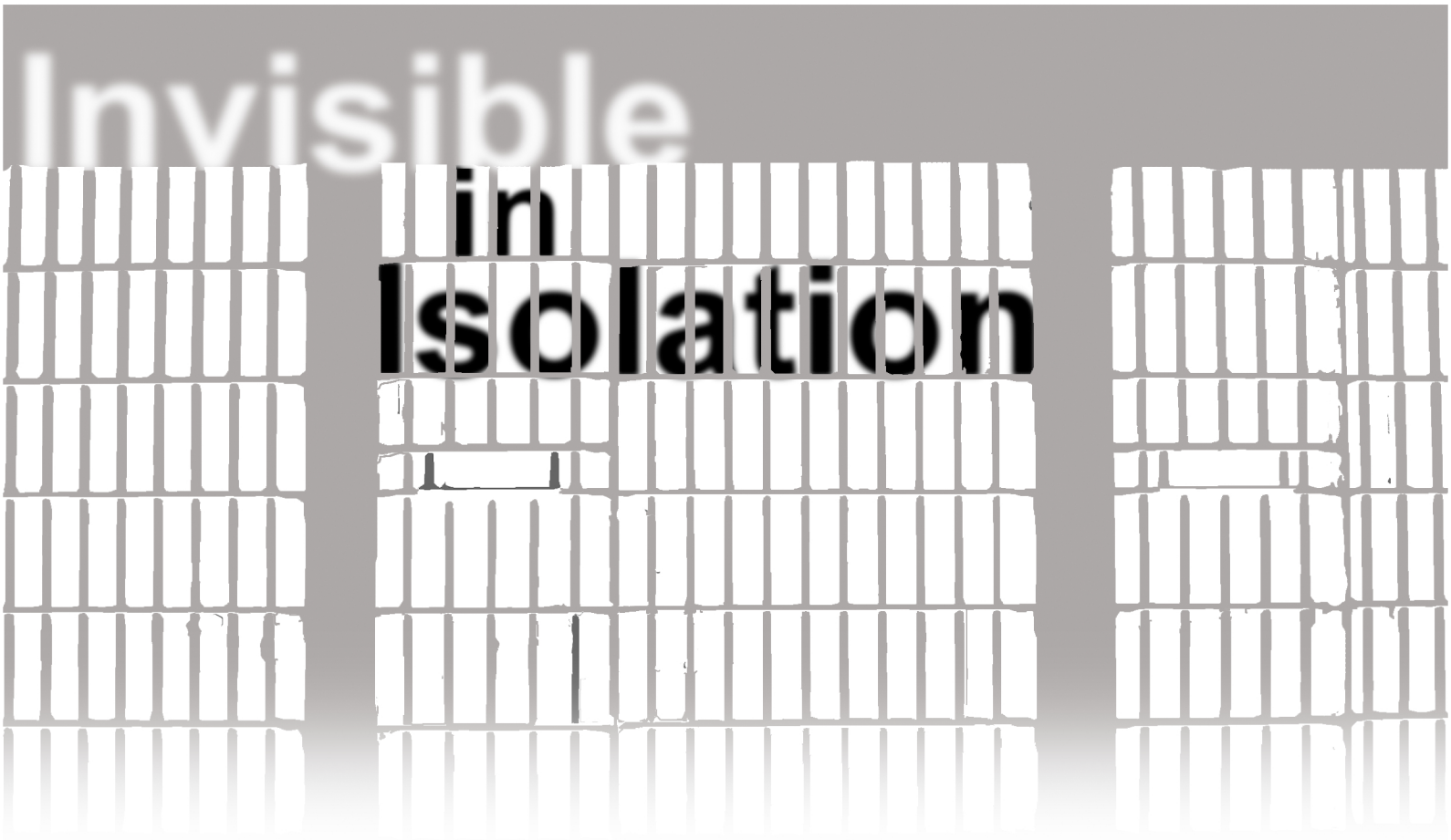

The Use of Segregation and Solitary Confinement in Immigration Detention

Heartland Alliance
National Immigrant Justice Center

PHR
Physicians for Human Rights

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About the Authors

Heartland Alliance's National Immigrant Justice Center (NIJC) and Physicians for Human Rights (PHR) are uniquely positioned to monitor and report on immigration detention trends nationally.

NIJC is a non-governmental organization dedicated to ensuring human rights protections and access to justice for all immigrants, refugees, and asylum seekers through a combination of direct services, policy advocacy, impact litigation, and public education. For more than a third of its 30-year history, NIJC has provided Know Your Rights presentations, direct representation, and individual advocacy for thousands of adults and children in more than 45 detention facilities across the country.

PHR is an independent nonprofit organization that uses medical and scientific expertise to investigate human rights violations and advocate for justice, accountability, and the health and dignity of all people. Since 1986, PHR has conducted investigations in more than 40 countries, including the United States. PHR's Asylum Program and its network of hundreds of volunteer health professionals have helped thousands of survivors of torture and other brutal forms of persecution gain asylum in the United States by providing medical evaluations to corroborate their claims of persecution. As part of the care it provides to asylum seekers, the Asylum Program advocates for improved conditions in U.S. immigration detention facilities and documents human rights abuses that immigrants suffer in their home countries and in the United States.

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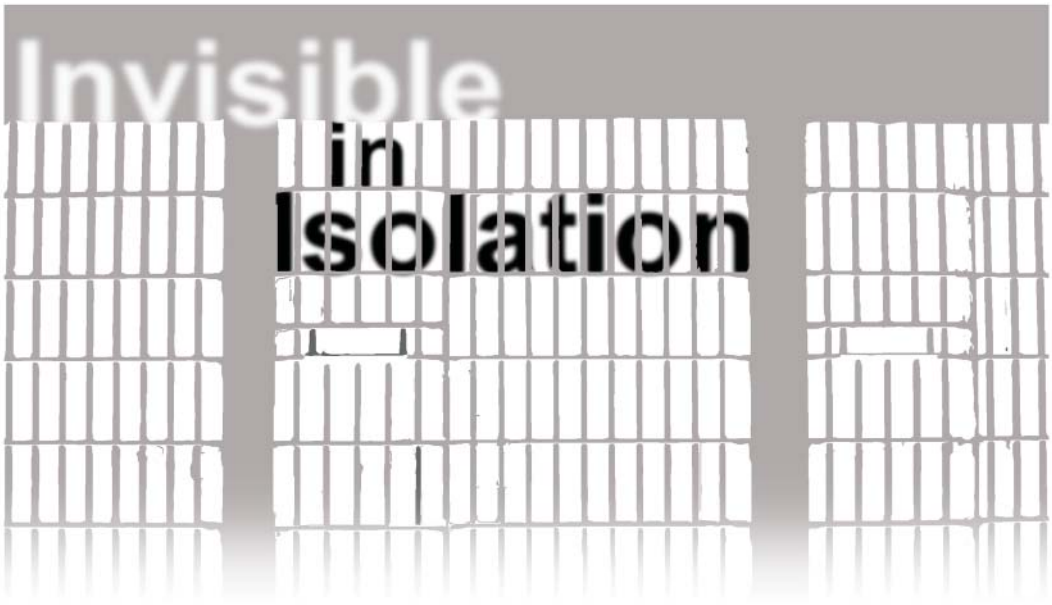
The statements made and views expressed in this report are those of Heartland Alliance's National Immigrant Justice Center and Physicians for Human Rights.



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DEFINITIONS

Segregation refers to the practice of separating vulnerable individuals or those who have been deemed dangerous to themselves or others from the general population in a prison or detention facility. Segregation takes different forms in different facilities, but is most commonly a designated housing unit that is separate from the general population.

Administrative segregation is, according to ICE, a "non-punitive form of separation from the general population used when the continued presence of the detainee in the general population would pose a threat to self, staff, other detainees, property, or the security or orderly operation of the facility."[9] ICE also places detainees who need "protective custody," those awaiting a disciplinary hearing, and those with medical conditions that require separation from the general population in administrative segregation.[10]

Disciplinary segregation is used to separate individuals who have violated a facility rule. ICE standards state that individuals are only to be placed in disciplinary segregation after a hearing has been conducted and the detainee is determined to have committed the violation.[11] Behavior giving rise to placement in disciplinary segregation can range from having an extra snack from the commissary — considered to be contraband — to violence against facility staff or other detainees.

Solitary confinement describes a form of segregation in which individuals are held in total or near-total isolation.[12] Individuals in solitary confinement are generally held in small cells for 23 hours a day and rarely have contact with other people. These cells can be located in a dedicated segregation units, within either administrative or disciplinary segregation, but individuals may also be locked in their cells in their assigned housing unit. In all cases, they are subject to stringent restrictions on recreation, visitation, and other privileges available to the facility's general population. Solitary confinement is sometimes referred to as "isolation," "the hole," "Supermax," "Secure Housing Unit (SHU)," or other terms.

Special Management Unit (SMU): According to the 2000 ICE National Detention Standards, "each facility will establish a Special Management Unit that will isolate certain detainees from the general population. The Special Management Unit will have two sections, one for detainees in Administrative Segregation; the other for detainees being segregated for disciplinary reasons."[8] Later versions of ICE standards do not state that SMUs will be used to isolate detainees, but rather to segregate certain detainees from the general population. In practice, the authors have found that SMUs are still used to hold detainees in solitary confinement.

EXECUTIVE SUMMARY

Immigration detention is the fastest-growing incarceration system in the United States.[1] While the system is not intended to be punitive, most immigration detention facilities are indistinguishable from jails: men and women are confined behind high walls lined with razor wire and have little freedom of movement or direct contact with family. Now, investigators have found that the detention centers and county jails that contract with U.S. Immigration and Customs Enforcement (ICE) often relegate immigration detainees to punitive and long-term solitary confinement without meaningful avenues for appeal.

This report, the first of its kind, aims to examine the use of segregation and solitary confinement in the immigration detention system, share individual experiences, and provide concrete recommendations to eradicate the use of solitary confinement, a practice that has proven unnecessary, costly, and harmful to detainees' physical and mental health.[2]

Even as the number of undocumented immigrants entering the United States has declined,[3] the number of people who are detained and deported has reached a record high.[4] ICE, the agency responsible for immigration detention within the Department of Homeland Security (DHS), now detains approximately 34,000 immigrants every night and more than 400,000 individuals each year. Since 2005, the immigration detention population has increased by nearly 85 percent.[5]

Most immigration detention centers are not dedicated facilities, meaning they hold both immigrants and criminally sentenced individuals. ICE-contracted detention facilities hold a wide range of individuals including asylum seekers; lawful permanent residents; people with mental health conditions; lesbian, gay, bisexual, and transgender (LGBT) individuals; elderly immigrants; and survivors of human trafficking. When all of these diverse populations are housed together, facilities often segregate certain individuals or groups.

ICE has failed to enforce consistent segregation standards in its detention facilities. As a consequence, jails often apply local correctional policies to manage both immigration and non-immigration detainees, leading to the widespread use of solitary confinement.

The vocabulary surrounding segregation and solitary confinement often can be misleading or confusing: solitary confinement is a form of segregation, but not all segregation amounts to solitary confinement. For example, some facilities place groups of certain individuals, such as sexual minorities, in sections of the jails separate from the general population. These individuals are allowed out of their cells for extended periods of time during each day and have regular contact with other detainees in the housing unit. In solitary confinement, however, individuals are locked in their cells for 23 hours each day and completely isolated from all other detainees (see definitions, page 2).

Much work has been done in the criminal justice system to show that harsh restrictions such as solitary confinement are unnecessary and almost always counterproductive and harmful.[6] But much less is known about the use of segregation and solitary confinement in the immigration detention system: most immigration detainees have no legal immigration status; many do not speak English; most do not have attorneys to represent their interests[7]; and the public is largely unaware that the immigration detention system even exists. Gaining access to facilities has historically been difficult for advocates, and access to segregated detainees is even more challenging.

Investigators found that solitary confinement in immigration detention facilities is often arbitrarily applied, significantly overused, harmful to detainees' health, and inadequately monitored. Some people give up and stop fighting their immigration cases so they will not have to spend another day in "the hole." These individuals are then deported to countries they may not remember, or worse, to countries where they have been persecuted or tortured. In short, the use of solitary confinement within the immigration detention system places enormous pressure on immigrants attempting to stay in the United States to abandon their options for legal relief, their families, their communities, and often the only country they have ever known.

Recommendations: A Roadmap to Ending Solitary Confinement in Immigration Detention

Based on this report's findings, the authors set forth the following recommendations:

ICE must:

1. End the use of solitary confinement in immigration detention facilities.

To achieve this goal, ICE must take the following critical steps:

2. Work closely with local and national human rights organizations to conduct a comprehensive review of existing segregation and solitary confinement policies and practices among the facilities it contracts to hold immigrants.

3. Place vulnerable individuals in alternatives to detention (ATD) programs if they cannot be held safely with the general population, and expand the release of individuals on humanitarian parole or immigration bond.

4. End the use of jails and jail-like facilities for immigration detention and quickly move to a system that holds immigration detainees in the least-restrictive conditions of confinement possible.

5. Develop and implement legally enforceable regulations to govern immigration detention based on civil and human rights principles, rather than correctional standards.

6. Withhold funding, impose financial penalties, or terminate contracts with detention facilities that violate segregation policies.

In the rare instances where non-solitary forms of segregation are necessary to ensure detainees' safety, ICE must take the following precautions to limit its use and ensure uniform procedures:

7. Train staff on the legal requirements and negative mental health effects of solitary confinement, emphasizing that segregation should only be used as a last resort and for as short a time as possible.

8. Ensure that individuals in disciplinary segregation and administrative segregation are housed in separate physical spaces and separate from those serving criminal sentences, to account for the fundamentally different purposes these forms of segregation serve.

9. Ensure that detention facilities comply with ICE detention standards, which require that detainees in segregation be provided the same rights as detainees in the general population, including outdoor recreation, access to counsel and legal materials, telephones, visitation, food, books, and hygiene.

10. Mandate daily face-to-face mental health assessments for individuals in segregation. Mental health professionals must be independent from and report to an authority other than the detention facility or DHS. Though the most recent ICE detention standards, which have not yet been implemented in any facilities, require daily medical assessments of detainees in Special Management Units, the two sets of older standards that currently govern detention facilities do not.

11. Provide detainees in both disciplinary and administrative segregation the opportunity to challenge their placement in segregation before an independent review body.

12. Track the use of segregation and distribute findings regularly. Facilities should be required to notify ICE any time a detainee is placed in segregation, and must provide ICE, the detainee, and the detainee's attorney with detailed reasoning behind such placement.

13. Allow periodic, independent monitoring of segregation units by non-governmental organizations, whose reports would be publicly available.

Though there is much that ICE can do to improve conditions in immigration detention facilities, it also faces constraints. In particular, Congress is responsible for allocating funds for both detention and ATD programs, establishing the number of detention beds that must be available, determining who is subject to mandatory detention, and enacting legally binding standards to govern detention facilities. All of these factors contribute to the misuse of segregation in immigration detention facilities.

Congress must:

1. Prohibit the use of solitary confinement in immigration detention.

2. End the practice of mandatory detention or reform mandatory detention laws so that only the most dangerous individuals are subjected to mandatory detention.

3. Reduce funding for immigration detention, thereby reducing the number of immigrants who may be detained each night, and dramatically increase funding for ATD programs.

4. Enact binding civil detention standards so that facilities that detain immigrants can be held legally accountable for improper use of segregation and solitary confinement.

METHODOLOGY

This report draws on three sources of information to illustrate the ways in which segregation and solitary confinement are used in immigration detention.

First, Heartland Alliance's National Immigrant Justice Center (NIJC) submitted open records requests to every immigration detention facility in the country to gather the following information:

- Policy manuals, staff training materials, detainee handbooks, and any other documents that describe the use of segregation and solitary confinement
- Architectural drawings of segregation units
- The number of ICE detainees held in segregation in 2011, the justification for such placement, and the length of time each detainee was segregated
- Log books, case memoranda, incident reports, periodic reviews, medical assessments of ICE detainees held in segregation, and any other materials to document the conditions of confinement

NIJC received responses from more than half (168) of the approximately 250 facilities that hold immigration detainees. Most indicated that the facilities did not maintain the records requested or that staff could not retrieve such information without going through each detainee's file. Several facilities agreed to provide information for fees in excess of $20,000, again claiming that they would need to hire staff to review each file to determine if someone was an immigration detainee or an individual serving a criminal sentence. These responses potentially signal that the fundamental distinction between the two populations was not readily apparent in these facilities. Thirty-two facilities from 23 states provided documents that detailed policies and practices related to the use of solitary confinement. Seven of those facilities also included information about ICE detainees who were held in solitary confinement.

Second, a research team comprised of medical and mental health professionals and attorneys from Physicians for Human Rights (PHR) toured immigration detention facilities and spoke with ICE officials, jail staff, medical personnel, local law enforcement officials, and segregated detainees. The team recorded several cases in which immigration detainees were inappropriately isolated from the general population, and cases in which solitary confinement was used to cloak assault, discrimination, and other abuses within the facility.

Out of the nearly 250 facilities that house immigration detainees, the research team interviewed individuals in segregation and solitary confinement at the following facilities:

Florence Service Processing Center, Florence, Arizona
Hampton Roads Regional Jail, Hampton Roads, Virginia
Houston Contract Detention Facility, Houston, Texas
Mira Loma Detention Center, Lancaster, California
Santa Ana City Jail, Santa Ana, California
Suffolk County House of Corrections, Boston, Massachusetts
York County Prison, York, Pennsylvania

In addition to these facilities, the authors solicited direct accounts from immigration detainees who had previously spent time in solitary confinement, including NIJC clients from:

Dodge County Detention Facility, Juneau, Wisconsin
Houston Processing Center, Houston, Texas
McHenry County Correctional Facility, Woodstock, Illinois
North Georgia Detention Center, Gainesville, Georgia
Oakdale Federal Detention Center, Oakdale, Louisiana
Theo Lacy Facility, Orange, California
Tri-County Detention Center, Ullin, Illinois

The authors also looked to reports produced by other advocacy organizations that had conducted recent visits to detention facilities and assessed conditions of segregation and solitary confinement.

This report does not purport to be a statistical analysis of the use of segregation across all immigration detention facilities. Rather, because of the large number of facilities used to detain immigrants and the limited number of researchers available, the authors designed a convenience sample of detention facilities instead of using a randomly selected set. Many detention facilities are located in remote areas or in regions where researchers were not available to conduct visits. In addition, many facilities only hold a small daily population of immigration detainees — many averaging less than one detainee per day — for less than 72 hours before they are transferred to a larger facility. It is entirely possible, and indeed probable that certain facilities not included in this report have exemplary segregation practices, and the authors would encourage detention facilities to share their best practices.

The facilities above were selected to achieve a diversity of geographic locations, population sizes and characteristics, and facility types. Researchers visited two Service Processing Centers (SPCs), two Contract Detention Facilities (CDFs), and six local jails that house immigration detainees through Inter-Governmental Service Agreements (IGSAs). The combined average daily population of these facilities is approximately 3,600, or about 11 percent of the total average daily population for the immigration detention system.

To assess segregation facilities in these detention centers, the research team developed an audit tool aimed at providing an overview of the use of segregation and solitary confinement in each facility. The audit tool contained questions regarding each facility's average daily population of immigration detainees; its segregation capacity and current administrative and disciplinary segregation population; the number of detainees in segregation with diagnosed mental health problems and the resources available for these detainees; the frequency of medical and mental health rounds in segregation, and the types of health professionals who conduct rounds; and whether detainees are cleared by medical and mental health personnel before being placed in segregation.

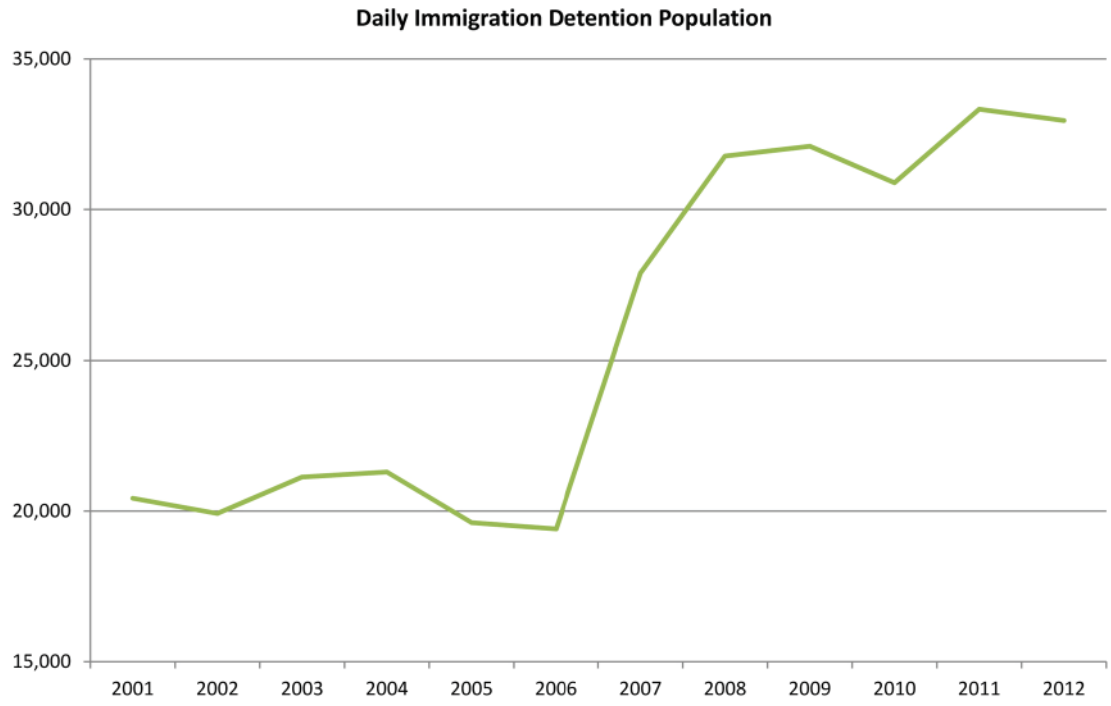
For detainee interviews, the research team developed a semi-structured interview form. This was administered after obtaining written, informed consent from the detainees. The questionnaire was used to gather information about the detainees' personal and immigration histories. Questions relating to segregation focused on the time spent in segregation and/or solitary confinement; the procedure used for placing the detainee in segregation; the procedure for complaints about conditions or abuse in segregation; and the conditions of segregation itself, including cell size; food; access to recreation; access to legal counsel and information; access to family members, either in person or by phone; and access to medical and mental health care. Interviewers also asked subjective questions relating to how detainees felt while in segregation.

Because many individuals who shared their stories remain in detention and are fighting their immigration cases, their names have been omitted from this report. If former detainees won their cases and wished to speak publicly about their experiences, we have included their names.

INTRODUCTION

Every night, nearly 34,000 people are held in immigration detention facilities across the country. About two-thirds of these individuals are held in a network of over 250 state and local facilities, which contract with ICE to house immigration detainees, often alongside criminal inmates.[14] The rest are held in dedicated immigration detention facilities run by ICE or contracted to private prison corporations.[15] In spite of the large number of people who pass through these detention facilities every year, little public information is available about immigration detention. Though ICE does release some data in response to Freedom of Information Act (FOIA) requests, it is unclear what data, if any, ICE routinely collects and analyzes. For example, though ICE detention standards mandate that facilities report to ICE whenever a detainee is held in segregation for more than 30 days, ICE has not made this information publicly available. As a result, advocates have very little information regarding the use of segregation in detention facilities. Most of what is known about segregation in these facilities comes from anecdotal reports from current and former detainees and the attorneys and advocates who work in detention centers.

The purpose of immigration detention is not to punish people who have violated immigration laws, but to ensure that immigrants attend all of their immigration court hearings and comply with orders issued by immigration judges. Some immigration detainees have no legal immigration status; others have permanent residence or another type of immigration status, but the government believes it has the legal authority to remove them from the country. The majority of immigration detainees have no criminal record,[16] or have committed only minor crimes or traffic violations, often years before being detained by ICE. Still others have come to the United



Source: Congressional Research Service, "Immigration-Related Detention: Current Legislative Issues," January 12, 2012, available at http://www.fas.org/irp/crs/RL32369.pdf. Note: Fiscal years. Data for FY 2012 is the average daily population in detention through December 13, 2011. Based on published and unpublished DHS data.

States seeking protection from persecution and torture in their home countries, only to be thrown into detention pending the outcome of their asylum claims.

> "Any restrictions or conditions placed on noncitizens — residents or others — to ensure their appearance in immigration court or their actual removal should be the least restrictive, non-punitive means necessary to further these goals."
>
> – American Bar Association
> Civil Immigration Detention Standards[13]

Because of the diverse population within immigration detention, it may be necessary to temporarily separate vulnerable or dangerous individuals from the general detention population to keep everyone safe. Yet this investigation uncovered the frequent use of solitary confinement, or 23-hour lockdown where segregated immigration detainees are denied contact with other people and privileges afforded to other detainees. This severe form of segregation, especially when it is used for long periods of time, is rarely necessary to achieve order in a jail or detention facility.

This investigation also revealed that solitary confinement frequently is used as a control mechanism. Researchers met individuals who were held in solitary confinement after they helped other detainees file complaints about detention conditions. People who are mentally ill and people who identify as lesbian, gay, bisexual, or transgender (LGBT) often are assigned to solitary confinement because jail staff is unwilling to deal with their unique circumstances and/or because staff thinks of solitary confinement as a "protective" status for vulnerable populations. Researchers also documented incidents where victims of assault were placed in solitary confinement, allegedly "for their protection" but against their wishes. Of greatest concern is the apparent lack of strict, comprehensive, and independent oversight of segregation practices, which would help ensure that segregation is only used in extreme circumstances, after all alternatives have been exhausted, for the shortest time possible, and under humane conditions.

It should be noted that in spite of the problems uncovered during this investigation, many detention facilities adhered to policies and practices that discouraged the use of segregation and promoted humane conditions within segregation units. The Santa Ana City Jail (California), for example, has a segregation unit dedicated to LGBT detainees (see case study on page 15). While detainees at Santa Ana described a number of problems, overall they felt safer in this segregation unit than in the general population, and were permitted all of the rights of other detainees. The use of segregation in the Suffolk County House of Corrections (Massachusetts) is very low, and the facility's superintendent stated that his goal was to reintegrate people in segregation back into the general population as quickly as possible. Detainees in the segregation unit at Suffolk receive over an hour of outdoor recreation every day, and are able to access showers, telephones, mail, and reading material.

ICE also has taken steps to improve the use of segregation in detention facilities. Its most recent set of standards — the 2011 Performance-Based National Detention Standards (2011 PBNDS) — contain significant improvements over prior standards, particularly in the realm of medical care for segregated detainees. But these standards had not been implemented in any detention facility at the time of this report's publication. These standards are still based on correctional standards and remain legally unenforceable. In short, ICE is heading in the right direction, but it has a long way to go.

The following sections discuss the most common problems with segregation and solitary confinement uncovered in this investigation.

CONDITIONS IN SOLITARY CONFINEMENT

Jails often place overly harsh restrictions on immigration detainees who are segregated from the general population. For example, the detainee handbook at Washoe County Jail (Nevada) is representative of several inappropriately punitive policies analyzed in this report. It states: "After reading this handbook, it will be clear to you that the jail has a strict environment. This environment will not be like home and probably not to your liking."[17] The handbook goes on to state that commissary, television, library, and visitation privileges must be "earned" by working in the jail, and failure to do so will result in "lockdown and failure to earn any privileges."[18] Though Washoe holds only a small number of immigration detainees on a typical day, it is clear from this handbook and other materials obtained from Washoe that the jail makes no distinction between individuals in ICE custody and those serving criminal sentences.

Facilities' recreation practices highlight the sedentary and isolated reality of detainees' day-to-day lives in solitary confinement. Detainees in disciplinary segregation at Cobb County Jail (Georgia) are only allowed to exercise outside once every 30 days, and even then they may be placed in "double restraints," meaning they are cuffed around the wrists and ankles. At the Fairfax County Jail (Virginia), recreation is "automatically suspended during the entire disciplinary segregation period."[19] At the Hampton Roads Regional Jail (Virginia), recreation for detainees in segregation units consist of one hour per day, five days per week, spent alone in a large room within the segregation unit. According to ICE, the space complies with ICE detention standards, which do not require facilities to provide outdoor recreation. While detainees in the segregation unit at York County Prison (Pennsylvania) are allowed outdoor recreation, one detainee reported that "[t]hey put you in a cage like an animal. It's smaller than your cell. There's nothing to do but walk up and down."

> "Keeping people locked down for hours on end is counter-productive in the long run. To the extent that safety allows, prisoners in segregation should have opportunities to better themselves through treatment, work, and study, and to feel part of a community, even if it is a highly controlled community."
>
> *– Confronting Confinement,* Vera Institute of Justice[20]

Detainees in solitary confinement may also be subject to a different diet than the general population. For example, detainees in the Washoe County Jail may be fed a Nutraloaf, which is "prepared from foods … ground up in a raw state to achieve a meat loaf consistency. Binding ingredients such as eggs, beans, flour, and cornmeal are added…and [the loaf] is placed in refrigeration until ordered."[21] After one week, detainees may "earn back a regular diet."[22] Using quality food as a privilege that can be earned for good behavior and taken away for bad is excessive even in the criminal incarceration system, and should be explicitly prohibited in facilities that house immigration detainees.

Researchers also found that several jails deny access to legal information and counsel for detainees in segregation. In Seneca County Jail (Ohio), guards may deny detainees who are "uncooperative" access to the law library until "their behavior and attitude warrants resumed access."[23] It is not clear who decides when privileges are restored. Detainees in segregation at York County Prison reported that they are prohibited from speaking with their attorneys during their first 30 days in segregation. Similarly, a Massachusetts attorney reported that

detainees in solitary confinement at the Bristol County House of Corrections were not allowed to use a phone — even to call their lawyers.

Detainees in solitary confinement may also be subject to excessive force, harassment, or abuse by corrections officers.[24] Researchers documented the following incidents:

- In the North Georgia Detention Center, one transgender detainee told researchers that she was grabbed by a guard while in the bathroom. The guard attempted to handcuff her while her pants were still around her ankles, and the detainee urinated on herself and the floor. She asked to clean herself up but the guard refused and told her to keep quiet about what happened.
- In the Butler County Jail (Ohio), a detainee with suspected mental health concerns was forced to the ground after guards asked him to stop yelling in his cell. He suffered a "knee strike" from one deputy and "three closed-hand strikes aiming for his upper body mass…[ultimately] landing on his face."[25] A report from this incident indicates that officers used "defensive tactics."
- A detainee formerly held at the Theo Lacy Facility (California) asked a corrections officer why he reduced the recreation time for LGBT detainees from two hours to 45 minutes. The officer responded: "Because you need to learn not to be faggots" and "it's not a pretty picture to see you [in the dayroom]."[26]
- A transgender detainee previously held in solitary confinement at the Florence Service Processing Center (Arizona) told investigators that the guards' insistence on calling her "Mister" or "Sir" was particularly traumatic.[27]

IMPROPER RELIANCE ON CORRECTIONAL FACILITIES AND PRACTICES

An overly strict correctional culture, where contact with other people and access to fresh air is denied, has been shown to be counterproductive when used in the criminal justice system.[29] There is no reason to expect it to be any less harmful when used in immigration detention. Indeed, the former director of the Department of Homeland Security's Office of Detention Policy and Planning (ODPP) has acknowledged that immigration detention facilities mirror prison culture:

> With only a few exceptions, the facilities that [ICE] uses to detain aliens were built, and operate, as jails and prisons to confine pretrial and sentenced felons. ICE relies primarily on correctional incarceration standards … and on correctional principles of care, custody, and control. These standards impose more restrictions and carry more costs than are necessary to effectively manage the majority of the detained [immigrant] population.[30]

Despite ICE's stated commitment to moving more detainees from jails and prisons to civil detention facilities with less-restrictive conditions of confinement,[31] ICE has made scant progress in building an immigration detention system that differs from criminal incarceration, in part because Congress continues to fund the expansion of immigration detention. In 2011, ICE released an updated version of its detention standards — the 2011 Performance-Based National Detention Standards (2011 PBNDS) — as a step toward its goal of creating a civil detention system.[32] The 2011 PBNDS do provide some incremental improvements over previous segregation policies, most notably by discouraging the use of solitary confinement for mentally ill detainees. But the 2011 PBNDS are still based on American Correctional Association (ACA) pre-trial detention standards for jails and prisons,

> "Residents should not be held in jails or jail-like settings … Civil detention facilities might be closely analogized to 'secure' nursing homes, residential treatment facilities, domestic violence shelters, or in-patient psychiatric treatment facilities."
>
> – American Bar Association
> Civil Immigration Detention Standards[28]

and fall short of truly civil and humane detention standards.

At the time of this report's publication, ICE has initiated contract negotiations to require detention facilities to implement the 2011 PBNDS. This is a welcome step toward alleviating some of the most harmful conditions of segregation. But the majority of immigration detention facilities do not detain immigrants exclusively. Without robust oversight, including routine, independent monitoring and meaningful sanctions for violations, the authors fear that facilities may continue to apply overly punitive correctional policies to everyone in their custody, without any distinction between people in ICE custody and those serving criminal sentences.

HEALTH CONSEQUENCES

Prolonged solitary confinement can cause severe and permanent damage to detainees' health.

Since solitary confinement first came into use in the United States in the 19th century, researchers and observers have documented its harmful psychological and physiological effects on the criminally convicted. Early observers noted that even among prisoners with no prior history of mental illness, those held in solitary confinement exhibited "severe confusional, paranoid, and hallucinatory features," as well as "random, impulsive, often self-directed violence."[33]

More recent studies have confirmed the disastrous psychological and physiological consequences of solitary confinement. Dr. Stuart Grassian, a noted expert on the psychological effects of solitary confinement, has identified a group of common symptoms:[34]

- Hyperresponsivity to external stimuli
- Perceptual distortions, illusions, and hallucinations
- Panic attacks
- Difficulties with thinking, concentration, and memory
- Intrusive obsessional thoughts
- Overt paranoia
- Problems with impulse control, including random violence and self-harm

This combination of symptoms — some of which Grassian notes are found in virtually no other psychiatric illnesses — together form a unique psychiatric syndrome as a result of solitary confinement, which some have termed "prison psychosis."[35]

While the mental health effects of even a short, defined period of time in solitary confinement can be disastrous, many individuals are held in solitary for prolonged or indefinite periods. These individuals "are in a sense in a

prison within a prison,"[36] and the effects on their mental health are severe. The U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment concluded that the limit between solitary confinement and "prolonged" solitary confinement is 15 days, at which point some of the harmful psychological effects of solitary confinement may become irreversible.[37]

The harmful effects of solitary confinement can be even more pronounced among the high proportion of individuals in American prisons and detention facilities who suffer from pre-existing personality disorders or other mental health issues.[38] Studies consistently show that many individuals serving criminal sentences enter prisons with a variety of psychiatric disorders. Because segregation and solitary confinement is often used as a management tool for individuals with mental illness, those with pre-existing psychiatric disorders often end up in solitary confinement. When placed in solitary confinement, detainees tend to experience further deterioration in their mental health.[39] Because of the psychological trauma resulting from solitary confinement, self-harm and suicide are also more common in solitary than among the general prison population.[40]

While the mental health effects of solitary confinement among the criminally convicted have been studied, much less information exists regarding the psychological effects of segregation and solitary confinement on individuals in immigration detention. Many non-citizens in detention survived persecution and torture in their countries of origin. Others have survived human trafficking, domestic violence, sexual assault, and other crimes in the United States. They are alone and terrified, unsure if they will be deported, and they frequently suffer from severe anxiety, depression, and Post-Traumatic Stress Disorder (PTSD). Without treatment, many detainees experience deteriorating psychological states during their weeks, months, or years in detention.

Some immigrants enter detention facilities with preexisting (and often previously undiagnosed) mental health conditions. Other previously healthy detainees develop mental illnesses as a result of prolonged detention or from the stress of removal proceedings. While precise figures are unavailable, a significant number of the approximately 400,000 immigrants detained in a year suffer from some form of mental illness.[41] As in the criminal justice system, many of these detainees end up in segregation or solitary confinement, where they receive insufficient mental health care.

In one groundbreaking study of detained asylum seekers, investigators found extremely high rates of anxiety, depression, and PTSD symptoms among detainees.[42] Respondents in this study said that the threat of segregation and the arbitrariness of the decision to impose segregation compounded their anxiety.[43] But asylum seekers make up only a small portion of the immigration detainee population, and more research can help determine the mental health effects of segregation and solitary confinement on other immigration detainees.

> While the mental health effects of even a short, defined period of time in solitary confinement can be disastrous, many individuals are held in solitary for prolonged or indefinite periods. These individuals "are in a sense in a prison within a prison."

Because most immigration detainees have committed no crimes and are not dangerous to society, they often cannot understand why they are being held in facilities that are identical to jails. While this deprivation of liberty alone is enough to inflict psychological damage, the further deprivation of liberty inherent in segregation and solitary confinement might be reasonably expected to compound the psychological stress of detention. Moreover, because most immigrants in ICE custody do not have attorneys at any point in their immigration proceedings, immigration detainees are effectively cut off from the outside world. For many immigration detainees,

**“I’m losing my memory.
I can’t remember conversations
with people a few minutes after.”**

“I feel like I’m an animal.”

– Immigrants in solitary confinement at York County Prison, PA

an attorney is their only advocate and contact outside of the facility.

Studies in the criminal justice system have also shown that the psychological trauma of solitary confinement persists after individuals are released, as most eventually are. One notable study found that the symptoms of prison psychosis last long after release from solitary confinement, while lasting personality changes resulting from solitary can permanently impair a person’s ability to interact socially.[44] This can severely impair a released individual’s ability to safely and successfully reintegrate into society — an especially important consideration for immigration detainees, all of whom are eventually released from detention.

Because most immigration detainees have committed no crimes and are not dangerous to society, they often cannot understand why they are being held in facilities that are identical to jails.

The health effects of solitary confinement are primarily psychological. Yet researchers have noted a number of corresponding physiological consequences among individuals held in solitary confinement. Detainees held in solitary for even a short period of time commonly experience sleep disturbances, headaches, and lethargy. In one study, researchers found that more than 80 percent of the sample population suffered from all three of these conditions, while more than half suffered from dizziness and heart palpitations.[45] Individuals in solitary confinement often suffer from appetite and weight loss, and severe digestive problems, sometimes resulting from their inability to tolerate the smell or taste of food in an environment of near-total sensory deprivation. Other common afflictions include diaphoresis, back and joint pain, deteriorating eyesight, shaking, feeling cold, and aggravation of pre-existing medical conditions.[46]

CASE STUDY

Segregation as "Protective Custody" in Santa Ana City Jail, CA

In 2011, NIJC filed the first multi-plaintiff complaint to the Department of Homeland Security's Office of Civil Rights and Civil Liberties (CRCL) on behalf of 17 LGBT immigration detainees who were subject to abusive conditions in detention. Among the complaints were a pervasive denial of medical care for chronic conditions, sexual assault and physical abuse by both guards and other detainees, and overreliance on segregation for LGBT detainees.

In response, CRCL and ICE began an investigation of the Santa Ana City Jail, where multiple plaintiffs were detained. An LGBT housing unit was created to protect these individuals and ensure access to recreation time and other privileges afforded to the general population. Medical care has reportedly improved for detainees with chronic conditions, but requests for treatment for acute conditions still go unanswered.

In a recent visit, a PHR researcher spoke to detainees in the LGBT housing unit who claimed that trying to see a doctor was a "nightmare." In one day, the researcher met:

- A transgender woman with severe abdominal pain resulting from a recent stabbing. She was told that she would be sent out of the LGBT housing unit after she repeatedly pressed an "emergency button" because of her abdominal pain.
- Another detainee who requested to see a doctor multiple times for abdominal pain. He was eventually sent to the medical ward, where it was determined that he needed to have an emergency appendectomy.
- A detainee who described being taken to an off-site doctor in his orange jumpsuit and handcuffs, an experience he described as "humiliating."
- A detainee who requested mental health services but was denied. He was told "you're just depressed because you're in jail." After multiple requests for services, he was sent to see a counselor, whom he states fell asleep during two visits.
- Other detainees in the LGBT housing unit report that guards threaten to move them out of protective custody to the general population.

The detainees who were interviewed on this visit felt that the dedicated LGBT unit was a significant improvement and that the quality of life was better than it had been in the general population. But ICE's efforts should not be spent on "perfecting" segregation; instead, ICE must expand the use of alternatives to detention programs and release vulnerable populations from detention.

Solitary confinement often is used in lieu of mental health treatment and qualified mental health staff is rarely on-site.

Throughout this investigation, researchers were consistently told of problematic and inadequate mental health care in segregation and solitary confinement units:

- A detainee at the North Georgia Detention Center reported to the ACLU of Georgia that the facility had no ability to care for people with mental illnesses, and instead placed them in segregation.[47]
- At the Irwin County Detention Center (Georgia), the ACLU of Geogia also reported that detainees with mental illnesses were afraid to discuss their symptoms because they feared being put in segregation.[48]
- At York County Prison (Pennsylvania), detainees receive a suicide screening by a nurse upon entering the facility. The threshold to flag a person as vulnerable to suicide attempts is very low, and those who meet this low standard are then placed in solitary confinement pending another examination by a psychiatrist or social worker.
- One detainee in the Mira Loma Detention Center (California) reported that while in segregation for arguing with a guard, he was placed on "mental observation" after another detainee falsely claimed that he was suicidal. According to the detainee, he was never evaluated by mental health professionals to determine whether he was truly suicidal.

> "Few beds are available for in-house psychiatric care for the mentally ill. Aliens with mental illnesses are often assigned to segregation, as are aliens on suicide watch."
>
> – Dr. Dora Schriro, former director of DHS Office of Detention Policy and Planning

In the 2011 PBNDS, ICE took steps to address gaps in mental health care, recognizing that isolated detainees need daily, face-to-face medical assessments.[49] The standards also state that "[d]etainees with serious mental illness may not be automatically placed in an SMU [Special Management Unit] on the basis of such mental illness. Every effort shall be made to place detainees with serious mental illness in a setting in or outside of the facility in which appropriate treatment can be provided, rather than an SMU, if separation from the general population is necessary."[50]

Yet even the 2011 PBNDS do not go far enough to protect immigration detainees. The 2011 PBNDS do not require mental health assessments to be conducted by licensed physicians or psychiatrists, so many facilities will assign nurses or medical assistants or technicians to provide mental health care. Moreover, ICE standards do not require immigration detention facilities to have mental health staff available on-site, so many do not.[51] In many facilities, including the Houston Contract Detention Facility, staff transport detainees in need of mental health services to a nearby mental health facility. Afterward, the detainees are returned to the segregation unit. Finally, the recommendation that medical personnel evaluate individuals before placing them in segregation is considered an "optimal" level of compliance, and there does not appear to be any incentive for detention facilities to comply with optimal standards of treatment. For example, despite having a large mental health team, the Suffolk County House of Corrections (Massachusetts) does not provide mental health screening for detainees before placing them in segregation. Once in segregation, however, nurses check detainees three times per day. It is unclear what mental health training nurses receive, if any, and detainees report that the nurses merely check off on the log that they are alive in their cells. The mental health of segregated detainees is only fully evaluated after 30 days in segregation.

DUE PROCESS CONCERNS AND LACK OF ICE OVERSIGHT

Without due process, detainees have no protection when guards abuse their power.

Guards have unfettered power over immigrants, who have no legal recourse for unfair custody decisions. Investigators found instances in which jails justified the use of solitary confinement to discriminate against non-English-speaking immigrants and to punish immigration detainees for violations as trivial as dressing improperly or putting their feet on tables. Failure to speak English when able; watching Spanish channels on TV; sitting on counters, tables, or railings; leaning back on chairs; horseplay; pulling pranks; and singing loudly can all lead to 23-hour lockdown according to existing policies.

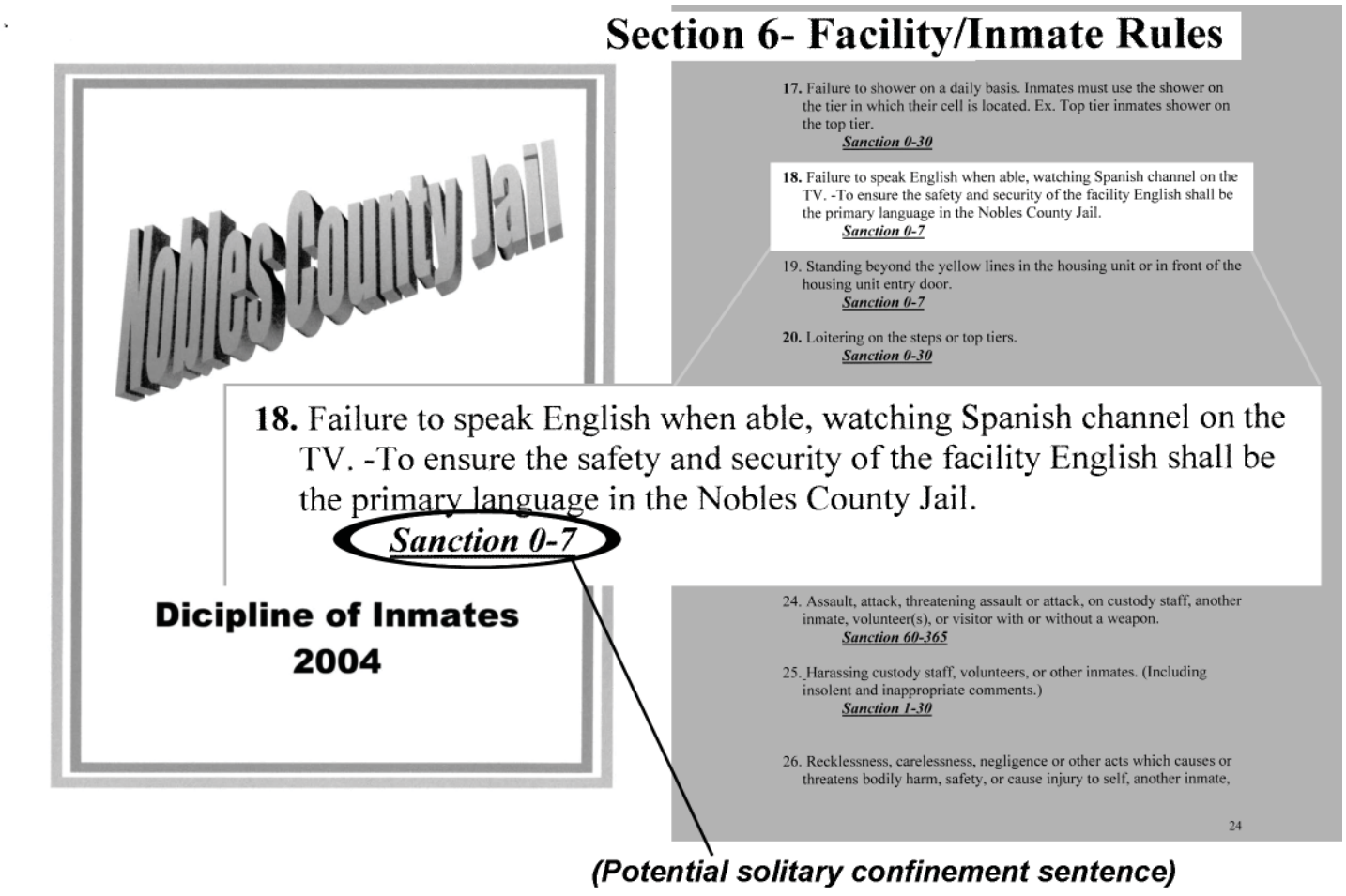
Some instances of troubling segregation and solitary confinement sentences for so-called "disciplinary" purposes include:

- According to a recent report by the ACLU of Georgia, a detainee in the Atlanta Pretrial Detention Center was placed in segregation because he translated for a non-English speaking detainee.[52] Some detainees at the Stewart Detention Center (Georgia) reported being put in segregation after complaining about the quality of the drinking water,[53] while another was threatened with segregation for refusing to work more than eight hours a day.[54]
- Researchers spoke to a domestic violence survivor who was detained for 11 months in McHenry County Correctional Facility (Illinois) while her U visa[55] application was pending. On separate occasions, she was placed in disciplinary segregation for having an extra blanket, bra, and pair of socks; for placing her shampoo bottle on the windowsill; and for having newspaper articles in her cell. She spent weeks in solitary confinement as punishment for her "offenses."
- In Butler County Jail (Ohio), records indicated that a detainee was sentenced to 30 days in solitary confinement without commissary or visitation privileges because she was in the dayroom playing cards during church services.[56]

Punished for Practicing Islam

Rashed, a young Yemeni, was detained for three years in multiple facilities in the Midwest while he appealed his asylum claim. He was observing Ramadan when he was brought to Dodge County Detention Facility (Wisconsin). He explained to officers that he would fast for 30 days and requested that he be excused from meals. Instead, officers placed him in solitary confinement for the remainder of Ramadan. He was not allowed to appeal the decision. Later, when he was at Tri-County Detention Center (Illinois), Rashed was placed in solitary confinement after he tried to advocate on behalf of another Muslim detainee who could not speak English well. When he inquired about the charges against him, officers would not respond. Rashed spent approximately 30 days in 23-hour lockdown for this "offense." Each day, the warden would ask Rashed if he was "broken" yet.

- In the Hampton Roads Regional Jail (Virginia), a detainee told investigators that he had been placed in segregation for manufacturing wine after he left juice in his cell until it began to smell. He reported that he had been in segregation for a week without a hearing. Although an official had told him he was due to be transferred back to the general population, he had no idea when or if that would happen.
- Two detainees at the York County Prison (Pennsylvania) reported to researchers that they were placed in a segregation unit after failing to notice that their identification armbands had fallen off. Both had cellmates in the segregation unit who were serving criminal sentences.
- Investigators uncovered a case from Washoe County Jail (Nevada) in which a disciplinary hearing committee found a detainee not guilty of fighting. However, the disposition report indicates that he was moved to the segregation unit anyway. It states: "Due to a lack of cooperation from all suspected parties and lack of witnesses, you were found not guilty of battery by an inmate. Due to your suspected involvement in the incident you will remain on administrative segregation…"[57]
- Records from Washoe County Jail (Nevada) showed a case in which an individual was threatened with permanent solitary confinement. The man was originally placed in segregation after he and several other detainees filed a collective grievance against a guard. Detainees claimed that they feared this guard because he routinely threatened to "send [the detainees] to the hole" if they upset him. Several months later, this individual was involved in a fight with another detainee. At



Excerpts from Nobles County Jail (MN) Inmate Handbook, cover and page 49

this point, the guard warned the detainee that "he could be placed in segregation permanently if he was found guilty of fighting during this incarceration."[58]

Detainees who commit single, minor violations are rarely placed in solitary confinement for very long, but many facilities examined for this report treat detainees more harshly with each subsequent infraction.[59] Guards have more and more authority to deny privileges and increase time in solitary confinement as a detainee accrues violations.Ultimately, guards can determine that an individual is a "threat to the security, safety, or orderly operation of the facility" and place a detainee in administrative segregation, which can be indefinite.[60]

Jail policies on administrative segregation are often much more subjective than those for disciplinary segregation and reveal an insensitivity to certain populations of detainees. For example, California's Ventura County Jail will segregate "obvious alternative life style inmates."[61] Washoe County Jail more explicitly states that individuals with "overt homosexual tendencies" and those who "cannot adjust to general population" may be held in administrative segregation.[62] Cobb County Jail (Georgia) suggests that "gender challenged" individuals and those who demonstrate "past or current…passive-aggressive behavior" merit placement in segregation.[63] Finally, the Clinton County Correctional Facility (Pennsylvania) will place detainees "who have serious problems of adjustment, are overly aggressive, [or] emotional or antisocial" in 23-hour lockdown.[64]

California's Ventura County Jail will segregate "obvious alternative life style inmates." Washoe County Jail more explicitly states that individuals with "overt homosexual tendencies" and those who "cannot adjust to general population" may be held in administrative segregation.

Delfino was held in protective custody from the time he was brought into ICE custody in Houston, Texas. When he asked about the guards' decision, they told him it was because of his "feminine appearance" and "for his own protection." Delfino asked to be placed in the general population, but instead was placed in a small, windowless cell and held in conditions befitting solitary confinement. While in solitary confinement, Delfino heard three other detainees attempt to commit suicide in his housing pod. Delfino knew that these men had been in solitary confinement for several months longer than him, and with each passing day he feared he would become suicidal. He asked to be placed on work detail and for a Bible so he could keep his body and mind occupied, but guards repeatedly ripped up his requests in front of him. He was only offered recreation time at 6 a.m. in the winter, and when he asked to go outside at a later time, officers told him he had no right to be with anyone else. He describes this time as the worst in his life and says he was made to feel like he was a "bad person for being gay."

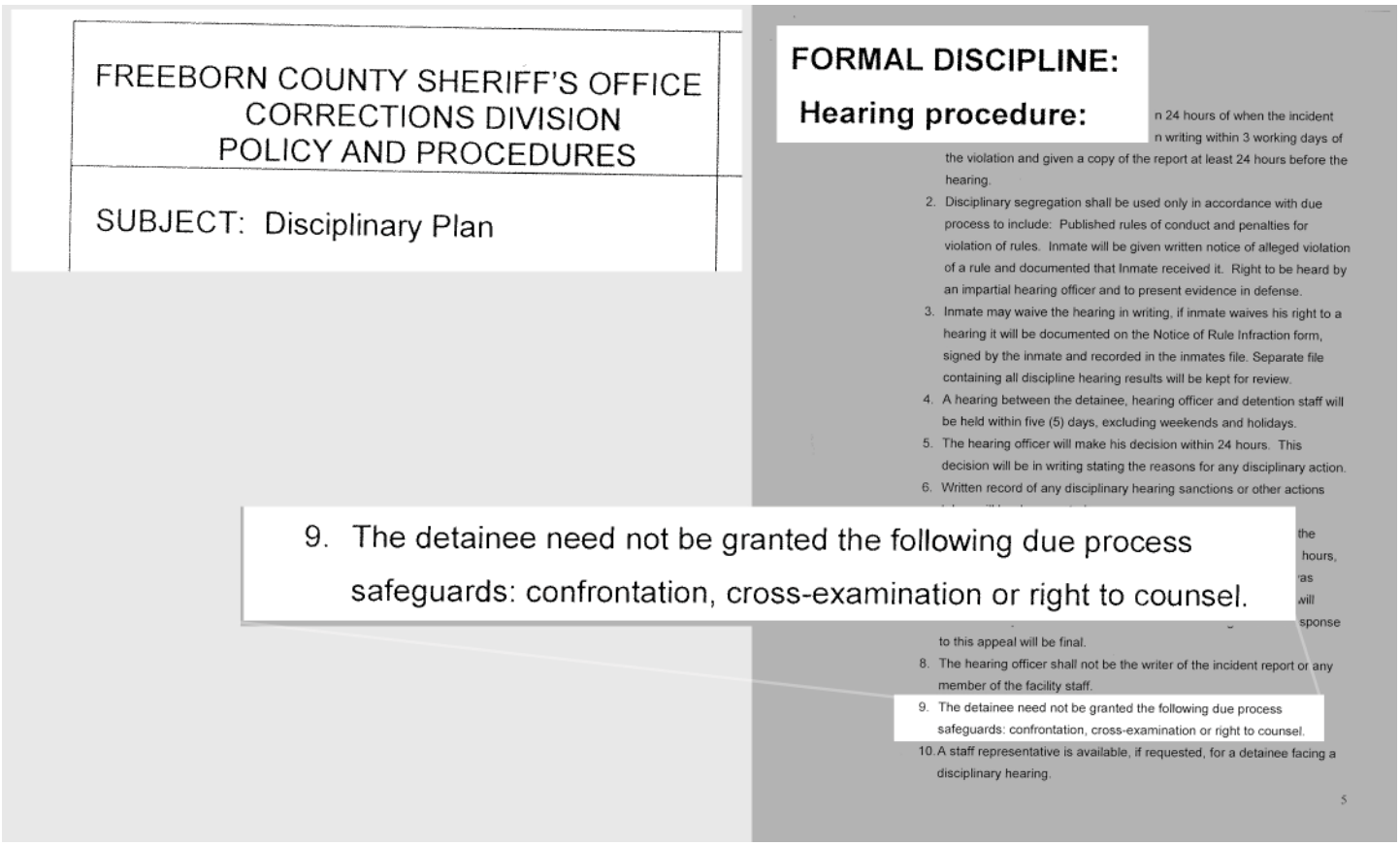
Throughout this investigation, immigration detainees expressed concerns about the stigma of solitary confinement and segregation. In both interviews and written policies, facility staff routinely emphasized the potential threats of certain populations to justify housing decisions. This emphasis allows guards to deny detainees' rights with little justification. For example:

- One detainee at the Mira Loma Detention Center (California) was placed in administrative segregation by a guard after lawyers discussed a case involving sexual abuse of a child at an immigration court hearing. Though this detainee's case had nothing to do with sexual abuse, a guard standing at the back of the room told him he would have to be moved to segregation for his own

protection. When the detainee clarified that he had never been convicted of sexual abuse, the guard replied that he would still be moved to segregation because other detainees in the courtroom might target him for violence. The detainee was terrified that the longer he spent in segregation, the more likely other detainees were to think he had been convicted of sexual abuse.

- A McHenry County Jail (Illinois) policy states: "The Corrections Bureau may from time to time receive detainees/inmates who are by test, medical record, or self-admission, known to be HIV-positive. Ordinarily, the identity of these detainees/inmates is confidential. However, there are cases when detainee/inmate behavior may require staff to take actions that may tend to identify them as HIV-positive. ... In such cases, the health and safety of staff and other detainees/inmates will take precedence over the detainee/inmate's right to freedom of movement or privacy, and that individual may be confined in Administrative Segregation indefinitely for preventive purposes."[65]

Guards also have the power to move a detainee out of segregation, even if he has requested placement in protective custody. Protective custody does not always escalate to solitary confinement, but typically involves the physical separation of an individual for his/her safety. Researchers interviewed several gay and transgender detainees who requested protective custody at the Santa Ana City Jail in California. They reported occasional threats of transfers out of the segregation unit and back into the general population by guards (see case study on page 15).


FREEBORN COUNTY SHERIFF'S OFFICE
CORRECTIONS DIVISION
POLICY AND PROCEDURES

SUBJECT: Disciplinary Plan

FORMAL DISCIPLINE:

Hearing procedure:

n 24 hours of when the incident
n writing within 3 working days of
the violation and given a copy of the report at least 24 hours before the hearing.

2. Disciplinary segregation shall be used only in accordance with due process to include: Published rules of conduct and penalties for violation of rules. Inmate will be given written notice of alleged violation of a rule and documented that Inmate received it. Right to be heard by an impartial hearing officer and to present evidence in defense.
3. Inmate may waive the hearing in writing, if inmate waives his right to a hearing it will be documented on the Notice of Rule Infraction form, signed by the inmate and recorded in the inmates file. Separate file containing all discipline hearing results will be kept for review.
4. A hearing between the detainee, hearing officer and detention staff will be held within five (5) days, excluding weekends and holidays.
5. The hearing officer will make his decision within 24 hours. This decision will be in writing stating the reasons for any disciplinary action.
6. Written record of any disciplinary hearing sanctions or other actions

9. The detainee need not be granted the following due process safeguards: confrontation, cross-examination or right to counsel.

to this appeal will be final.

8. The hearing officer shall not be the writer of the incident report or any member of the facility staff.
9. The detainee need not be granted the following due process safeguards: confrontation, cross-examination or right to counsel.
10. A staff representative is available, if requested, for a detainee facing a disciplinary hearing.

5

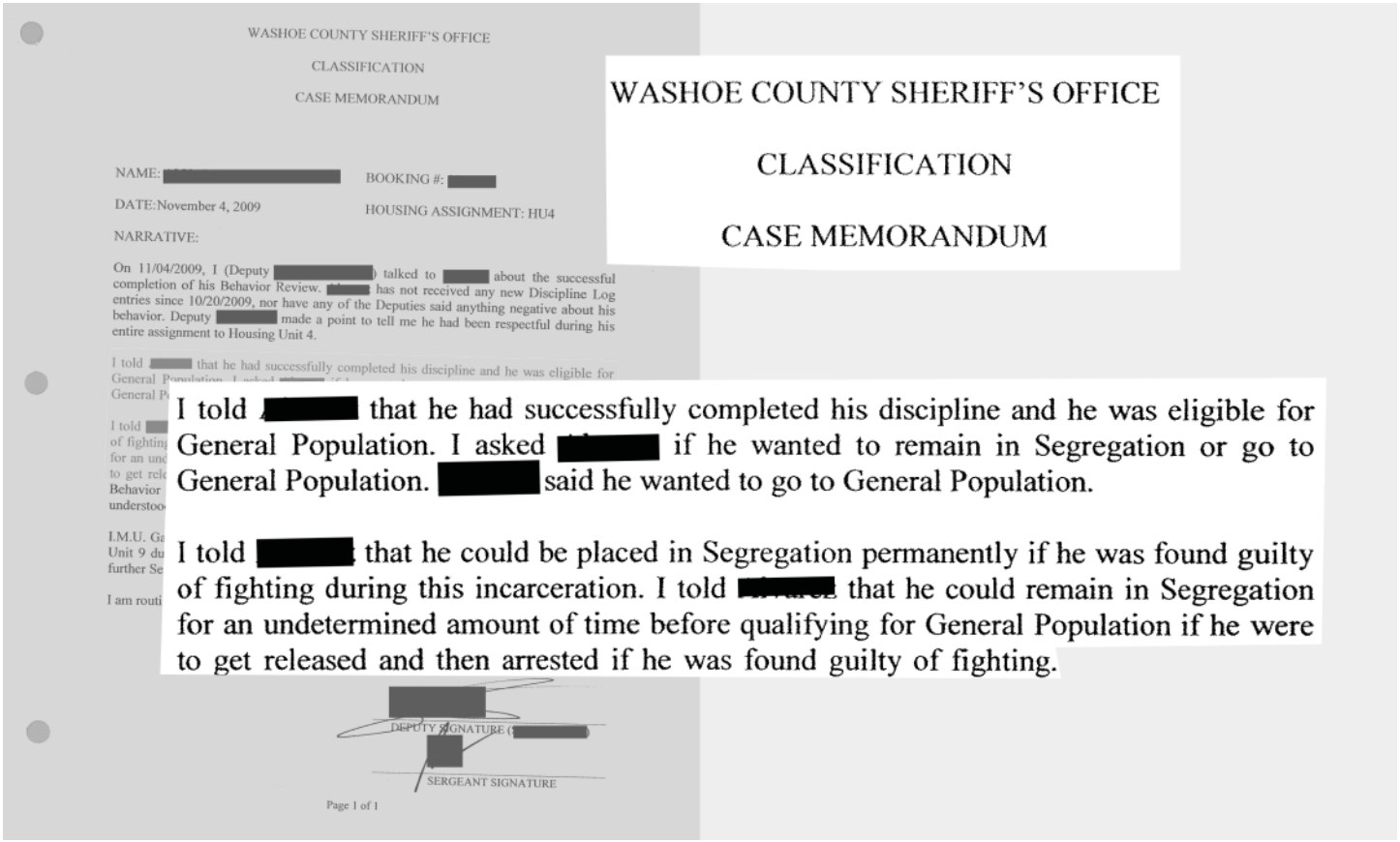
Excerpts from Freeborn County Sheriff's Office (MN) Corrections Division Policy and Procedures, page 5

Detainees often are denied due process and are unable to appeal their segregation.

ICE detention standards state that individuals should only be placed in disciplinary segregation after they have had a disciplinary hearing and a review panel has determined they have violated a facility rule. Many county jail policies, however, indicate that only serious infractions, such as murder, arson, or escape from jail, require a hearing. Individuals who commit "minor" violations can be placed in solitary confinement at the discretion of jail guards, without any hearing. The list of minor violations and sanctions varies greatly from facility to facility. In Essex County Jail (New Jersey), guards are only permitted to confine a detainee to his cell for up to four hours.[66] In Yakima County Jail (Washington), staff can impose 30 days in solitary confinement.[67] In the Josephine County Jail (Oregon), guards can impose a 60-day punishment.[68] In each case, sanctions are handed down by an officer without a disciplinary hearing.

Some facilities did provide specific and reasonable language to justify immediate 23-hour lockdown of a detainee before a disciplinary hearing. For example, policies at Ventura County Jail (California) state:

> ... compelling reasons must exist before an individual can be placed in disciplinary detention without first holding a disciplinary hearing, provided that such a hearing will be conducted within 72 hours of such placement. The following may constitute compelling reasons:
>
> - When an inmate has assaulted a staff member or another inmate and is likely to commit another assault or start a disturbance;



WASHOE COUNTY SHERIFF'S OFFICE

CLASSIFICATION

CASE MEMORANDUM

NAME: [redacted] BOOKING #: [redacted]

DATE:November 4, 2009 HOUSING ASSIGNMENT: HU4

NARRATIVE:

On 11/04/2009, I (Deputy [redacted]) talked to [redacted] about the successful completion of his Behavior Review. [redacted] has not received any new Discipline Log entries since 10/20/2009, nor have any of the Deputies said anything negative about his behavior. Deputy [redacted] made a point to tell me he had been respectful during his entire assignment to Housing Unit 4.

I told [redacted] that he had successfully completed his discipline and he was eligible for General Population. I asked [redacted] if he wanted to remain in Segregation or go to General Population. [redacted] said he wanted to go to General Population.

I told [redacted] that he could be placed in Segregation permanently if he was found guilty of fighting during this incarceration. I told [redacted] that he could remain in Segregation for an undetermined amount of time before qualifying for General Population if he were to get released and then arrested if he was found guilty of fighting.

DEPUTY SIGNATURE ([redacted])

SERGEANT SIGNATURE

Page 1 of 1

Washoe County Sheriff's Office (NV) Classification Case Memorandum for an ICE detainee

- When an inmate has deliberately caused serious damage to property and is likely to commit additional and separate acts of destruction; and
- When an inmate has escaped, was recaptured and returned to the facility.[69]

While the above scenarios may justify segregation, immigration detainees still have the right to basic due process protections. Each facility should inform detainees of the reason for placement, and after a disciplinary hearing, tell detainees how long they are to be held in segregation. In addition, detainees must be allowed to appeal this decision. Facility staff should educate detainees about the appeals process and prevent retaliation against those who do appeal.

Each facility should inform detainees of the reason for placement in segregation, and after a disciplinary hearing, tell detainees how long they are to be held in segregation. Detainees must be allowed to appeal this decision.

Researchers spoke with one individual at the Mira Loma Detention Center (California) who was placed in disciplinary segregation after another detainee alleged the individual had scratched him. After a hearing, the man was sentenced to 15 days in isolated conditions that fit the definition of solitary confinement. The detainee reported that he knew he could appeal the decision, but chose not to because he had already been told that his sentence would not be reduced. Another detainee at Mira Loma reported that he had no idea how to appeal his 15-day sentence or how to file complaints about his treatment in general.

Each detention facility in this study has a grievance system through which detainees can challenge living conditions within the jail, but none of the facilities examined for this report allow detainees to use grievance procedures to challenge solitary confinement decisions. Instead, detainees must navigate separate appeals systems that differ among facilities. For example, in Monroe County Jail (Florida) appeals are directed to the jail administrator.[70] In Minnesota's Freeborn Adult Detention Center, individuals must appeal to the sheriff.[71] In Clinton County Correctional Facility (Pennsylvania), individuals must appeal to the warden.[72] In some cases, a detainee is given one opportunity to appeal. In others, detainees can appeal as many as four times to four different parties. Even where the appeals process is easy to navigate, immigration detainees are regularly transferred between facilities, often in different states. If they are placed in segregation in those facilities, they must learn a new appeals process.

Investigators have also discovered that detainees have a particularly difficult time appealing administrative segregation because placement may not be the result of a detainee's actions. For example, one detainee in solitary confinement at the Mira Loma reported that he was placed in segregation following an altercation with a guard, who allegedly assaulted him while looking through his property. The detainee was taken to the hospital for his injuries, and then placed in segregation pending the outcome of an investigation into the guard's behavior, even though the detainee did nothing wrong. Because he wanted the investigation to move forward, he had no choice but to remain in administrative segregation until it was complete.

Individuals can be held in solitary confinement indefinitely and without ICE oversight.

According to the 2011 PBNDS and many county policies, detention facilities have 30 days to notify ICE when they place an individual in segregation.[73] But facilities can easily avoid ICE oversight. Notification is only required if the facility keeps the individual in segregation continuously beyond 30 days. If, for example, the detainee is released into the general population after 29 days of solitary confinement but returned the following day, notification to ICE is not required. At Mira Loma, records show that 53 detainees were placed in segregation between May 2011 and May 2012. Of those, only four were held for a continuous period of 30 days or more, while 10 were held for between 26 and 29 days. One individual was held in segregation for 19 days, released for one day, and then returned to segregation for another 19 days.

It is unclear whether ICE tracks information related to the segregation of detainees who have been held for less than 30 days. Among the facilities surveyed, only Butler County Jail (Ohio) indicated that jail administrators notified ICE when staff placed individuals in disciplinary segregation. Even then, records only indicate that the facility notified ICE in the cases of two detainees, both of whom had been on suicide watch before being placed in disciplinary segregation for allegedly violating a facility rule. According to Butler County Jail records, the facility held a total of 29 ICE detainees in solitary confinement in 2011.

No Questions Asked: ICE Refuses to Review Eight-Month Solitary Sentence

ICE's failure to consistently apply and enforce detention standards has allowed some facilities to leave immigrants languishing for months in conditions of solitary confinement, invisible to the outside world.

Investigators spoke with a detainee at the Oakdale Federal Detention Center (Louisiana) who was held in solitary confinement for nearly eight months without review. Guards told him they "could hold him as long as [they] wanted" and that he was not going to be released from solitary confinement. The man was never found guilty of violating a facility rule, but was kept in solitary confinement for 23 hours a day and placed on a no-meat diet to accommodate his shellfish allergy. He ate "more peanut butter sandwiches than [he] would care to remember" and began to feel weak after a few days.

The man told investigators that he was occasionally denied recreation time because of an emergency in the facility. He claimed that the criminal inmates would get to make up recreation time, but immigrants would not. While he was held in solitary confinement, he regularly requested to go to the law library because he did not have an attorney. He found that the library had no materials on immigration law, and the last time he visited, the library had no books at all. He filed multiple complaints to both facility leadership and ICE staff, and would regularly speak with an ICE officer informally when she visited the facility. The officer told the detainee that "she would like to help, but she was told that her job was not to question policy."

INTERNATIONAL PRINCIPLES

International and regional human rights organizations have consistently stated that solitary confinement conditions violate international prohibitions against torture. The Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), and the U.N. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) all prohibit torture and other cruel, inhuman or degrading treatment or punishment.[74] Article 10 of the ICCPR specifies that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."[75]

The Inter-American Commission on Human Rights has criticized the use of solitary confinement in immigration detention, particularly in the United States. In a 2010 report, the Commission stated that "the conditions of [immigration] detention ought not to be punitive or prisonlike," while noting that "this principle is not observed in immigration detention in the United States."[76] The report also recognized the confusing terminology used in the U.S. immigration detention system that often conflates segregation with solitary confinement: "[T]he Inter-American Commission is deeply troubled by the use of confinement ("administrative segregation" or "disciplinary segregation") in the case of vulnerable immigration detainees, including members of the LGBT community, religious minorities and mentally challenged detainees. The use of confinement to protect a threatened population amounts to a punitive measure. Equally troubling is the extent to which this measure is used as a disciplinary tool."[77]

"[T]he Inter-American Commission is deeply troubled by the use of confinement ("administrative segregation" or "disciplinary segregation") in the case of vulnerable immigration detainees, including members of the LGBT community, religious minorities and mentally challenged detainees."

– Inter-American Commission on Human Rights, *Report on Immigration in the United States: Detention and Due Process*

Beginning in 1955, the United Nations issued several sets of guidelines for the treatment of prisoners. For example, the Standard Minimum Rules for the Treatment of Prisoners emphasizes that the primary goal of confinement should be the promotion of rehabilitation, and states that "[d]iscipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life."[78] In 1988, the U.N. General Assembly passed the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which, like the Standard Minimum Rules, contains an absolute prohibition against torture and other cruel, inhuman, or degrading treatment or punishment in the prison setting.[79] The Body of Principles further explains that torture or other cruel, inhuman, or degrading treatment or punishment includes "the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.[80] Two years later, the Basic Principles for the Treatment of Prisoners explicitly addressed solitary confinement, stating that "[e]fforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged."[81] And in 1992, the UN Human Rights Committee concluded that "prolonged solitary confinement of the detained or imprisoned person may amount to [torture or other cruel, inhuman, or degrading treatment or punishment]."[82]

In recent years, two Special Rapporteurs on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment have issued reports assessing the use of solitary confinement around the world. In his 2008 interim report, Special Rapporteur Manfred Nowak concluded after receiving reports of solitary confinement from an array of countries that "the prolonged isolation of detainees may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture."[83] In 2011, Special Rapporteur Juan Mendez devoted his entire interim report to the use of solitary confinement.[84] After investigating the use of solitary confinement around the world, Mendez concluded that "the social isolation and sensory deprivation that is imposed by some States does, in some circumstances, amount to cruel, inhuman and degrading treatment and even torture." While he does not go so far as to call for an absolute prohibition on solitary confinement, Mendez recommends several safeguards and limits to its use, including:

- A prisoner or detainee should never be kept in solitary confinement for longer than 15 days, the limit between "solitary confinement" and "prolonged solitary confinement," at which point some of the harmful psychological effects of solitary confinement can become irreversible[85]
- If solitary confinement is to be used, it must be only in exceptional circumstances; its duration must be as short as possible, and for a definite term that is communicated to the detainee[86]
- Solitary confinement should only be imposed as a last resort, where less restrictive measures could not be employed for disciplinary purposes[87]
- While it may be necessary to segregate detainees with mental disabilities from the general population, solitary confinement should never be used on the mentally ill[88]
- Qualified medical and mental health personnel who are independent from and accountable to an outside authority must regularly review the medical and mental health condition of detainees in solitary confinement, both at the initiation of solitary confinement and on a daily basis thereafter[89]

Mendez concludes that prolonged solitary confinement can never be justified as a means of punishment or discipline "because it imposes severe mental pain and suffering beyond any reasonable retribution for criminal behaviour."[90]

While U.N., European, and Inter-American human rights organizations have not focused on solitary confinement in immigration detention to the extent they have examined the issue in prisons, several have noted that immigration detention is often inappropriately punitive in nature.[91] The Standard Minimum Rules, while not explicitly addressing immigration detention, provide that persons imprisoned as a result of any non-criminal process "shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order."[92]

The European Committee for the Prevention of Torture (CPT) has stated that the European Prison Rules, which restrict the use of solitary confinement, apply equally to immigration detainees, though it notes that the commentary to the Rules states that immigration detainees should not be held in prison in the first place.[93] The CPT notes in its standards for immigration detention that "[t]he purpose of deprivation of liberty of irregular migrants is … significantly different from that of persons held in prison," and thus the conditions of their detention "should reflect the nature of their deprivation of liberty, with limited restrictions in place and a varied regime of activities."[94] The standards further state that immigration detainees should be restricted in their freedom of movement within detention facilities as little as possible.[95]

RECOMMENDATIONS TO END INHUMANE SOLITARY CONFINEMENT

The authors make the following recommendations to ICE and Congress.

ICE must:

1. End the use of solitary confinement in immigration detention facilities.

While some individuals may need to be segregated from time to time for their own safety, solitary confinement is never justifiable in immigration detention. Individuals should only be held in segregation after all alternatives have been exhausted and for as short a time as possible. In no case should immigration detainees be held in 23-hour lockdown for more than 15 days.

To achieve this goal, ICE must take the following critical steps:

2. Work closely with local and national human rights organizations to conduct a comprehensive review of existing segregation and solitary confinement policies and practices among the facilities it contracts to hold immigrants.

3. Place individuals in alternatives to detention (ATD) programs if they cannot be held safely with the general population, and expand the release of individuals on humanitarian parole or immigration bond.

Some immigration detainees are subject to "mandatory detention," meaning that the law prohibits their release from detention until an immigration judge decides whether they will be allowed to remain in the United States. But the vast majority of immigration detainees are not violent criminals, threats to the community, or flight risks. In these cases, ICE has the authority to release detainees after they post immigration bonds, require that they wear ankle monitoring bracelets, or require them to regularly check in with ICE. Congress must appropriate increased funds for these ATDs, and ICE must commit to using them more often, especially in scenarios where detainees cannot safely reside in the general population of a detention facility.

In addition to these established ATD programs, several organizations are piloting a community release program that would allow detainees to be released back into their communities. These organizations would then ensure that individuals appear at immigration court hearings. A pilot study by the Vera Institute of Justice found that a similar community release program had a very high appearance rate.[96] ICE should support community release programs and devote its immigration detention bed space to truly dangerous criminals who have a low likelihood of being allowed to remain in the country.

If a detainee cannot be housed safely in a certain facility, ICE's policy is to transfer them to another facility.[97] Instead of shuffling detainees between inadequate detention centers — often hundreds of miles from their attorneys and families — ICE should acknowledge its inability to provide legally adequate detention conditions and prioritize alternatives to detention.

4. End the use of jails and jail-like facilities for immigration detention and quickly move to a system that holds immigration detainees in the least-restrictive conditions of confinement possible.

The purpose of immigration detention is not to punish immigrants, but to ensure that they appear for their hearings in immigration court and comply with orders issued by immigration judges. Because the intent of immigration detention is fundamentally different from the criminal incarceration system, ICE must develop a set of civil detention standards that are not modeled on corrections standards. Solitary confinement originated in jails and prisons, and its continued acceptance in the immigration detention context is made easier by the fact that most detention facilities are virtually indistinguishable from jails. In many cases, immigration detainees (including many who have never been convicted of crimes) are housed alongside individuals serving criminal sentences and treated largely the same by jail administrators and guards, whose expertise and experience is with criminal incarceration. Immigration detention facilities must reflect the fact that immigration detention is not the same as jail.

5. Develop and implement legally enforceable regulations to govern immigration detention based on civil and human rights principles, rather than correctional standards.

While the most recent set of detention standards — the 2011 Performance Based National Detention Standards (2011 PBNDS) — contain many improvements over prior sets of standards, they are not implemented in any facilities and they are based on a correctional model that is inappropriate for immigration detention. Furthermore, they are not legally enforceable statutes or regulations. Detainees who experience treatment that violates these standards have no legal recourse.

ICE must work to develop a set of civil detention standards, and Congress must enact these standards into law without further delay. Among other improvements, these standards should stipulate that segregation may be used only in the very rarest of cases — for example, to separate truly violent and uncontrollable detainees from the general population — and not to warehouse detainees with mental health problems or to punish detainees for minor infractions. The standards should prohibit 23-hour lockdown in solitary confinement entirely.

6. Withhold funding, impose financial penalties, or terminate contracts with detention facilities that violate segregation policies.

If an immigration detention facility fails to meet basic detention standards, it should not continue to detain individuals. ICE is ultimately responsible for the treatment of immigration detainees, so it must impose strict and tangible sanctions on those facilities that hold individuals in solitary confinement. ICE must also terminate contracts with facilities where documented human rights abuses are pervasive.

ICE already has a system in place that is equipped to monitor detention conditions. Detention Service Managers (DSMs), ICE personnel who ensure compliance with ICE detention standards, monitor most dedicated immigration detention facilities and a few county jails. This model should be expanded to reach every detention facility in the country. DSMs should monitor the use of segregation and ask staff appropriate questions to determine why and for how long a detainee is segregated. DSMs should regularly inspect log books and other records to ensure that each segregated detainee is receiving medical and mental health care, recreation time, and access to legal counsel. DSMs should also speak to detainees in segregation to ensure that they have been informed of the reason for their placement, the length of time they are to be held, and what the review and appeals processes entail. Most importantly, DSMs should be given the authority to recommend transfers of detainees from segregation units to facilities that can better accommodate the detainees' needs.

The Department of Homeland Security's Office of Civil Rights and Civil Liberties (CRCL) can also monitor the use of segregation. CRCL receives complaints and investigates nationwide violations of detainees' rights, so it is uniquely positioned to identify systemic patterns and trends of detention conditions. ICE should be bound by a CRCL request to stop using a detention facility.

In the rare instances where non-solitary forms of segregation are necessary to ensure detainees' safety, ICE must take the following precautions to limit its use and ensure uniform procedures:

7. Train staff on the legal requirements and negative mental health effects of solitary confinement, emphasizing that segregation should only be used as a last resort and for as short a time as possible.

8. Ensure that individuals in disciplinary segregation and administrative segregation are housed in separate physical spaces and separate from those serving criminal sentences, to account for the fundamentally different purposes these forms of segregation serve.

9. Ensure that detention facilities comply with ICE detention standards, which require that detainees in segregation be provided the same rights as detainees in the general population, including outdoor recreation, access to counsel and legal materials, telephones, visitation, food, books, and hygiene.

10. Mandate daily face-to-face mental health assessments for individuals in segregation. Mental health professionals must be independent from and report to an authority other than the detention facility or the DHS. Though the most recent ICE detention standards, which have not yet been implemented in any facilities, require daily medical assessments of detainees in Special Management Units, the two sets of older standards that currently govern detention facilities do not.

11. Provide detainees in both disciplinary and administrative segregation the opportunity to challenge their placement in segregation before an independent review body.

12. Track the use of segregation and distribute findings regularly. Facilities should be required to notify ICE any time a detainee is placed in segregation, and must provide ICE, the detainee, and his/her attorney with detailed reasoning behind such placement.

13. Allow periodic, independent monitoring of segregation units by non-governmental organizations, whose reports would be publicly available.

Though there is much that ICE can do to improve conditions in immigration detention facilities, it also faces real constraints. In particular, Congress is responsible for allocating funds for both detention and ATD programs, establishing the number of detention beds that must be available, determining who is subject to mandatory detention, and enacting legally binding standards to govern detention facilities. All of these factors contribute to the misuse of segregation in immigration detention facilities.

Congress must:

1. Prohibit the use of solitary confinement in immigration detention

Congress has the authority to mandate that immigration detainees, who are in federal custody even if they are detained in state and local jails, may not be held in solitary confinement. Legislation should be proposed and passed that would significantly circumscribe the instances in which immigration detainees may be placed in segregation.

2. End the practice of mandatory detention or reform mandatory detention laws so that only the most dangerous individuals are subjected to mandatory detention

Under federal immigration law, many detainees are subject to mandatory detention, meaning that neither ICE nor the immigration courts have the discretion to release them from detention until an immigration judge has granted them permission to remain in the United States. While perhaps appropriate for the small fraction of detainees who are violent or dangerous, current mandatory detention laws are too broad. As a result, detainees who have committed only minor offenses or have never been convicted of a crime are subject to mandatory detention. Curtailing or eliminating mandatory detention could mean that many detainees who are put in segregation — for example, the mentally ill or members of minority groups who need special protection from the general population — could be released through ATD programs.

3. Reduce funding for immigration detention, thereby reducing the number of immigrants who may be detained each night, and dramatically increase funding for ATD programs

For fiscal year 2013, the U.S. House of Representatives appropriated $2.026 billion for immigration detention to fund 34,000 detention beds — $67 million more than the president requested.[98] In contrast, the Obama administration requested only $111.59 million for ATDs.[99] Detaining one individual for one night costs approximately $122, while placing an immigrant on an ATD costs between 30 cents and $14 per day.[100] Significantly decreasing funding for detention and increasing funding for ATDs would not only save enormous amounts of money, but also would reduce the number of detained immigrants. In turn, this reduction would likely reduce the number of detainees who are held in segregation and help ensure that segregation units are used only for those detainees who truly could not be released from detention or housed with the general population in a detention facility.

4. Enact binding civil detention standards so that facilities that detain immigrants can be held legally accountable for improper use of segregation and solitary confinement

The 2011 PBNDS are an important step in regulating the use of segregation in detention facilities. But these standards are not enforceable. While ICE has the authority to terminate contracts of non-complying facilities, the standards do not create any legal recourse for detainees who are abused or mistreated. Congress has the power to enact a set of civil detention standards that will require detention facilities to provide humane treatment to detainees. These standards should sharply limit the circumstances under which segregation may be used.

ENDNOTES

1. PBS Frontline, *Lost in Detention*, (October 18, 2011), available at: http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/map-the-u-s-immigration-detention-boom/.

2. Vera Institute of Justice, *Confronting Confinement*, 56 (2006). (hereinafter "*Confronting Confinement*"), available at: http://www.vera.org/content/confronting-confinement

3. Pew Research Center, *Net Migration from Mexico Falls to Zero — and Perhaps Less*, 10 (2012).

4. Department of Homeland Security, Office of Immigration Statistics, "Immigration Enforcement Actions: 2011" (September 2011), available at http://www.dhs.gov/sites/default/files/publications/ immigration-statistics/enforcement_ar_2011.pdf. According to ICE statistics, ICE detained approximately 429,000 individuals in 2011, an all-time high.

5. See Map: The U.S. Immigration Detention Boom, available at: http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/map-the-u-s-immigration-detention-boom/.

6. *Confronting Confinement* at 56.

7. Vera Institute of Justice, *Improving Efficiency and Promoting Justice in the Immigration System: Lesson from the Legal Orientation Program* (2008).

8. ICE National Detention Standards, Special Management Unit Administrative Segregation, 2 (2000) (hereinafter "ICE NDS Administrative Segregation"), available at: http://www.ice.gov/doclib/dro/detention-standards/pdf/smu_adm.pdf

9. Id. at 1

10. Id. at 3.

11. ICE National Detention Standards, Special Management Unit Disciplinary Segregation, 1 (2000) (hereinafter "ICE NDS Disciplinary Segregation"), available at: http://www.ice.gov/doclib/dro/detention-standards/pdf/smu_dis.pdf

12. Solitary confinement should be distinguished from medical isolation, in which prisoners or detainees are isolated to ensure that they do not spread infectious diseases. This report does not address the use of medical isolation in immigration detention facilities.

13. In August, 2012, the American Bar Association House of Delegates passed these standards in an effort to help the Department of Homeland Security transition to a civil detention model. American Bar Association, Civil Immigration Detention Standards lines 84-86, (2012), (hereinafter "ABA Civil Detention Standards), available at: http://www.americanbar.org/content/dam/aba/administrative/immigration/abacivdetstandards.authcheckdam.pdf.

14. ICE, *Fact Sheet: Detention Management* (November 2011), available at http://www.ice.gov/news/library/ factsheets/detention-mgmt.htm.

15. Id. According to ICE, about 3% of detainees are housed in Federal Bureau of Prison (BOP) facilities.

16. Transactional Records Access Clearinghouse, "ICE Targets Fewer Criminals in Deportation Proceedings," available at: http://trac.syr.edu/immigration/reports/268/.

17. Washoe County Jail Inmate Handbook, 1.

18. Id.

19. Fairfax County Administrative of Discipline Policy, Attachment 1.

20. Confronting Confinement at 56.

21. Washoe County Jail Inmate Handbook at 9.

22. Id. at 6.

23. Seneca County Jail Policy and Procedure Manual, Disciplinary Segregation.

24. Leena Kurki and Norval Morris, "The Purposes, Practices, and Problems of Supermax Prisons," 28 Crime & Justice 385, 409 (2001).

25. Butler County Jail Inter-Office Memorandum (January 14, 2011).

26. Heartland Alliance's National Immigrant Justice Center, Submission to the Department of Homeland Security's (DHS's) Office of Civil Rights and Civil Liberties Regarding Mistreatment and Abuse of Sexual Minorities in DHS Custody (April 13, 2011).

27. Id.

28. ABA Civil Detention Standards, lines 88-91.

29. Confronting Confinement at 14.

30. Dr. Dora Schriro, former director of U.S. Department of Homeland Security Office of Detention Policy and Planning, Immigration Detention Overviews and Recommendations, 2 (2009).

31. See Restore Fairness, "Head of ICE John Morton Speaks of Promised Changes for Immigration Detention" (January 25, 2010), available at: http://restorefairness.org/2010/02/head-of-ice-john-morton-speaks-of-promised-changes-for-immigration-detention/.

32. Testimony of Kevin Landy, Assistant Director of U.S. Department of Homeland Security Office of Detention Policy and Planning before U.S. House of Representatives Hearing on the Judiciary Subcommittee on Immigration Policy and Enforcement (March 28, 2012) available at: http://judiciary.house.gov/hearings/Hearings%202012/Landy%2003282012.pdf.

33. Stuart Grassian, "Psychiatric Effects of Solitary Confinement," 22 Wash. U. J.L. & Pol'y 325, 328 (2006).

34. Id. at 335-36.

35. Id. at 337; see also *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 62, U.N. Doc. A/66/268 (August 5, 2011) (prepared by Juan Méndez) (hereinafter "Méndez Report"), available at http://www.ohchr.org/EN/Issues/Torture/SRTorture/ Pages/SRTortureIndex.aspx.

36. Méndez Report, supra, at ¶ 57.

37. Méndez Report, supra note __, at ¶ 26.

38. Grassian, "Psychiatric Effects," supra note __, at 348.

39. Smith, "The Effects of Solitary Confinement," supra note __, at 474.

40. Craig Haney and Mona Lynch, "Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement," 23 N.Y.U. Rev. L. & Soc. Change 477, 525 (1997).

41. *Franco-Gonzalez v. Holder, No. 10-02211 (C.D. Cal filed March 26, 2010).* Available at: http://www.aclu.org/files/assets/2010-8-2-GonzalezvHolder-AmendedComplaint.pdf.

42. Physicians for Human Rights and The Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* (2003) (hereinafter "From Persecution to Prison") at 56-57. Among the surveyed population, researchers found clinically significant symptoms of anxiety in 77%; depression in 86%; and PTSD in 50%; Forty-four percent had symptoms of all three disorders. Id. at 57. A similar study of formerly-detained asylum seekers in Australia likewise found that prolonged detention contributed to a risk of ongoing depression, PTSD, and other mental health issues even after the period of detention had ended. Zachary Steel et al., "Impact of Immigration Detention and Temporary Protection on the Mental Health of Refugees," 188 British J. of Psychiatry 58, 62 (2006).

43. Id. at 116.

44. Sharon Shalev, *A Sourcebook on Solitary Confinement* (2008) (hereinafter *Sourcebook*) at 13, 22, available at http://www.solitaryconfinement.org/sourcebook.

45. *Sourcebook*, supra note __, at 11.

46. Id. at 15.

47. ACLU of Georgia, Prisoners of Profit: Immigrants and Detention in Georgia (May 2012) (hereinafter "Prisoners of Profit"), available at: http://www.acluga.org/files/2713/3788/2900/Prisoners_of_Profit.pdf.

48. Prisoners of Profit at 90.

49. ICE 2011 Performance-Based National Detention Standards, Special Management Units, 149 (hereinafter "2011 PBNDS"), available at: http://www.ice.gov/doclib/detention-standards/2011/special_management_units.pdf.

50. 2011 PBNDS at 158.

51. ICE detention standards require facilities to directly or contractually provide medical services to detainees. See ICE 2011 Performance-Based National Detention Standards, Medical Care, 236, available at: http://www.ice.gov/doclib/detention-standards/2011/medical_care.pdf.

52. Prisoners of Profit at 16.

53. Prisoners of Profit at 19.

54. Prisoners of Profit at 57.

55. Victims of crime who are willing to cooperate with a criminal investigation may apply for a U visa.

56. Butler County Jail Incident Report (July 28, 2011).

57. Washoe County Jail Incident Report (February 6, 2007).

58. Washoe County Jail Case Memo, October 20, 2009.

59. Repeated minor violations are often elevated to a major violation and repeated major violations can be elevated to a serious violation of facility rules. Researchers noted similar language in policies from Yavapai County Jail in Arizona, Contra Costa County Jail West in California, Atlanta Pretrial Detention Center and Cobb County Jail in Georgia, Hardin County Jail in Iowa, Jefferson County Jail and McHenry County Jail in Illinois, Freeborn Adult Detention Center in Minnesota, Essex County Jail in New Jersey, Seneca County Jail and Josephine County in Ohio, Clinton County Correctional Facility in Pennsylvania, Lexington County Jail in South Carolina, Utah County Jail in Utah, Fairfax County Jail in Virginia, and Dodge County Jail in Wisconsin.

60. Neither ICE detention standards nor county jail policies place a time limit on administrative segregation. Few policies explicitly state that this can lead to indefinite solitary confinement, but in practice, this has been investigators' observations.

61. Ventura County Sheriff's Department Pre-Trial Detention Facility Policy & Procedures, Administrative Segregation Cells, 2.

62. Washoe County Segregated Inmates Standard Operating Procedure, 2.

63. Cobb County Detention Facilities Division Standard Operating Procedures Manual, Classification of Inmates Policy.

64. Clinton County Correctional Facility Inmate Handbook, 18

65. McHenry County Sheriff's Office General Order, Special Management, Security Management of HIV-Positive Detainees/Inmates, 1.

66. Essex County Correctional Facility ICE Detainee Handbook, 8.

67. Yakima County Department of Corrections Inmate Handbook, 16.

68. Josephine County Adult Jail Detainee Handbook, 23.

69. Ventura County Sheriff's Department Pre-Trial Detention Facility Policy & Procedures, Disciplinary Isolation Cells, 2.

70. Monroe County Sheriff's Office Bureau Directive, Corrections, Administrative Confinement and Protective Custody, 3.

71. Freeborn County Sheriff's Office Corrections Division Policy and Procedures, Disciplinary Plan, 5.

72. Clinton County Correctional Facility Inmate Handbook, 18.

73. 2011 PBNDS at 154.

74. Universal Declaration of Human Rights, G.A. Res. 217A (III), at 71, art. 5, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter "UDHR"]; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 31st Sess., Supp. No. 16, art. 7, U.N. Doc. A/6316 (December 16, 1966), entered into force March 23, 1976 [hereinafter "ICCPR"]; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., 93d mtg., art. 1, U.N. Doc. A/39/51 (December 10, 1984), entered into force June 26, 1987 [hereinafter "CAT"]. Importantly for any discussion of prison conditions, CAT qualifies "torture" with the statement that it does not "include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

75. CAT, supra note __, at art. 11.

76. Inter-American Commission on Human Rights, R*eport on Immigration in the United States: Detention and Due Process*, Doc. 78/10 (December 30, 2010), [hereinafter "Inter-American Commission Report"] ¶ 243.

77. Inter-American Commission Report, supra note __, at ¶ 337 (internal citation omitted).

78. Standard Minimum Rules for the Treatment of Prisoners, E.S.C. Res. 2076, U.N. ESCOR, 62d Sess., Supp. No. 1, art. 27, 58 & 65, UN Doc. E/5988 (1977) [hereinafter "Standard Minimum Rules], available at http://www2.ohchr.org/ english/law/treatmentprisoners.htm.

79. See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173, annex, art. 1 & 6, 43 U.N. GAOR, Supp. No. 49, 76th plen. mtg., UN Doc. A/43/49 (December 9, 1988) [hereinafter "Body of Principles"], available at http://www.un.org/documents/ga/res/43/a43r173.htm.

80. Id. at art. 6.

81. Basic Principles for the Treatment of Prisoners, G.A. Res. 45/111, annex, art. 7, 45 U.N. GAOR Supp. No. 49A, 68th plen. mtg., UN Doc. A/45/49 (December 14, 1990), [hereinafter "Basic Principles"] available at http://www.un.org/ documents/ga/res/45/a45r111.htm.

82. Human Rights Committee, General Comment 20, Article 7, 44th Sess., U.N. Doc. HRI/GEN/1/Rev. 1 at 30 (1994), at art. 6.

83. Méndez Report, at 77.

84. Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 66th Sess., UN Doc. A/66/268 (August 5, 2011), [hereinafter "Mendez Report"].

85. Mendez Report, supra note __, at 26 & 79.

86. Id. at 75.

87. Id. at 91.

88. Id. at 86.

89. Id. at 100.

90. Id. at 72.

91. ECOSOC, U.N. Comm'n on Human Rights, Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro, Submitted Pursuant to Commission on Human Rights Resolution 2002/62, U.N. Doc. E/CN.4/2003/85 (Dec. 30, 2002) (prepared by Gabriela Rodriguez Pizarro), [hereinafter "Rodriguez Pizarro Report"], ¶ 54 ("Administrative detention should never be of a punitive nature"); Special Rapporteur on the Human Rights of Migrants, August 2010 report A/65/222, ¶ 87 ("Migration-related detention should not bear similarities to prison-like conditions").

92. Standard Minimum Rules, supra note __, at art. 94.

93. Council of Europe, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Text of the Convention and Explanatory Report, European Treaty Series, No. 126, CPT/Inf/E (2002), Rev. 2010, ¶ 78, [hereinafter "CPT Explanatory Report"], available at http://www.cpt.coe.int/en/documents/eng-convention.pdf.

94. Id. at ¶¶ 78-79; see also European Convention on Human Rights, supra note __, at art. 5(1)f (deprivation of liberty of immigrants is allowed for "the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition").

95. CPT Explanatory Report, supra note __, at ¶ 79.

96. The Vera Institute of Justice, *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program* (August 2000), available at http://www.vera.org/download?file=615/finalreport.pdf.

97. Enforcement & Removal Operations, "Field Guidance on Classification," March 7, 2011.

98. National Immigration Forum, *The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies* (August 2012), available at http://www.immigrationforum.org/images/uploads/ MathofImmigrationDetention.pdf.

99. Id.

100. Id.

APPENDICES

1. List of facilities that provided information pursuant to open records requests

2. Freedom of Information Act request sent to 250 facilities requesting information about use of segregation and solitary confinement

Appendix 1: Facilities that provided information pursuant to open records requests

Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention

To obtain copies of records provided by a specific facility, please contact Alexis Perlmutter at aperlmutter@heartlandalliance.org.

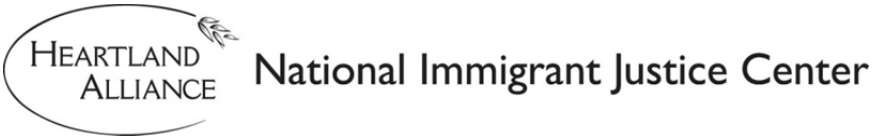
Facility Name	City	State	Average Daily Immigration Population[1]	ICE Detention Standards[2]
Apache County Jail	St. Johns	Arizona	Less than 1	2000 National Detention Standards (NDS)
Yavapai County Detention Center	Camp Verde	Arizona	5	2000 NDS
Contra Costa County Jail West	Richmond	California	124	2000 NDS
Santa Cruz County Jail	Nogales	California	Less than 1	2000 NDS
Ventura County Jail	Ventura	California	Less than 1	2000 NDS
Park County Jail	Fairplay	Colorado	15	2000 NDS
Monroe County Jail	Key West	Florida	80	2000 NDS
Atlanta Pretrial Detention Center	Atlanta	Georgia	141	2000 NDS
Cobb County Jail	Marietta	Georgia	8	2000 NDS
Hardin County Jail	Eldora	Iowa	65	2000 NDS
Dale G. Haile Detention Center	Caldwell	Idaho	3	2000 NDS
Jefferson County Jail	Mount Vernon	Illinois	105	2000 NDS
McHenry County Correctional Facility	Woodstock	Illinois	313	2000 NDS
Macomb County Jail	Mount Clemens	Michigan	1	2000 NDS
Freeborn Adult Detention Center	Albert Lea	Minnesota	76	2000 NDS
Nobles County Jail	Worthington	Minnesota	5	2000 NDS
Dakota County Jail	Dakota City	Nebraska	2	2000 NDS
Washoe County Jail	Reno	Nevada	17	2000 NDS
Essex County Jail	Newark	New Jersey	496	2000 NDS
Wake County Sheriff's Department	Raleigh	North Carolina	5	2000 NDS
Butler County Jail	Hamilton	Ohio	124	2000 NDS
Seneca County Jail	Tiffin	Ohio	120	2000 NDS
Josephine County Jail	Grants Pass	Oregon	5	2000 NDS
Cambria County Jail	Ebensburg	Pennsylvania	26	2000 NDS
Clinton County Correctional Facility	Lock Haven	Pennsylvania	77	2000 NDS
Lexington County Jail	Lexington	South Carolina	4	2000 NDS
Randall County Jail	Amarillo	Texas	3	2000 NDS
Salt Lake County Jail	Salt Lake City	Utah	Less than 1	2000 NDS
Utah County Jail	Spanish Fork	Utah	198	2000 NDS
Fairfax County Jail	Fairfax	Virginia	Less than 1	2000 NDS
Yakima County Department of Corrections	Yakima	Washington	4	2000 NDS
Dodge County Jail	Juneau	Wisconsin	204	2000 NDS

[1] *See* Map: Immigration Detention Facilities 1981-2011, *available at*: http://investigativereportingworkshop.org/investigations/immigration-detention/htmlmulti/immigration-detention-map/.

[2] *See* ICE FOIA Library, *available at*: http://www.ice.gov/foia/library/. NIJC has also posted data from previous FOIA requests at http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Ex.%20AA.pdf.

Appendix 2: Template of Freedom of Information Act request sent to 250 facilities requesting information about use of segregation and solitary confinement

Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention



[Date]

FOIA Officer
[Address]

VIA CERTIFIED MAIL

Re: Freedom of Information Act Request

Dear FOIA Officer:

This is a request for information under the State of Illinois Freedom of Information Act ("FOIA"), 5 ILCS 140. Heartland Alliance's National Immigrant Justice Center ("NIJC") requests any and all records, including all drafts and electronic documents, in your possession or control concerning the use of segregation at [facility] ("facility"), from January 2011 until the date of responding to this FOIA request.

For the purposes of this FOIA request, "segregation" is defined as including, but not limited to, disciplinary segregation, punitive segregation, solitary confinement, disciplinary isolation unit, disciplinary detention, extended lockdown, locked housing unit, disruptive group segregation, management control unit, temporary segregation, administrative segregation, administrative confinement, medical segregation, special management unit, protective custody, protective housing unit, special housing unit, behavioral management unit, security housing unit, psychiatric housing unit, special needs management unit, and suicide watch unit, or any other term that describes the separation of detained individuals from the general population.

We request the following records, including but not limited to:

a) All reports, policy manuals, practices and procedure manuals, detainee handbooks, segregation review and classification panel/tribunal/committee guidelines and decisions, and training materials regarding the use of segregation, operative at the facility as at January 2011 until the date of responding to this FOIA request;

b) All documents, including but not limited to electronic communications, log books, case records, action reports, facility forms and files, segregation reports, meeting minutes, internal notes, and memoranda, regarding:
    i. The number of Immigration and Customs Enforcement (ICE) detainees held in segregation each day, from January 2011 until the date of responding to this FOIA request;
    ii. Any and all factors considered, classifications, and determinations made by the facility to place each ICE detainee in segregation, from January 2011 until the date of responding to this FOIA request;
    iii. The length of stay of each ICE detainee in segregation, from January 2011 until the date of responding to this FOIA request;
    iv. Any periodic review, review hearings and/or disciplinary hearings of each ICE detainee during the course of his or her placement in segregation, from January 2011 until the date of responding to this FOIA request;
    v. Any notification provided to each ICE detainee during the course of his or her placement in segregation regarding duration of stay and review findings, from January 2011 until the date of responding to this FOIA request;

vi. Any removals or transfers of ICE detainees out of segregation, from January 2011 until the date of responding to this FOIA request;

c) All documents, including but not limited to electronic communications, log books, case records, action reports, facility forms and files, segregation reports, meeting minutes, internal notes, and memoranda, regarding:
    i. A listing of all infractions that are disciplined with segregation, from January 2011 until the date of responding to this FOIA request;
    ii. The number of facility personnel assigned to segregation, from January 2011 until the date of responding to this FOIA request;
    iii. Facility personnel supervisory practices and policies of the detained population in segregation;
    iv. All and any services provided to ICE detainees during the course of his or her placement in segregation, including, but not limited to, medical services, mental health services, legal services, phone services, religious services, hygiene services, meal services, and recreation time;

d) All video or electronic recordings of ICE detainees held in segregation, from January 2011 until the date of responding to this FOIA request; and

e) All architectural drawings, facility floor plans, and any other documents evidencing the layout and physical division of space designated for segregation at the facility.

Please construe this as an ongoing FOIA request, so that any reports or documents that come within your possession or control prior to your response to this FOIA request should also be considered within the scope of the request. Please provide data that is current as of the day of production of materials.

Should you deny our request in whole or in part, please state in writing the basis for the denial, including evidence of any exemption (5 ILCS 140/9). If some portion(s) of the requested materials are determined to be exempt, please provide remaining non-exempt portions. We reserve to the right to appeal any decision(s) to withhold information and expect that you will list the address and office to which such an appeal may be directed.

NIJC requests a waiver of all fees for this request pursuant to 5 ILCS 140/6(c).We are entitled to a waiver of all costs because the information sought is likely to contribute significantly to public understanding of the operations or activities of the federal government and its partnership with local law enforcement agencies, and is not in our commercial interest. We have a proven track record of compiling and disseminating information to the public about government functions and activities. The issue of immigration detention reform is one of significant public interest generally and the primary purpose of this FOIA request is to obtain information to further the public's understanding of federal immigration detention policies and practices.

As stated above, NIJC has no commercial interest in this matter. We are a not-for-profit organization under the parent organization Heartland Alliance for Human Needs and Human Rights, a publicly supported, 501(3)(c) organization. NIJC's work encompasses advocating for immigrants through direct representation, policy reform, impact litigation and public education. Therefore, it has no commercial interest that could be furthered by any FOIA request. We will make any information that we receive as a result of this FOIA request available to the public, at no cost.

If you decline to waive these fees, please notify us of these fees before filing this request.

We look forward to hearing from you in writing within five working days, as required pursuant to 5 ILCS 140/3. If you have any questions regarding this request, please do not hesitate to contact me at XX or at XX.

Sincerely,

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