



# NYCLU

NEW YORK CIVIL LIBERTIES UNION

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**FOR THE RECORD**

New York City Council  
Members of Committee on Immigration  
Hearing Room, 14<sup>th</sup> Floor, 250 Broadway  
New York, NY 10007

October 24, 2013

**Re: Pre-considered resolution urging the United States Department of Homeland Security to end the practice of placing immigrant detainees in solitary confinement, except in emergency situations**

Dear Members of Committee on Immigration:

We write to express our strong support for the Committee's Pre-considered Resolution supporting abolishment of the use of solitary confinement in immigration detention in non-emergency situations.

The NYCLU is a not-for-profit, non-partisan organization with almost 50,000 supporters around the state, including nearly 26,000 in New York City. As the foremost defender of civil rights and civil liberties in New York State, we are deeply committed to reforming the inhumane practice of solitary confinement for all incarcerated or detained individuals in New York, whether they are held by Immigration and Customs Enforcement (ICE), in state prisons, in or city jails. Last year, the NYCLU released a report about the overuse of solitary confinement in New York, *Boxed In: The True Cost of Extreme Isolation in New York's Prisons*. In the courts, we are currently challenging the constitutionality of New York State's practice of arbitrarily sentencing tens of thousands of incarcerated individuals to months and years of solitary confinement for alleged infractions that often present no threat to prison safety.

Solitary confinement is the practice of placing a person in physical and social isolation for 22 to 24 hours a day with little or no human contact – generally in a small cell with a solid steel door, a bunk, a toilet and a sink. Studies published by the American Psychological Association and many others have shown that prolonged periods of solitary confinement can bring about disastrous and sometimes permanent mental and physical health effects.<sup>1</sup> Detainees have experienced a wide-range of negative consequences after being held in isolation including: perceptual distortions and hallucinations, lack of

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<sup>1</sup> See, e.g., Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AMERICAN JOURNAL OF PSYCHIATRY 1450 (1983); R. Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 SOCIAL JUSTICE 8 (1988); S.L. Brodsky and F.R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REPORTS 267 (1988); Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQUENCY 124 (2003); H. Miller and G. Young, *Prison Segregation: Administrative Detention Remedy or Mental Health Problem?*, 7 CRIMINAL BEHAVIOUR AND MENTAL HEALTH 85 (1997); H. Toch, *Mosaic of Despair: Human Breakdown in Prison*, Washington DC: American Psychological Association (1992).

impulse control, severe and chronic depression, weight loss, self-mutilation and lower levels of brain function.<sup>2</sup>

As the Committee notes in its resolution, and as was recently reported in *The New York Times*<sup>3</sup> and elsewhere, evidence of the excessive use of solitary confinement in civil immigration detention abounds. On any given day, more than 300 immigration detainees are held in solitary confinement; almost half are kept there for 15 days or more. According to the United Nations Special Rapporteur on torture, beyond 15 days, the conditions of solitary confinement create a significant risk of permanent psychological damage.<sup>4</sup> As Senator John McCain attested in an April 2013 report by Physicians for Human Rights, “It’s an awful thing, solitary. It crushes your spirit and weakens your resistance more effectively than any other form of mistreatment.”<sup>5</sup> And the use of solitary confinement in immigration facilities, on individuals who are being detained for no crime is even more troubling, as Senator Charles E. Schumer and others have publically noted.

### **DHS and ICE Detention**

The NYCLU wholeheartedly supports this resolution, which urges the Department of Homeland Security (DHS) to end the practice of placing immigrant detainees in solitary confinement, except for in emergency situations. Immigration and Customs Enforcement (ICE), the department within DHS responsible for immigration enforcement, recently issued a directive expanding due process protections for immigrant detainees being held in solitary. The resolution before the committee today calls on ICE to build on this positive step, eliminating the use of solitary confinement in all but emergency situations.

The new directive also takes important steps to impose substantive limits on the use of solitary confinement. For example, it now requires automatic review of all decisions to place detainees in solitary confinement for more than 14 days, including an evaluation of whether any less-restrictive option could be used. It requires heightened justifications in order to place vulnerable detainees – such as people with medical or mental illnesses, or people at risk of suicide – in solitary confinement. And it requires medically and mentally ill detainees to be removed from solitary confinement if their health is deteriorating. If enforced, ICE's new directive will enable the agency to more strictly oversee the use of solitary confinement across approximately 250 immigration detention facilities – the vast majority of which are county jails and private prisons that are not directly operated by ICE itself.

This spring, the NYCLU applauded the United States Senate for its passage of an amendment to its comprehensive immigration reform bill which included significant restrictions on the use of solitary confinement in immigration detention. Now part of the House of Representatives’ comprehensive

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<sup>2</sup> See e.g., Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AMERICAN JOURNAL OF PSYCHIATRY 1450, 1452 (1983); R. Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 SOCIAL JUSTICE 8 (1988); S.L. Brodsky and F.R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REPORTS 267 (1988); Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQUENCY 124, 130 (2003).

<sup>3</sup> See Ian Urbana, “Immigrants Held in Solitary Cells, Often for Weeks,” THE N.Y. TIMES, Mar. 23, 2013, available at [http://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html?\\_r=0](http://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html?_r=0)

<sup>4</sup> “Solitary Confinement Should be Banned in Most Cases, UN Expert Says,” Oct. 18, 2011, available at <https://www.un.org/apps/news/story.asp?NewsID=40097&Cr=torture&Cr1=%20ForceRecrawl:%200>.

<sup>5</sup> John McCain, “Prisoner of War,” U.S. NEWS AND WORLD REPORT, May 14 1973, available at <http://www.usnews.com/news/articles/2008/01/28/john-mccain-prisoner-of-war-a-first-person-account>.

immigration bill, this amendment establishes significant restrictions on when solitary confinement can be used against immigrant detainees: for example, it cannot be used for prisoners under eighteen years old, or for those with significant mental illnesses or for more than 15 days unless a less restrictive alternative is more likely to cause more harm.

But until federal Comprehensive Immigration Reform is signed into law, this amendment has no practical effect. And although ICE's directive is a major step forward, the best solution overall is to abolish the use of solitary confinement for immigration detainees except in emergency situations. Therefore, we strongly support the City Council's resolution, and encourage ICE to embrace abolishment as its long-term goal. In the meantime, the NYCLU will continue to monitor the use of solitary confinement in immigrant detention centers throughout the state of New York, and we urge ICE to fully and consistently implement its new directive, beginning immediately.

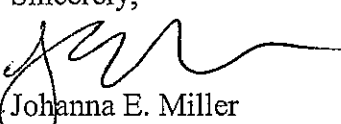
### **Solitary Confinement in Prisons and Jails**


While this resolution focuses on the injustice of subjecting civil detainees to solitary confinement, we hope it will draw needed attention to the broader issue of overuse of solitary confinement in New York's prisons and jails. New York holds far too many men and women in isolation: around 3,800 individuals languish in solitary Special Housing Units in prisons across the state every day.<sup>6</sup> Here in New York City, 7.5% of the entire inmate population was in punitive segregation as of June 30, 2013.<sup>7</sup>


This June, New York City's Board of Correction took a positive first step to reducing reliance on solitary when it voted unanimously to propose new rules for disciplinary segregation.<sup>8</sup> The NYCLU urges the New York City Board of Correction to consider this resolution as a starting point for reforming, if not abolishing, the use of solitary confinement. Isolation should only ever be used as a last resort, for the briefest time necessary, and under the least restrictive conditions. New York must move away from the overuse of solitary confinement in both civil and criminal detention.

We appreciate your consideration of our views; we welcome the opportunity to work with you and the City Council to support the protection and expansion of human rights in New York City. If you have questions or comments, or would like to set up a meeting, please contact Rebecca Engel, Public Policy Counsel, at (212) 607-3376 or [rengel@nyclu.org](mailto:rengel@nyclu.org).

Sincerely,

  
Johanna E. Miller  
Advocacy Director

  
Rebecca Engel  
Public Policy Counsel

  
Nate Vogel  
Legislative Counsel

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<sup>6</sup> New York Department of Corrections and Community Supervision, DAILY CAPACITY REPORT (Sep. 26, 2013)

<sup>7</sup> James Gilligan, M.D. & Bandy Lee, M.D. M.Div., "Report to the New York City Board of Correction, at 3 (Sep. 5, 2013).

<sup>8</sup> New York City Board of Correction, "Motion to proceed with rulemaking regarding punitive segregation on Rikers Island" (approved on Jun. 3, 2013), *available at* <http://www.nyc.gov/html/boc/downloads/pdf/Memo%20to%20the%20Board%20%2008222013.pdf>.

**Written Comments of The Bronx Defenders  
Delivered by Randi Sinnreich, Social Worker, and Zoe Levine, Immigration Attorney**

**New York City Council Committee on Immigration**

**Resolution urging the United States Department of Homeland Security to end the practice  
of placing immigrant detainees in solitary confinement, except in emergency situations.**

**Oversight: The use of solitary confinement in detention centers  
and its effect on the City's immigrants.**

**Testimony by Randi Sinnreich:**

My name is Randi Sinnreich, and I am a Licensed Social Worker at The Bronx Defenders. I am here with my colleague Zoe Levine, an Immigration Attorney at The Bronx Defenders. Together we submit these comments on behalf of The Bronx Defenders and thank this committee for the opportunity to testify.

The Bronx Defenders provides innovative, holistic, and client-centered criminal defense, family defense, civil legal services, social work support and advocacy to indigent people of the Bronx. Our staff of nearly 200 represents 30,000 individuals each year and reaches hundreds more through outreach programs and community legal education. In the Bronx and beyond, The Bronx Defenders promotes justice in low-income communities by keeping families together.

We are here today to describe the ways in which the use, overuse and misuse of solitary confinement has caused irrevocable psychological and physical damage to the clients we serve and to urge an end this inhumane, torturous practice.

On any given day, about 300 immigrants are held in solitary confinement at the 50 largest detention facilities that make up the sprawling patchwork of holding centers nationwide overseen by [ICE].<sup>1</sup> Nearly half are isolated for 15 days or more, with about 35 detainees kept for more than 75 days.

The Special Rapporteur of the United Nations recently described solitary confinement as causing severe mental and physical pain leading to cruel, inhumane, degrading treatment, punishment or

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<sup>1</sup> Stop Subjecting Immigration Detainees to Widespread and Prolonged Solitary Confinement. American Civil Liberties Union, 12April2013.

even torture.<sup>2</sup> While solitary confinement constitutes torture for all populations, it is most traumatic—and perhaps most frequently abused—for individuals diagnosed with a mental illness.

Research has shown that prolonged solitary confinement can precipitate and/or exacerbate the symptoms of mental illness.<sup>3</sup> Specifically, after 15 days in isolation individuals with mental illness are at risk of severe mental harm as symptoms such as paranoia, hallucinations, and impulsive, often self-directed violence develop. Despite this deleterious effect, many detainees are placed in solitary confinement *because* they have a mental or psychiatric disability. **On any given day on Riker’s Island, 41% of individuals housed in segregation are mentally ill.** While this number is not specific to immigration detention centers, it reflects the inappropriate use of solitary confinement for individuals housed in a locked down facility who are mentally ill. This number is undoubtedly higher in detention centers, because so many detainees who are mentally ill are placed in segregation solely because they are mentally ill.

Whether punishment is the intention of placing detainees in solitary confinement is irrelevant. The sole consequence of placing an individual in this form of seclusion—devoid of human contact and with severely limited resources and privileges—is plain punishment. A detainee is stripped of the some of the most basic human necessities: human contact, including contact with family-members; access to medical and mental healthcare, and access to legal information. They are also subject to excessive force, harassment, or abuse by officers.<sup>4</sup> A common misconception is that punitive segregation prevents or deters violence. However, any form of punishment, specifically an isolated form of punishment, has the potential to encourage more violence.

Immigration detention is intended to be a civil, non-punitive measure. The use of solitary confinement in this atmosphere creates a punitive environment, which can in turn create a vicious cycle of misbehavior and punishment where the more violently an individual behaves, the more seriously he is punished, and the more seriously he is punished the more violent he/she becomes. The use of solitary confinement makes detention centers less safe for staff and detainees. Furthermore, the harmful effects of solitary confinement don’t end once an individual is released from detention. The psychological trauma impairs an individual’s ability to interact socially and to safely and successfully reintegrate into society.

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<sup>2</sup> Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment. (A/66/268). Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, 5 August 2011.

<sup>3</sup> Gilligan & Lee, Report to the New York City Board of Correction, 1-20, 2013.

<sup>4</sup> National Immigrant Justice Center. The Use of Segregation and Solitary Confinement in Immigration Detention. Physicians for Human Rights, September 2012.

### **Testimony by Zoe Levine:**

As an immigration attorney at the Bronx Defenders, I frequently represent noncitizens in removal proceedings who are detained by Immigration and Customs Enforcement. I have witnessed firsthand the devastating effects of segregation on mentally ill people, and I'd like to share one of my experiences with you today.

For many months, I represented a woman I'll call Anna. Anna was an older woman from the Dominican Republic, and she had lived in the United States as a lawful permanent resident for over 40 years. She had struggled with mental illness, namely bipolar disorder and depression, as well as drug addiction for most of her adult life. She had also spent time in a number of psychiatric hospitals. Her drug addiction led to arrests, which in turn led to removal proceedings in immigration court. Anna was detained during her case, and quickly placed in segregation because of her mental illness. According to ICE regulations, mentally ill people are among those placed in segregation.<sup>5</sup>

I received weekly phone calls from Anna's daughter, who was horrified by what her mother told her was happening to her in jail. Just as Randi explained, her mental health deteriorated and she was in great pain and distress. She was medicated but did not receive the comprehensive mental health services she desperately needed. We put together a great deal of information about Anna's mental health history and struggles, and implored ICE to consider releasing her from custody for humanitarian reasons. Sadly, Anna remained in segregation for many more months, until the conclusion of her case. The psychological impact on her, as well as her family, has been profound.

Anna's segregated confinement also affected my ability to represent her effectively in immigration court. Guards often insisted on standing very near to us when we met inside the jail, which was intimidating to Anna and made her less willing to talk openly with me. She often, and understandably, wanted to focus on the conditions of her confinement and how I could help improve her conditions, rather than talking about her legal case. And as her mental health deteriorated, so did her ability to remember important facts and testify coherently.

While some of the New Yorkers detained by ICE have committed criminal offenses, they have already served their sentences and paid their debts for those cases in the criminal system. Anna had served some time and was trying to put her life back together, including fighting her deportation, when she was detained and isolated. Immigration detention is civil in nature, and not supposed to be punitive. Its only stated purpose is to ensure that noncitizens appear in court. And because removal cases can last anywhere from a few weeks to a few years, our friends and

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<sup>5</sup> U.S. Immigration and Customs Enforcement, Review of the Use of Segregation for ICE Detainees, September 4, 2013, available at [http://www.ice.gov/doclib/detention-reform/pdf/segregation\\_directive.pdf](http://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf).

family are suffering in immigration detention without knowing when their ordeal will end. For those in solitary confinement, it can be psychologically and emotionally unbearable.

Long-term civil immigration detention is costly, unnecessary, and inhumane. Solitary confinement is perhaps the costliest, most unnecessary, and most inhumane practice within the mass immigration detention system. But while our dysfunctional immigration laws continue to require the detention of many of our noncitizen friends and family members, we urge the Council to use all methods possible to demand that ICE improve conditions for those that are trapped in the detention and enforcement system. You have the opportunity to continue to make New York City a national example and standard-bearer when it comes to protecting our immigrant communities.

In summary, we ask that you keep our client Anna -- and the hundreds of immigrant New Yorkers like her -- in your thoughts as you consider this resolution to pressure ICE to put an end to the inhumane practice of solitary confinement in immigration detention. We thank this Committee for your time and your courageous efforts on behalf of noncitizen New Yorkers.

For the Record

## FOR THE RECORD

City Council Hearing on a

Resolution urging the United States Department of Homeland Security to end the practice of placing immigrant detainees in solitary confinement, except in emergency situations.

Testimony by Amy Gottlieb  
Director, American Friends Service Committee Immigrant Rights Program  
15 Rutherford Place  
New York, NY 10003

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My name is Amy Gottlieb and I am the Director of the American Friends Service Committee (AFSC) Immigrant Rights Program. The AFSC is an almost 100-year-old faith-based organization grounded in Quaker beliefs respecting the dignity and worth of every person. Since 1917 AFSC has worked with refugees and displaced persons worldwide. Today AFSC's engagement across the U.S. includes a range of work focused in immigrant and refugee communities. AFSC provides direct legal services and engages in organizing with immigrants and allies along with advocacy and movement building throughout the U.S.

At AFSC's Immigrant Rights Program we represent a number of individuals, including New York City residents, who are detained at various facilities while they await their deportation hearings before an immigration judge. Especially for those with mental illness, detention can be a harrowing experience. Jails routinely separate those who have been diagnosed with mental illness in what many facilities euphemistically refer to as the "forensic unit"—another term for solitary confinement. Ostensibly this is done for the detainee's own benefit, though in reality, this isolation has a gross negative impact on both the individual and their legal defense.

Once in solitary, several of our clients have experienced a marked deterioration of their psychiatric well-being. This deterioration—which manifests in everything from a decrease of comprehension to an increase in agitation, hallucinations, and despair—has been discovered by our attorneys after requesting a client's medical records. One client held at Hudson County Jail, who suffered from disorganized schizophrenia, started inflicting harm to his face after only one week in solitary because he "wanted to see color." Another schizophrenic client at Essex County Jail deteriorated so badly over the several months that he was held in isolation that even the immigration judge remarked that he had gone from "mostly competent" at the outset of the proceedings to "completely incoherent" by their conclusion. A third client (held at York County Jail in York, Pennsylvania) was placed in solitary following an unknown incident and held for several months. By the end of his



tenure in isolation, he was observed pacing in circles in his cell until his feet bled and applying feces to the wall and his body. While able to communicate with the judge and his attorneys at the beginning of the trial, he was so detached from reality by the end that his presence in court was waived.

Solitary confinement in the United States prison system has been referred to as torture, yet it is used in both prisons and in immigration detention either for punishment or because the facilities don't have proper accommodations for people with special needs. The solution is not detention but rather to develop community based alternatives to detention that allow people to live in supportive environments during their immigration court proceedings. But while detention still exists, the American Friends Service Committee strongly urges the end solitary confinement—and particularly its use against the mentally ill.

Thank you for the opportunity to present this testimony.

October 24, 2013

Jacqueline Esposito, Esq.  
New York Immigration Coalition, Director of Immigration Advocacy  
New York City Council Committee on Immigration  
Hearing regarding a Resolution urging the United States Department of Homeland Security to end the practice of placing immigrant detainees in solitary confinement, except in emergency situations.

## **Introduction**

My name is Jacqueline Esposito and I am the Director of Immigration Advocacy at the New York Immigration Coalition (NYIC). The NYIC is an umbrella policy and advocacy organization for nearly 200 groups in New York State who work with immigrants and refugees. The NYIC aims to achieve a more fair and just society that values the contributions of immigrants and extends opportunity to all. I appreciate the opportunity to testify before the Committee on the use of solitary confinement in immigration detention.

Immigration detention is the fastest-growing incarceration system in the United States.<sup>i</sup> U.S. Immigrations and Customs Enforcement (ICE), the interior immigration enforcement bureau of the Department of Homeland Security (DHS), now detains more than 34,000 individuals each day.<sup>ii</sup> While the immigration detention system is intended to be civil in nature, most facilities are indistinguishable from jails. Detainees are confined behind high walls lined with barbed wire, and have little freedom of movement or direct contact with loved ones. Those held in detention include asylum seekers; lawful permanent residents; people with mental health conditions; lesbian, gay, bisexual, and transgender individuals; elderly immigrants; and survivors of human trafficking. When all of these diverse populations are detained together, facilities often segregate certain individuals or groups. As a result, some immigrants in detention facilities can face punitive and, in some cases, long-term solitary confinement, which amounts to 23-hour lockdown where segregated immigration detainees are denied contact with other people as well as the usual privileges afforded to other detainees. Many immigrants in solitary confinement face strict limits on outdoor recreation, reading material, and even access to legal counsel. According to federal data, of the roughly 34,000 immigrants detained each day, about 300 are held in solitary confinement.<sup>iii</sup> Nearly half of which are isolated for fifteen days or more, the point at which medical experts say they are at risk for severe mental harm, with about 35 detainees held in isolation for more than seventy-five days.<sup>iv</sup>

Solitary confinement of immigrants in detention is often arbitrarily applied, significantly overused, and inadequately monitored. Historically, ICE has failed to hold detention centers and jails accountable for their use of solitary confinement and has not enforced consistent segregation standards in its detention facilities. As a result, guards often apply local jail policies to both immigration and non-immigration detainees, leading to a more widespread use of solitary confinement for immigrants. Research also has shown that solitary confinement frequently is used by guards as a control mechanism.<sup>v</sup> Numerous cases have been uncovered in which detention facilities placed immigrants suffering from mental health issues in solitary confinement rather than treating them, or separated immigrants who identified as lesbian, gay, bisexual or transgender against their wishes from the general inmate population because guards were unable to deal with their unique circumstances and viewed solitary confinement as necessary as a protective measure.<sup>vi</sup> Other documented cases of solitary confinement involved individuals who were placed in solitary confinement after they filed complaints about detention conditions or helped others to do so.<sup>vii</sup> Researchers also have documented incidents where victims of assault were placed in solitary confinement against their wishes as a protective measure.<sup>viii</sup>

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 claims for relief. Some people give

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up and stop fighting their immigration cases so they will not have to spend another day in isolation. These individuals are then deported to countries they may not remember, and know no one, or to countries where they have been persecuted or tortured.

## Conclusion

While ICE has taken initial steps to address the problems that result from the use of segregation in detention facilities, such as improved medical care for segregated detainees and special reporting requirements when segregation is used, much more is needed to ensure immigrant detainees are treated humanely and fairly. The New York Immigration Coalition calls for an end to the use of solitary confinement in immigration detention, a practice that has been proven unnecessary, costly, and harmful to detainees' physical and mental health, and recommends DHS implement the following reforms:

- Use detention only as a last resort, and where detention is necessary to ensure public safety or appearance for immigration proceedings, end the use of jails and jail-like facilities for immigrant detainees;
- Release or place vulnerable individuals in alternatives to detention (ATD) programs if they cannot be held safely with the general population;
- Develop and implement legally enforceable civil detention standards based on human rights principles, rather than penal standards; and
- Withhold funding, impose financial penalties, or terminate contracts with detention facilities that violate ICE's detention standards.

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<sup>i</sup> Lutheran Immigration and Refugee Service, *Unlocking Liberty: A Way Forward for U.S. Immigration Policy*, 2012, p. 6, available at: <http://www.lirs.org/wp-content/uploads/2012/05/RPTUNLOCKINGLIBERTY.pdf>.

<sup>ii</sup> Dep't of Homeland Security, Office of Inspector General, *Detention and Removal of Illegal Aliens*, April 2006, p. 5, available at [http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG\\_06-33\\_Apr06.pdf](http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_06-33_Apr06.pdf).

<sup>iii</sup> New York Times, *Immigrants Held in Solitary Cells, Often for Weeks*, Mar. 23, 2013, available at:

<http://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html?pagewanted=all>.

<sup>iv</sup> *Id.*

<sup>v</sup> National Immigrant Justice Center and Physicians for Human Rights, *Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention*, Sept. 2012, p. 9, available at:

<http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Invisible%20in%20Isolation->

[The%20Use%20of%20Segregation%20and%20Solitary%20Confinement%20in%20Immigration%20Detention.September%202012\\_7.pdf](http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Invisible%20in%20Isolation-The%20Use%20of%20Segregation%20and%20Solitary%20Confinement%20in%20Immigration%20Detention.September%202012_7.pdf).

<sup>vi</sup> *Id.*

<sup>vii</sup> *Id.*

<sup>viii</sup> *Id.*

## **Solitary Confinement in Immigration Detention**

Hearing of the New York City Council, October 24, 2013  
Testimony of Emily Tucker, Center for Popular Democracy

Good afternoon, and thanks to Councilman Dromm and the Immigration Committee for convening today's hearing and for inviting me to testify on this important issue. My name is Emily Tucker and I am currently a staff attorney at the Center for Popular Democracy in Brooklyn, where I work on state and local policy initiatives to protect immigrant rights and promote racial justice. I am also an active member of Detention Watch Network, where I was Policy Director prior to joining CPD. Detention Watch Network is a national coalition fighting to end immigration detention.

Other speakers have already given an overview of the practice of solitary confinement in immigration detention centers, the system wide problems with abuse, and the failure of ICE's minimal oversight and accountability mechanisms. Rather than duplicate their testimony I will use my time to share some stories with you of the real suffering experienced by actual people subjected to solitary confinement by ICE.

In April of this year I was part of a Detention Watch Network delegation that visited the Etowah detention center in Alabama. We interviewed approximately 30 people that day, several of whom were New Yorkers. Etowah is a facility that ICE uses to hold individuals subjected to prolonged or indefinite detention, and a large number of New York City residents with complicated immigration cases end up there, often for several months or even years. Almost every person we spoke to that day had spent time in solitary confinement. One man from Bedford Stuyvesant, Brooklyn, told me how he spent more than 20 days in segregation (a stretch of time that the UN Special Rapporteur has said constitutes torture) for yelling at a guard who refused to allow him to see his wife, after she spent hundreds of dollars and 15 hours travelling all the way from New York for a visit with him. Another man, who had been previously diagnosed as schizophrenic reported being kept in solitary confinement for multiple three day stints, as an attempt to contain the "disruptive outbursts" that resulted from his being denied his medication. A father of three, who broke down into tears at the mention of his youngest daughter, told us how ICE put him in solitary after he went on hunger strike to protest the injustice of his incarceration. After he developed gastrointestinal bleeding, the jail staff told him he would not be released from solitary, and that he would be denied medical care, unless he agreed to end his hunger strike.

These kinds of stories are unfortunately quite common among those who have spent any length of time in ICE custody, not only at Etowah, but at any of the 250 detention facilities across the country. In November 2012, Detention Watch Network released a series of ten reports as part of the Expose and Close campaign. The reports catalogued the poor conditions and regular mistreatment at ten of the worst detention centers in the United States. The

misuse and overuse of solitary confinement was one of the most prevalent problems across the board. Individuals reported spending weeks in segregation, sometimes for “disciplinary” reasons, sometimes as retaliation for complaints they had filed against about detention center conditions. One of the most disturbing pretexts for solitary confinement is the “protection” of certain especially vulnerable people – such as gay or transgendered individuals – who should never be in detention to begin with.

While there is nothing that this body can do to curb the federal government’s use of solitary confinement, the city does have some control over who ends up in ICE’s custody to begin with. The council took an important step in this direction last spring, by passing two bills that limit collaboration between local law enforcement and ICE. Those measures, however, only protect about a third of New Yorkers targeted by ICE from ending up in detention. We encourage the council to expand the protections of that detainer compliance policy to all New Yorkers, and to deny ICE access to Riker’s Island Jail so that New Yorkers whom the criminal justice system has determined should be released can rejoin their families and carry on with their lives.

From: Michelle Gonzalez, Legal Fellow

Date: October 24, 2013

Re: Proposed Testimony for City Council Hearing on October 24, 2013

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My name is Michelle Gonzalez. I am a Legal Fellow at Immigration Equality, a national organization that advocates for the rights of lesbian, gay, bisexual, transgender, (LGBT) and HIV positive immigrants. I would like to start by thanking the committee for inviting me to present testimony on the proposed resolution urging the United States Department of Homeland Security (“DHS”) to end the practice of placing immigrant detainees in solitary confinement.

LGBT asylum seekers flee violence, trauma, bigotry and persecution in their home countries due to their sexual orientation or gender identity. However, once they are within the federal immigration detention system, LGBT detainees are effectively punished again for their sexual orientation or gender identity. This is because Immigration and Customs Enforcement (“ICE”) detention facilities and subcontracted detention facilities have adopted a practice of placing LGBT detainees in solitary confinement on the basis that it will protect them from attack by the general detained population. While there may be real safety issues in many instances, there is usually no attempt by the detention facility to assess the actual safety risk in each individual case, nor is there any attempt to ascertain the detainee’s own view about his or her safety. Inappropriate solitary confinement is a particularly disconcerting issue for transgender detainees, as they are nearly always housed in sex-segregated facilities that conflict with their self-identified gender, and detention facilities will routinely place them in solitary confinement on the pretext of safety concerns.

Although ICE detention is not designed to be punitive, this so-called “administrative segregation” is generally indistinguishable from punitive segregation. Detainees are placed in a small cell for 23 hours per day, for days, weeks, or even months at a time. Some detainees report having as little as five to ten minutes outside of their cell each day. They have no access to services and programs, external support systems, or any human interaction. They often have no ability to access counsel, which means they are deprived of representation that could help them put an end to their solitary confinement. Given that solitary confinement is a form of punishment normally reserved for those who are a threat to others, this practice effectively punishes LGBT detainees for being LGBT. It is psychologically damaging and exacerbates the fear and anxiety felt by an already vulnerable group.

Immigration Equality has represented many clients who have been traumatized by solitary confinement. One example is Maria (not her real name), a transgender woman escaping from persecution in Mexico who was detained at York Detention Center in Pennsylvania. Prior to being detained, she had access to hormone therapy treatment and lived her life as a woman. Among other medical procedures, she had surgeries to feminize her face and to augment her breasts. She had changed her name from Eric to Maria, and wore women’s clothing. Upon arrival at York, Maria was processed through the center’s intake procedures, placed in the male facility and asked whether she wanted to be placed in solitary confinement. She said no. Despite this, and without any individualized risk assessment, the detention officer placed Maria in solitary confinement, where she was subject to 23 hour lockdown.

Maria stayed in solitary confinement for a total of three months, the entirety of her stay at York. During this time, she had no social interaction with other detainees, and she was denied both her HIV treatment and her gender hormone therapy. Due to the involuntary isolation that Maria experienced while in 23 hour lockdown and her inability to participate in recreation, Maria started having nightmares. In her nightmares she dreamed that she would be returned to Mexico and would again be abused and killed due to her status as a transgender woman. Maria shared her nightmares with a detention officer and assured the officer that she did not want to kill herself. At one point Maria expressed her frustration at being in 23 hour lockdown by banging her head against a wall and screaming.

Again, without an individualized psychiatric evaluation of Maria's mental state, detention officers placed her in a smaller solitary confinement cell. The suicide watch cell she was placed in was about 10 feet by 10 feet in size. Additionally, Maria was stripped of her clothing and subject to checks by officers every 15 minutes. Maria was not given clothing for a day and remained on suicide watch solitary confinement for a total of 15 days. Finally, after obtaining legal counsel, Maria was released from detention and placed on an electronic monitoring unit. Had it not been for our intervention she would have remained in solitary confinement.

Maria's descent into depression due to being placed in solitary confinement is an all too common occurrence. Another one of our clients at Immigration Equality, Eva (not her real name), is a transgender woman from Mexico who was detained in an all male prison in Georgia. When she was attacked by another detainee, it was Eva and not the attacker who was placed in disciplinary detention. There, her isolation caused her to become depressed, at which point she was put on suicide watch and forced to wear an anti-suicide smock. Understandably, this made Eva feel degraded and magnified her depression. This damaging cycle only ended when we were able to have her released.

The mental and emotional damage caused by solitary confinement has been well documented. Studies of prisoners in solitary confinement show that they develop psychopathologies at almost twice the rate of those in the general prison population.<sup>1</sup> They have also been found to engage in self-mutilation at higher rates.<sup>2</sup> Data also indicates that solitary confinement is a major factor in suicidal ideation and suicide attempts.<sup>3</sup> An extensive study of prisoners in solitary confinement in California found that they had "high anxiety, nervous-ness [sic], obsessive ruminations, anger, violent fantasies, nightmares, trouble sleeping, as well as dizziness, perspiring hands, and heart palpitations".<sup>4</sup> We at Immigration Equality have seen these effects first hand. One of our clients, Carmen (not her real name) was placed in solitary detention in Essex County, New Jersey, for two weeks after being constantly harassed. When she came out of detention to meet with us, she was shaking all over and found it difficult to form words. The damage done to Carmen's mental health was evident.

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<sup>1</sup> H.S. Andersen, D. D. Sestoft, T. T. Lillebæk, G. G. Gabrielsen, R. R. Hemmingsen & P. P. Kramp, *A Longitudinal Study of Prisoners on Remand: Psychiatric Prevalence, Incidence and Psycho-pathology in Solitary vs. Non-Solitary Confinement*, 102(1) ACTA PSYCHIATRICA SCANDINAVICA 19 (2000).

<sup>2</sup> C. Haney & M. Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 NEW YORK UNIVERSITY REVIEW OF LAW AND SOCIAL CHANGE 477-570 (1997).

<sup>3</sup> I. Suto, *Inmates Who Attempted Suicide in Prison: A Qualitative Study*, 46 (2007) (paper on file with the School of Professional Psychology).

<sup>4</sup> S. Rodriguez, *Fact Sheet: Psychological Effects of Solitary Confinement*, SOLITARY WATCH (2011), <http://solitarywatch.com/wp-content/uploads/2011/06/fact-sheet-psychological-effects-of-solitary-confinement2.pdf>.

The involuntary placement of transgender women like Maria, Eva and Carmen in conditions of extreme isolation without individualized assessment is in violation of existing standards and should not have occurred. Given that they are women, it was inappropriate for them to have been housed in male facilities in the first place. This practice subjects transgender women to high risks of sexual assault by other detainees and at its core violates a woman's dignity and her rights to be placed with other women. So-called "protective" placement in solitary confinement would not be necessary if transgender women are appropriately placed in female detention facilities or given regular access to an alternative to detention program.

While there are regulations and non-binding standards that purport to deal with the issue of LGBT detainees being improperly placed in solitary confinement, they are only loosely implemented and do not go far enough to ensure that LGBT detainees are not routinely housed in solitary confinement. Any legislative reform must include protections to ensure that immigration detention centers do not systematically place LGBT detainees in solitary confinement simply on the basis of their sexual orientation or gender identity. It must also provide for clear enforcement procedures in the event that those protections are breached.

DHS must address the issue of LGBT detainee safety in detention centers rather than using the "quick fix" of solitary confinement. Being LGBT is not a crime, and LGBT detainees should not have to choose between assault and punitive isolation. A resolution by the New York City Council urging DHS to end the practice of routinely placing LGBT detainees in solitary confinement would send a clear message that New York City does not support this grossly inhumane practice, and Immigration Equality would strongly support such a resolution.





AMERICAN IMMIGRATION LAWYERS ASSOCIATION  
NEW YORK CHAPTER  
2013-2014

Executive Committee

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October 24, 2013

Christine C. Quinn, Speaker  
The New York City Council  
250 Broadway  
New York, NY 10007

**Re: Preconsidered Resolution: *a Resolution urging the United States Department of Homeland Security to end the practice of placing immigrant detainees in solitary confinement, except in emergency situations***

Dear Speaker Quinn:

We are submitting this testimony on behalf of the New York Chapter of the American Immigration Lawyers Association (AILA), the nation's largest professional organization of immigration lawyers. We thank you for the opportunity to contribute to this forum.

The New York Chapter of the American Immigration Lawyers Association commends the New York City Council for this resolution urging the Department of Homeland Security (DHS) to end the practice of placing immigrant detainees in solitary confinement, except in emergency situations.

Our immigration policies should reflect this country's values of due process and respect for human dignity. In 2012, the U.S. government detained approximately 400,000 individuals in immigration custody in a network of about 250 facilities, including those that hold both immigrants and criminally sentenced individuals. ICE-contracted detention centers, *i.e.*, facilities that are contracted out to for-profit companies and county jails, hold a broad range of individuals, including asylum seekers, U.S. permanent residents, people with

mental health conditions, LGBT individuals, elderly immigrants, and survivors of human trafficking. As *The New York Times* recently reported, more than 300 immigrants are held in solitary confinement on any given day in the 50 largest immigration detention facilities, with nearly half isolated for 15 days or more. According to the United Nations Special Rapporteur on Torture, solitary confinement of 15 days or more constitutes torture, due to the risk of permanent psychological damage from such extended periods of isolation.

Over the past several years, Congress has significantly increased funding for U.S. Immigration and Customs Enforcement (ICE) detention beds, from 20,800 beds per day in FY 2006 to 34,000 beds per day in FY 2012, at an annual cost in excess of \$1.7 billion. ICE has interpreted appropriations language to mandate the detention of an average daily population of approximately 34,000 individuals. Immigration detention costs U.S. taxpayers an average of \$122 to \$164 per person per day. Alternatives to detention have proved to be extremely effective, demonstrating a more than 90% appearance rate before the immigration courts, and are significantly less expensive, costing between 30 cents and \$22 per day, depending on the nature of the program. As a result of our detention and deportation policies, immigrants are living in inhumane and abusive conditions in detention centers around the country, while the private prison industry and county jails are profiting. A September 24, 2013 article in *Bloomberg Businessweek* reports on the costs of this “bed mandate” to U.S. taxpayers and detained immigrants and their families, as private profit prison operators, which detain almost two-thirds of all immigrants held in federally funded prisons, continue to make huge profits.<sup>1</sup>

Most detainees lack immigration status and legal representation, and many do not speak English. The use of solitary confinement further isolates these individuals and encourages them to “give up” on pursuing their cases, accepting deportation to countries that are often dangerous, provide few opportunities and to which they might have little or no connection other than birth. Compounding this isolation is the lack of accountability in the prison system. A May 1, 2013 report issued by the Government Accountability Office, “Improvements Needed in Bureau of Prisons’ Monitoring and Evaluation of Impact of Segregated Housing,” found serious deficits in oversight of solitary confinement policies in federal prisons.

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<sup>1</sup> William Selway and Margaret Newkirk, “Congress Mandates Jail Beds for 34,000 Immigrants as Private Prisons Profit,” *Bloomberg Businessweek*, September 24, 2013.

We therefore welcome the ICE policy directive of September 4, 2013 regulating the use of solitary confinement for immigrant detainees, which calls for such improvements as a system for centralized review, the consideration and use of alternatives to detention (ATD), heightened justifications for solitary confinement and requirements for release, and other helpful measures such as attorney notification in certain instances.

However, these guidelines fall short in several respects. The directive does not establish specific limits on the duration of solitary confinement, it is not legally enforceable, and it does not provide for effective remedial action against facilities that violate the guidelines. As a first step, we would encourage DHS to look to the proposed Amendment #2 (offered by Senator Blumenthal and adopted by voice vote in the Senate Judiciary Committee) to S.744, the "Border Security, Economic Opportunity, and Immigration Modernization Act," which sets fixed terms for the length of allowable detention, the number of weekly visits by doctors and mental health professionals, conditions triggering release, and other measures to reduce the amount of and mitigate the damage of solitary confinement.

The City Council is to be highly commended for taking significant steps toward protecting residents from unnecessarily or inappropriately being transferred into immigration detention, through passage of Local Laws 2013/021 and 2013/022 regarding when the NYPD and DOC will and will not honor ICE detainees. However, we feel that these policies do not go far enough. ICE's practices and policies regarding detainer issuance are much too broad. Many New York City residents who are noncitizens and who come into contact with local law enforcement, often for offenses as minor as traffic violations, remain vulnerable to being swept into DHS custody and the types of confinement described above. More needs to be done by ICE to ensure that detainees protect the due process and Constitutional rights of citizens and noncitizens and focus on the agency's highest priorities. We therefore recommend that the City Council consider expanding New York City's detainer policy to encompass more New York City residents who would be exempt from ICE detainees.

Accordingly, we call on Congress to end the practice of placing in immigration detention individuals who do not pose an immediate risk to the community. We further encourage Congress to reduce funding for immigration detention and to increase funding for ATD programs,

and to enact binding civil detention standards holding facilities legally accountable for improper use of solitary confinement. Finally, we encourage DHS to withhold funding for, impose financial penalties on, or terminate contracts with, detention facilities that violate these segregation policies.

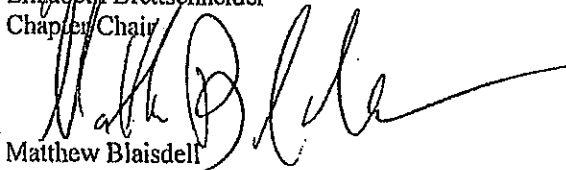
We join immigrants and their families, the City Council, and the other groups and individuals testifying today to urge that DHS end the inhumane and harmful practice of solitary confinement, except in emergency situations that are subject to continuing oversight.

Thank you for your consideration.

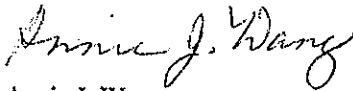
Sincerely,



Elizabeth Brettschneider  
Chapter Chair



Matthew Blaisdell  
Co-Chair, Ethics and Unauthorized Practice of Law Committee



Annie J. Wang  
Co-Chair, Comprehensive Immigration Reform Committee



City Council Hearing on a  
Resolution urging the United States Department of Homeland Security to end the  
practice of placing immigrant detainees in solitary confinement, except in  
emergency situations.

Testimony by Ravi Ragbir  
New Sanctuary Coalition of New York City  
239 Thompson St  
New York, NY 10012

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My name is Ravi Ragbir from the New Sanctuary Coalition of NYC, NSC. The NSC is a network of inter-faith organizations consisting of churches, mosques, synagogues and temples working to keep families together when they or their loved ones are facing deportation. We advocate for a real and true immigration policy that would allow everyone to live with dignity.

The NSC believes that the premise of detaining/imprisoning a person for who they are is fundamentally wrong. There isn't enough rhetoric to justify that the immigration system, a civil proceeding, needs to hold an immigrant in prison, no matter how "civil" the jail may be. You are taking someone's freedom away.

The reasoning that solitary confinement is used for the protection and welfare of detainees is specious. In the criminal justice system isolation is used to control a person's behavior, which is in itself wrong. But when it happens in immigration detention, where there are no enforceable standards, and every jail can create its own policy, it becomes not just inhumane and morally wrong but torture.

Detainees are ever fearful and unwilling to complain about the prison conditions. Some of the conditions they suffer include terrible food, lack of legal access, lack of access to friends, family and support. Should the detainee complain and/or file a grievance they are threatened with solitary confinement. This injury suffered by immigrant detainees is compounded, when officers consistently scream and shout, demeaning, dehumanizing, and demonizing them.

When someone is in solitary confinement, everything is taken away from him or her. Their legal papers, their books, bibles, are removed, and phone access is restricted sometimes to one call every thirty days. Already their families worry about them in prison, and when they don't hear anything for long periods the families are traumatized. The detainee is stressed in isolation, and by the trauma he knows his family has to live with, not knowing whether he's still alive.

I've seen solitary used to control inmate behavior, but I've also seen solitary used to discard people that the prison has no resources to deal with – the mentally ill, the depressed, lgbt people, are some of those inmates.

You are taken into solitary shackled and removed shackled. The prison does not know how you will react going into or leaving solitary. Even the officers are told that they cannot work more than two simultaneous shifts in the solitary units because of the impact it has on them. The trauma that you have experienced causes physical, emotional and mental damage.

I spent two years in immigration detention, and vividly remember the trauma I experienced. I still suffer from depression and PTSD after my time in detention and solitary.

As an immigrant rights activist and as someone who has lived through the devastation of solitary confinement and seen hundreds of people undergo similar treatment, I commend you for the steps you are taking to raise awareness of this problem and to end this brutal system.

**Testimony by Mary Meg McCarthy  
Executive Director, National Immigrant Justice Center**

**Submitted to the New York City Council on Immigration**

October 25, 2013

Members of the Committee, thank you for the opportunity to submit this statement for the record. The National Immigrant Justice Center (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, legal representation, and individual advocacy for thousands of adults and children in more than 45 detention facilities across the country.

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 an immigration judge. Despite the fact that immigration detention is fundamentally different from the criminal incarceration system, immigration detainees—many of whom have never been convicted of a crime—are often housed alongside individuals serving criminal sentences and treated largely the same by jail administrators and guards, whose expertise and experience is with criminal incarceration. Moreover, immigration detention facilities routinely put immigrant detainees into solitary confinement. Solitary confinement, also known as segregation, refers to:

A form of segregation in which individuals are held in total or near-total isolation. 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 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.<sup>i</sup>

In September of 2012, NIJC and Physicians for Human Rights published an investigative report on the use of solitary confinement in immigration detention, titled *Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention*. This testimony, based on our findings, speaks to the use of solitary confinement in immigration detention, its physical and psychological effects, recourse for detainees, and recommendations on how to prevent its overuse.

### **Immigration Detention**

An average of nearly 34,000 people are held in immigration detention facilities across the country every night due to Congressional appropriations language known as the "bed mandate" requiring ICE to fill a daily average quota of 34,000 immigration beds. Many immigrant detainees have no criminal records. According to the National Immigration Forum, over half of all immigrant detainees between 2009 and 2011 had no criminal records.<sup>ii</sup> Among those with a criminal record, close to 20 percent were only for traffic offenses.<sup>iii</sup> 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.<sup>iv</sup>

The rest are held in dedicated immigration detention facilities run by ICE or contracted to private prison corporations.<sup>v</sup> 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, if any, data 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.

Because of the diverse population within immigration detention, it may be necessary to use administrative segregation where vulnerable or dangerous individuals are separated from the general detention population to keep everyone safe. People who are mentally ill and people who identify as lesbian, gay, bisexual, or transgender (LGBT) are often assigned to solitary confinement because jail staff is unwilling or lacking capacity to deal with their unique circumstances and/or because staff thinks of solitary confinement as a “protective” status for vulnerable populations. Victims of assault are at times placed in solitary confinement, allegedly “for their protection” but against their wishes. There are also individuals who may request placement in solitary confinement. However, our investigation uncovered the overuse of solitary confinement.

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 available alternatives have been exhausted, for the shortest time possible, and under humane conditions. While the release of a new ICE directive on segregation, which will be discussed further, has the potential to provide greater oversight, there are still many policy options that would create greater accountability.

### **Conditions of Solitary Confinement in Immigration Detention**

Jails often place overly harsh restrictions on immigration detainees who are segregated from the general population. Although detainees who are placed in administrative segregation—as opposed to punitive disciplinary segregation<sup>1</sup>—are supposed to be granted full access to benefits they would otherwise enjoy in the general population, detainees are often denied access. Benefits include recreation time, proper food, and access to phones, reading materials, legal resources, and the law library. In most immigration facilities, there is no meaningful difference in the conditions used to house individuals in “protective” administrative solitary and those used for disciplinary segregation. Detainees in solitary confinement may also be subject to excessive force, harassment, or abuse by corrections officers.<sup>vi</sup> 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.
- 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].”<sup>vii</sup>

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<sup>1</sup> Disciplinary segregation is used to separate individuals who have violated a facility rule. DHS/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 a violation.



## Effects of Solitary Confinement

Since it first came into use in the United States in the 19<sup>th</sup> century, researchers and observers have documented the harmful psychological and physiological effects of solitary confinement. 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.”<sup>viii</sup>

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:<sup>ix</sup>

- 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 Dr. 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.”<sup>x</sup>

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,”<sup>xi</sup> and the effects on their mental health are severe. The UN 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.<sup>xii</sup>

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.<sup>xiii</sup> 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, leading to a return to a prior psychotic state or an exacerbation of their already identified ailment.<sup>xiv</sup> 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.<sup>xv</sup>

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 immigrants in detention are survivors of persecution and torture in their countries of origin. Others have survived human trafficking, domestic violence, sexual assault, and other crimes. They are alone and terrified, unsure if they will be deported and frequently suffer from severe anxiety, depression, and Post-Traumatic Stress Disorder (PTSD). In one groundbreaking study of detained asylum seekers, investigators found extremely high rates of anxiety, depression, and PTSD symptoms among detainees.<sup>xvi</sup> Respondents in this study said that the threat of segregation and the arbitrariness of the decision to impose segregation compounded their anxiety.<sup>xvii</sup>

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.<sup>xviii</sup> 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.

### **Recourses for Detainees in Solitary Confinement**

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.

Even if a detainee's action justifies 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 detention facility in our study has a grievance system through which detainees can challenge living conditions within the jail, but none of them allow detainees to use grievance procedures to challenge solitary confinement decisions. Instead, detainees must navigate separate appeals systems that differ among facilities. 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 Detention Center (California) 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.

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 an immigration 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. This detainee 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. He was occasionally denied recreation time because of an emergency in the facility, but he claimed that while criminal inmates would get to make up rec time at another time, 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 on his last visit, the library had no books at all. He filed multiple complaints to both facility leadership and ICE staff, and regularly spoke 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."

## ICE Segregation Directive

ICE released a new directive on segregation in September 2013. The directive requires all detention facilities that contract with ICE to report cases in which individuals are held in solitary confinement within a certain time period. The directive explicitly states that solitary confinement should be used only as a last resort, and that release from detention should be considered for individuals who are not subject to mandatory custody laws. In addition, the directive includes special reporting requirements for vulnerable populations, including people with mental illness; severe medical illnesses or disabilities; pregnant or nursing women; elderly individuals; and those susceptible to harm due to their sexual orientation, gender identity, or because they have been victims of sexual assault.

This directive is a step in the right direction, but does not by itself represent greater protections. While the reporting requirements provide important steps to review ICE's segregation policy, it does not prevent individuals from languishing in solitary confinement for stretches of time extending beyond 15 days while their cases are being reviewed. Strict implementation of the policy will be required in order to avoid lengthy placements in solitary confinement while evaluations and processes take place. In addition, the directive calls for the Office of Civil Rights and Civil Liberties to participate in Subcommittee Meetings to discuss trends in the use of solitary confinement. However, given the fact that CRCL is a department working under DHS, this is not sufficient oversight. Furthermore, the directive prohibits CRCL from utilizing any information shared in meetings to pursue investigations, generating yet another obstacle towards true transparency. Allowing third parties to audit facilities and participate in the oversight committee would be beneficial in monitoring effectiveness.

## Recommendations for ICE

In order to comprehensively address the overuse of solitary confinement in immigration detention, ICE must take the following steps:

- 1. Work closely with local and national human rights organizations to perform a comprehensive review of existing segregation and solitary confinement policies and practices among the facilities it contracts to hold immigrants;**
- 2. 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;**
- 3. 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;**
- 4. 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 have not been implemented in most facilities and the fact remains that they are still 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 virtually no legal recourse.

- 5. Withhold funding, impose financial penalties, or terminate contracts with detention facilities that violate segregation policies;**

6. 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;
7. 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;
8. 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;
9. 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 most facilities, require daily medical assessments of detainees in Special Management Units, the two sets of older standards that currently govern detention facilities do not;
10. Provide detainees in both disciplinary and administrative segregation the opportunity to challenge their placement in segregation before an independent review body;
11. Allow periodic, independent monitoring of segregation units by non-governmental organizations, whose reports would be publicly available.

### **Recommendations for Congress**

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 filled, 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. In order to meaningfully reform segregation and eliminate punitive solitary confinement, Congress must:

1. Limit 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;

While mandatory detention may be 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 would facilitate increased release through ATD programs. Alternatively, Congress could recommend that ATDs constitute the requisite “custody” for the purposes of mandatory detention for individuals who pose no risk to public safety.

### 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; and

For Fiscal Year 2013, the House of Representatives appropriated \$2.026 billion for immigration detention to fund 34,000 detention beds - \$67 million more than the President requested.<sup>xix</sup> In contrast, the Obama administration requested only \$111.59 million for ATDs.<sup>xx</sup> Detaining one individual for one night costs approximately \$159, while placing an immigrant on an alternative to detention costs between 70 cents and \$17 per day.<sup>xxi</sup> Significantly decreasing funding for detention and increasing funding for ATDs would not only reduce detention spending by 80 percent, but would also reduce the number of detained immigrants.<sup>xxii</sup> In turn, this reduction would likely reduce the number of detainees who are held in segregation and help ensure that segregation units were 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 abusing or mistreating detainees in violation of the standards. 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.

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<sup>i</sup> *Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention* at 2.

<sup>ii</sup> 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>.

<sup>iii</sup> *Id.*

<sup>iv</sup> ICE, "Fact Sheet: Detention Management" (November 2011), available at <http://www.ice.gov/news/library/factsheets/detention-mgmt.htm>.

<sup>v</sup> *Id.* According to ICE, about 3% of detainees are housed in Federal Bureau of Prison (BOP) facilities.

<sup>vi</sup> Leena Kurki and Norval Morris, "The Purposes, Practices, and Problems of Supermax Prisons," 28 *Crime & Justice* 385, 409 (2001).

<sup>vii</sup> 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).

<sup>viii</sup> Stuart Grassian, "Psychiatric Effects of Solitary Confinement," 22 *Wash. U. J.L. & Pol'y* 325, 328 (2006).

<sup>ix</sup> *Id.* at 335-36.

<sup>x</sup> *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* "Mendez Report"), available at <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>.

<sup>xi</sup> Mendez Report, *supra*, at ¶ 57.

<sup>xii</sup> Mendez Report, *supra* note \_\_, at ¶ 26.

<sup>xiii</sup> Grassian, "Psychiatric Effects," *supra* note \_\_, at 348.

<sup>xiv</sup> Smith, "The Effects of Solitary Confinement," *supra* note \_\_, at 474.

<sup>xv</sup> 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).

<sup>xvi</sup> 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).

<sup>xvii</sup> *Id.* at 116.

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

<sup>xix</sup> National Immigration Forum 2013.

<sup>xx</sup> *Id.*

<sup>xxi</sup> *Id.*

<sup>xxii</sup> *Id.*

City Council Hearing on a

Resolution urging the United States Department of Homeland Security to end the practice of placing immigrant detainees in solitary confinement, except in emergency situations.

Testimony by Amy Gottlieb  
Director, American Friends Service Committee Immigrant Rights Program  
15 Rutherford Place  
New York, NY 10003

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My name is Amy Gottlieb and I am the Director of the American Friends Service Committee (AFSC) Immigrant Rights Program. The AFSC is an almost 100-year-old faith-based organization grounded in Quaker beliefs respecting the dignity and worth of every person. Since 1917 AFSC has worked with refugees and displaced persons worldwide. Today AFSC's engagement across the U.S. includes a range of work focused in immigrant and refugee communities. AFSC provides direct legal services and engages in organizing with immigrants and allies along with advocacy and movement building throughout the U.S.

At AFSC's Immigrant Rights Program we represent a number of individuals, including New York City residents, who are detained at various facilities while they await their deportation hearings before an immigration judge. Especially for those with mental illness, detention can be a harrowing experience. Jails routinely separate those who have been diagnosed with mental illness in what many facilities euphemistically refer to as the "forensic unit"—another term for solitary confinement. Ostensibly this is done for the detainee's own benefit, though in reality, this isolation has a gross negative impact on both the individual and their legal defense.

Once in solitary, several of our clients have experienced a marked deterioration of their psychiatric well-being. This deterioration—which manifests in everything from a decrease of comprehension to an increase in agitation, hallucinations, and despair—has been discovered by our attorneys after requesting a client's medical records. One client held at Hudson County Jail, who suffered from disorganized schizophrenia, started inflicting harm to his face after only one week in solitary because he "wanted to see color." Another schizophrenic client at Essex County Jail deteriorated so badly over the several months that he was held in isolation that even the immigration judge remarked that he had gone from "mostly competent" at the outset of the proceedings to "completely incoherent" by their conclusion. A third client (held at York County Jail in York, Pennsylvania) was placed in solitary following an unknown incident and held for several months. By the end of his

tenure in isolation, he was observed pacing in circles in his cell until his feet bled and applying feces to the wall and his body. While able to communicate with the judge and his attorneys at the beginning of the trial, he was so detached from reality by the end that his presence in court was waived.

Solitary confinement in the United States prison system has been referred to as torture, yet it is used in both prisons and in immigration detention either for punishment or because the facilities don't have proper accommodations for people with special needs. The solution is not detention but rather to develop community based alternatives to detention that allow people to live in supportive environments during their immigration court proceedings. But while detention still exists, the American Friends Service Committee strongly urges the end solitary confinement—and particularly its use against the mentally ill.

Thank you for the opportunity to present this testimony.

**THE COUNCIL  
THE CITY OF NEW YORK**

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Name: Hadley Fitzgerald

Address: 287 Bedford Ave, #7

I represent: Jails Action Coalition

Address: \_\_\_\_\_

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Name: Ravi Ragbir

Address: 239 Thompson St

I represent: New Sanctuary Coalition of NYC

Address: \_\_\_\_\_

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Name: Jacqueline Esposito

Address: 137-139 West 25th St NYC

I represent: New York Immigration Coalition

Address: same

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Name: Annie J. Wang

Address: 225 W. 106th St., New York, NY 10025

I represent: American Immigration Lawyers Ass'n

Address: c/o Elizabeth Brattschneider, 430 W. 14th St.,  
St. 305, NYC 10014

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Name: Emily Tucker

Address: 402 Kent Ave Brooklyn NY

I represent: Center for Popular Democracy

Address: same as above

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Name: ALLAN FEINBLUM

Address: 1342 E 18th St apt 6A

I represent: JAC - NYC JAILS ACTION COALITION

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in favor  in opposition

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Name: ZOE LEVINE

Address: 360 E. 161st St. Bronx, NY 10451

I represent: The Bronx Defenders,

Address: same as above

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in favor  in opposition

Date: 10/24/13

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Name: RANDI SIWUREICH

Address: 360 E. 161st St. Bronx NY 10451

I represent: The Bronx Defenders

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Appearance Card

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in favor  in opposition

Date: 10/24/2013

(PLEASE PRINT)

Name: Michelle P. Gonzalez, Legal Fellow

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I represent: Immigration Equality

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