

United States Senate

WASHINGTON, DC 20510

March 29, 2024

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

Patrick J. Lechleitner
Deputy Director and Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, DC 20536

Dear Secretary Mayorkas and Acting Director Lechleitner:

We are deeply concerned with findings that U.S. Immigration and Customs Enforcement (ICE) continues to violate its own policies related to solitary confinement. Studies have long shown that solitary confinement is an inhumane practice that leads to irreparable mental and physical harm. The Department of Homeland Security (DHS) must end the misuse of solitary confinement in immigration detention, particularly for individuals with mental health or chronic medical conditions, LGBTQ+ individuals, and other vulnerable populations. DHS should discontinue the use of solitary confinement as a form of discipline in ICE detention and establish meaningful alternatives to solitary confinement that would phase out its use. At a minimum, DHS and ICE must issue binding rules limiting its use of solitary confinement and follow them.

According to a recent report by Physicians for Human Rights, ICE has isolated individuals in its facilities for months and even years, used solitary as punishment for minor infractions, and placed in solitary vulnerable individuals, including those with mental health conditions. From 2022 to 2023 alone, the number of people ICE placed in solitary confinement—or “segregation,” as ICE describes it—skyrocketed by 61 percent.¹ Between 2018 and 2023, ICE placed individuals in solitary confinement more than 14,000 times²—leaving them in a cell without human contact for more than 22 hours per day.³ ICE places many individuals in solitary confinement for minor infractions, such as using profanity or not getting out of a bunk during count.⁴ Others are placed in solitary in apparent retaliation for submitting a complaint or participating in a hunger strike.⁵ Once in solitary confinement, individuals have endured additional punishment, including denial of access to legal visits, reduced portion sizes at meals,

¹ PHYSICIANS FOR HUM. RTS., “ENDLESS NIGHTMARE”: TORTURE AND INHUMAN TREATMENT IN SOLITARY CONFINEMENT IN U.S. IMMIGRATION DETENTION 14 (2024), <https://phr.org/wp-content/uploads/2024/02/PHR-REPORT-ICE-Solitary-Confinement-2024.pdf>.

² *Id.* at 2.

³ *Id.* at 11.

⁴ *Id.* at 16.

⁵ *Id.* at 20.

and being forced to sleep on a cement or steel platform without a mattress and with florescent lights on throughout the night.⁶

ICE has also relied on solitary confinement to respond to mental health needs. Today, an estimated 56 percent of individuals in ICE’s solitary confinement have mental illnesses—up from 35 percent in 2019. This includes diagnoses of chronic post-traumatic stress disorder (PTSD), major depressive disorder, bipolar disorder, and schizophrenia.⁷ Furthermore, the length of time individuals with mental health conditions spend in solitary confinement while in ICE custody has nearly doubled.⁸

ICE’s own data shows ICE’s solitary confinement practices to be in clear violation of international norms. According to the United Nations Standard Minimum Rules for the Treatment of Prisoners, prolonged solitary confinement lasting more than 15 days constitutes torture or cruel, inhuman, or degrading treatment.⁹ Yet in the last five years, roughly half the people in ICE’s solitary units remained there for more than 15 days, and the average length of time was 27 days.¹⁰ ICE placed nearly 700 individuals in solitary for more than 90 days and more than 40 individuals for more than one year — despite ICE’s own protocol instructing that disciplinary solitary confinement should last no longer than one month except in “extraordinary circumstances.”¹¹

Solitary confinement carries severe adverse health effects, including the risks of permanent brain damage, hallucinations, confusion, heart palpitations, disrupted sleep, and reduced cognitive function.¹² It also can trigger PTSD, self-harm, and suicide.¹³ For those with a pre-existing mental illness, being put into solitary confinement can worsen symptoms.¹⁴ Given that solitary confinement has been shown to present a significant risk of substantial psychological,

⁶ *Id.* at 23.

⁷ Memorandum from Dep’t of Homeland Sec. Off. of Civ. Rts. & Civ. Liberties and the Off. of Gen. Couns. to U.S. Immigr. & Customs Enf’t on Segregation of Individuals with a Mental Health Disability and/or Serious Mental Illness (Sept. 1, 2023), https://www.dhs.gov/sites/default/files/2023-09/23_0901_crcl_retention_memo_to_ice_segregation_mental_health_or_illness_redacted_508.pdf; PHYSICIANS FOR HUM. RTS., *supra* note 1, at 17.

⁸ PHYSICIANS FOR HUM. RTS., *supra* note 1, at 11 graphic 3.

⁹ G.A. Res. 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), at 13-14 (Dec. 17, 2015), https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf; *see also* Press Release, General Assembly, Special Rapporteur on Torture Tells Third Committee Use of Prolonged Solitary Confinement on Rise, Calls for Global Ban on Practice (Oct. 18, 2011), <https://press.un.org/en/2011/gashc4014.doc.htm>.

¹⁰ PHYSICIANS FOR HUM. RTS., *supra* note 1, at 14.

¹¹ U.S. IMMIGR. & CUSTOMS ENF’T, 2011 OPERATIONS MANUAL ICE PERFORMANCE-BASED NATIONAL DETENTION STANDARDS (rev. Dec. 2016) [hereinafter 2011 OPERATIONS MANUAL OPERATIONS MANUAL ICE PERFORMANCE-BASED NATIONAL DETENTION STANDARDS], <https://www.ice.gov/doclib/detention-standards/2011/3-1.pdf>.

¹² Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 CRIME & JUST. 441, 488 (2006), <https://www.jstor.org/stable/10.1086/500626>.

¹³ *Id.*; *see also* Press Release, *supra* note 9.

¹⁴ *Solitary Confinement*, NATIONAL ALLIANCE ON MENTAL ILLNESS, <https://www.nami.org/Advocacy/Policy-Priorities/Stopping-Harmful-Practices/Solitary-Confinement> (last visited Mar. 26, 2024).

emotional, and even physical harm, we are concerned that ICE's solitary confinement practices may also constitute cruel and unusual punishment in violation of the U.S. Constitution.¹⁵

ICE has failed to follow its own guidelines that limit both the punitive use of solitary confinement and the imposition of additional forms of punishment in solitary confinement.¹⁶ The guidelines require carefully considering alternatives before placing an individual in solitary confinement and using it only as a "last resort" for individuals with special vulnerabilities — such as individuals with mental health conditions, elderly, pregnant, LGBTQ+, or survivors of abuse.¹⁷ The DHS Office of Inspector General (OIG) found that, in many cases, ICE has not documented alternatives before placing someone in solitary.¹⁸ It is therefore unclear whether ICE is sufficiently weighing alternatives.

Furthermore, ICE guidance requires a hearing before ICE may place an individual in solitary confinement for disciplinary reasons. That guidance provides:

Disciplinary segregation is authorized only pursuant to the order of a facility disciplinary panel, following a hearing in which the detainee is determined to have committed serious misconduct in violation of a facility rule . . . and only when alternative dispositions would inadequately regulate detainee behavior.¹⁹

Yet, according to Physicians for Human Rights, ICE regularly places individuals in solitary without that required hearing.²⁰ Some detained people are allegedly discouraged from pursuing a hearing, raising due process concerns.²¹

For these reasons, we call on DHS to end the misuse of solitary confinement in immigration detention and establish meaningful alternatives to solitary confinement that would eventually end its use in immigration detention, except under exigent circumstances. We ask that you direct ICE to promulgate binding detention rules that restrict the use of solitary confinement, contractually require compliance with those restrictions, and establish enhanced reporting mandates. Under no circumstances should ICE use solitary confinement as a form of discipline in civil immigration detention. ICE should also prioritize vulnerable individuals for release into post-release care plans whenever appropriate, rather than placing them in solitary confinement in the first place.

¹⁵ See e.g., *Porter v. Clarke*, 923 F.3d 348, 364 (4th Cir. 2019), as amended (May 6, 2019).

¹⁶ U.S. IMMIGR. & CUSTOMS ENF'T, DIRECTIVE 11065.1: REVIEW OF THE USE OF SEGREGATION FOR ICE DETAINEES §§ 2, 3.2 (2013) [hereinafter REVIEW OF THE USE OF SEGREGATION FOR ICE DETAINEES], https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

¹⁷ 2011 OPERATIONS MANUAL OPERATIONS MANUAL ICE PERFORMANCE-BASED NATIONAL DETENTION STANDARD, *supra* note 11, at 175; REVIEW OF THE USE OF SEGREGATION FOR ICE DETAINEES, *supra* note 16, at § 3.3.

¹⁸ OFF. OF INSPECTOR GEN., DEP'T OF HOMELAND SEC., OIG-22-01, ICE NEEDS TO IMPROVE ITS OVERSIGHT OF SEGREGATION USE IN DETENTION FACILITIES 5 (2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-10/OIG-22-01-Oct21.pdf>.

¹⁹ REVIEW OF THE USE OF SEGREGATION FOR ICE DETAINEES, *supra* note 16, at § 3.2.

²⁰ PHYSICIANS FOR HUM. RTS., *supra* note 1, at 20.

²¹ *Id.*; *Wilkerson v. Goodwin*, 774 F.3d 845, 853 (5th Cir. 2014).

New practices must also ensure that those in solitary confinement receive the same rights as others in ICE detention, including the same access to counsel, telephones, visitation, food, and hygiene.

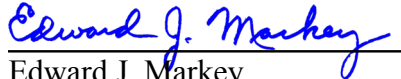
ICE also must ensure that each facility rigorously tracks and reports its use of solitary—including the alternatives to solitary considered and any vulnerabilities identified—consistent with ICE’s concurrence with recommendations in reports from the U.S. Government Accountability Office and the DHS OIG.²² Additionally, for any detained individual, ICE should require facilities to (1) report the use of solitary to both the field office director and ICE and DHS headquarters within 24 hours, and (2) conduct psychological and physical examinations of all individuals before placing them in solitary. Finally, DHS should ensure that individuals in solitary confinement have access to a system to file grievances about solitary confinement without fear of retribution.


To help us and the public better understand ICE’s solitary confinement practices and DHS’s oversight of ICE with respect to solitary confinement, we ask that you provide written responses to the following questions by April 5, 2024:


1. What steps do DHS and ICE plan to take to limit solitary confinement, including establishing meaningful alternatives to solitary confinement and phasing out its use in immigration detention, except in exigent circumstances?
2. For each full calendar year since 2017, how many times has ICE placed individuals in solitary confinement? Please include in your response:
 - a. the median and mean lengths of time in solitary confinement;
 - b. the percentage of individuals placed in solitary with special vulnerabilities, with a breakdown by type of vulnerability (HIV positive, mental health conditions, medical conditions, suicide risk, victim of sexual assault, or other vulnerability); and
 - c. the percentage of individuals placed in solitary held in each of the following: (i) ICE service processing centers, (ii) contract detention facilities, and (iii) Intergovernmental Service Agreement facilities.
3. What barriers do DHS and ICE face in documenting alternatives to solitary confinement?
4. Since 2013, what steps has ICE taken to comply with its internal guidance governing solitary confinement?
5. What steps has ICE taken to respond to the recommendations of the Government Accountability Office and the DHS Inspector General in the reports cited above?


²² U.S. GOV’T ACCOUNTABILITY OFF., GAO-23-105366, IMMIGRATION DETENTION: ACTIONS NEEDED TO COLLECT CONSISTENT INFORMATION FOR SEGREGATED HOUSING OVERSIGHT (2022), <https://www.gao.gov/assets/d23105366.pdf>; OIG-22-01, ICE NEEDS TO IMPROVE ITS OVERSIGHT OF SEGREGATION USE IN DETENTION FACILITIES, *supra* note 18; OFF. OF INSPECTOR GEN., DEP’T OF HOMELAND SEC., OIG-17-119, ICE FIELD OFFICES NEED TO IMPROVE COMPLIANCE WITH OVERSIGHT REQUIREMENTS FOR SEGREGATION OF DETAINEES WITH MENTAL HEALTH CONDITIONS (2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017-11/OIG-17-119-Sep17.pdf>.

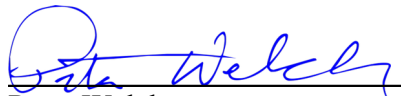
Thank you for your attention to this important matter.
Sincerely,

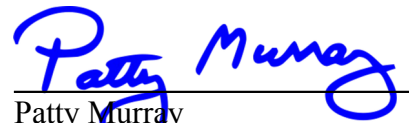

Edward J. Markey
United States Senator



Richard J. Durbin
United States Senator

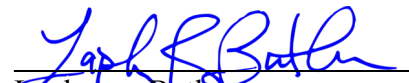

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Peter Welch
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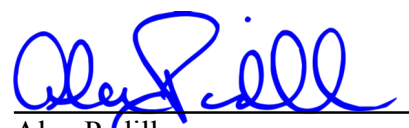

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