



National Immigrant Justice Center

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Submitted to the Senate Judiciary Subcommittee on the Constitution,
Civil Rights, and Human Rights
Hearing on Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public
Safety Consequences

June 19, 2012

Heartland Alliance's National Immigrant Justice Center (NIJC) applauds Senator Richard Durbin for initiating the first congressional hearing on solitary confinement. NIJC appreciates the opportunity to submit this statement for the record to document the misuse of solitary confinement in immigration detention.

Since its founding 30 years ago, NIJC has safeguarded the rights of non-citizens, particularly those held in immigration detention. Each year, NIJC and its unparalleled network of 1,000 *pro bono* attorneys provide legal counsel and representation to nearly 10,000 individuals. NIJC also conducts regular "Know Your Rights" presentations in immigration detention facilities, operates a detention hotline, and responds to correspondence from detainees throughout the country. In each capacity, NIJC encounters individuals who have been held in solitary confinement for prolonged periods of time with weak or no justification.

As co-chair of the Department of Homeland Security (DHS)/Nongovernmental Organization (NGO) Enforcement Working Group, NIJC facilitates regular dialogue between the federal government and 100 human rights organizations, legal aid providers, academics, and immigrant rights groups on issues of immigration enforcement and detention. NIJC is also a leading voice within the Midwest Coalition for Human Rights, a network of 56 organizations, including human rights groups, service providers, and academic institutions, that promote and protect human rights in the Midwest. In these and other coalitions, NIJC elevates our clients' stories to press for systemic policy change.

Today, we call on Congress to hold DHS accountable for the misuse of solitary confinement in immigration detention. NIJC offers the following recommendations, described in detail below:

1. Congress should require DHS to implement legally enforceable regulations to govern the use of solitary confinement.
2. DHS must track the use of solitary confinement to assess the extent to which non-citizens are held in solitary confinement and prevent future abuse.
3. DHS must regularly inspect facilities and monitor compliance with regulations. Failure to comply with regulations must be a basis to end contracts.
4. DHS should end the inappropriate use of solitary confinement, particularly for individuals with mental health and chronic medical conditions, LGBT detainees, and other vulnerable populations.
5. Congress should encourage DHS to give meaningful consideration to alternatives to detention for vulnerable populations who would be held in isolation.
6. DHS must require immigration detention facilities to properly investigate accusations against detainees before placing individuals in disciplinary segregation. DHS must also require facilities to afford detainees an opportunity to confront the evidence against them.

Background

Immigration detention is the fastest growing incarceration system in the United States.¹ Each year, DHS detains nearly 400,000 men, women, and children in a patchwork of 250 facilities, including county jails and prisons operated by private corporations. Individuals are held in civil custody for immigration violations. They are not being punished for criminal conduct, so they are not afforded procedural protections such as a right to appointed counsel. Even without procedural protections, however, immigrant detainees are subject to the same detention policies as criminal detainees, including policies that govern the use of solitary confinement.

In April 2011, NIJC filed a mass complaint with DHS' Office of Civil Rights and Civil Liberties (CRCL) on behalf of 13 detained LGBT immigrants who were targeted for physical, sexual, and emotional abuse in immigration detention.² In October 2011, four additional DHS detainees joined the civil rights complaint. Many of these individuals were inappropriately held in solitary confinement, often for months at a time without formal determinations of the necessity of solitary confinement and without an appeals process.

NIJC continues to represent dozens of clients who have been improperly isolated from other detainees. We continue to receive letters from non-citizens who are languishing in detention. Yet we can only reach a small fraction of the 400,000 people in immigration detention each year. DHS can and must take steps to proactively track and oversee the use of solitary confinement.

Lack of Regulations and Data

➤ DHS detention standards are not legally enforceable.

This year, DHS released long-awaited Performance-Based National Detention Standards (PBNDS) to address critical human rights concerns in the system. While the release of the PBNDS acknowledges the need for reform, the administration can only ensure humane and fair treatment of detained individuals by issuing legally enforceable regulations.

➤ DHS has failed to track solitary confinement policies and procedures.

If asked today, DHS would be unable to describe when, how often, and why any immigrant detainee is placed in solitary confinement. Without statistics from DHS, it is impossible to accurately assess the scope of this problem.

➤ DHS detention standards are not uniformly implemented, so solitary confinement policies and procedures vary greatly.

No facility has taken steps to become compliant with 2011 PBNDS. Rather, immigration detention facilities are inspected against older versions of DHS detention standards, either from 2000 or 2008. These standards vary dramatically. As a result, local jails and private prison companies often adhere to inconsistent policies and procedures. It is not clear that

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

² See <http://immigrantjustice.org/sites/immigrantjustice.org/files/OCRCL%20Global%20Complaint%20Letter%20April%202011%20FINAL%20REDACTED.pdf>

DHS reviews these policies or inspects facilities for compliance with national detention standards for solitary confinement. It is clear, however, that contracted facilities have no incentive to create non-punitive conditions. DHS does not issue financial penalties nor does it terminate contracts with facilities that routinely perform below standards.

Misuse of Segregation in Immigration Detention

Immigration detention facilities distinguish between administrative segregation and disciplinary segregation. Administrative segregation is a “non-punitive” status to ensure the safety of an individual and/or security of the facility. Disciplinary segregation is a punitive status that stems from a violation of facility rules.

NIJC has identified several disturbing trends in the use of administrative and disciplinary segregation in immigration detention.

➤ **Administrative segregation can be indefinite and without review.**

For many individuals in immigration proceedings, detention is indefinite. As a consequence, individuals in administrative segregation do not know how long they remain isolated. Moreover, because non-citizens do not have a right to counsel, they can easily lose contact with the outside world and become even more vulnerable to abuse.

José (pseudonym), a gay Mexican national, was held in solitary confinement for four months. Officers told him that he was being isolated because of his “feminine appearance” and “for his own protection.” José became increasingly confused when he found out that other gay men were living in the general population. Three people in José’s isolation unit tried to commit suicide while he was there. These individuals had been isolated for many months, and José feared that he would also become suicidal. He repeatedly asked to be put on work detail to keep his mind and body busy but he was denied. Officers told him that he had no right to be with anyone else.

➤ **Administrative segregation is used as a substitute to mental health and medical treatment.**

Solitary confinement is often used in lieu of proper mental health services for detainees with severe mental illness and for those who become suicidal as a consequence of their isolation. Isolation is also used as a substitute for proper medical treatment. The Inter-American Commission on Human Rights has held that the use of solitary confinement as part of a person’s mental health rehabilitation plan can rise to the level of “inhuman and degrading treatment.”³

NIJC represents Adan (pseudonym), a refugee from Eritrea whose competency to be in proceedings is being evaluated. Adan has been in DHS custody since February 2012. He is not receiving proper treatment for his mental illness and he is frequently placed in segregation. Adan has told NIJC that he prefers to be in the general population, but without his medication, it is difficult for him to remain among other detainees.

³ Inter-American Commission of Human Rights, *Rosario Congo v. Ecuador*, Report 63/99, Case 11.427 of April 13, 1999 at 59; *See also Keenan v. the United Kingdom*, European Court of Human Rights, April 3, 2001, Application No. 27229/95 at 113.

Martin (pseudonym) is a young man from Guatemala who has bipolar disorder and requires a series of medication and regular therapy. He spent nine months in detention last year while pursuing relief under the Convention Against Torture. While in detention, he did not receive correct dosages of his medication and he did not have consistent access to a psychiatrist. Instead of providing him proper treatment, jail staff regularly placed him in administrative segregation.

➤ **LGBT immigrants are inappropriately held in “protective custody.”**

Administrative segregation is disproportionately used against the most vulnerable populations in immigration detention, such as LGBT individuals. Juan Méndez, Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, notes that “Although segregation of [LGBT] individuals may be necessary for their safety, lesbian, gay, bisexual and transgender status does not justify limitations on... access to recreation, reading materials, legal counsel, or medical doctors.”⁴

Jessica (pseudonym) is a transgender woman from Mexico. She languished in DHS custody for nearly two years before obtaining legal protection. Jessica was placed in solitary confinement for the first month of her detention because officers insisted she be separated for her own protection. Jessica repeatedly asked facility staff and DHS to move her to the general population. While in isolation, Jessica received reduced quantities of food and was prohibited from communicating with others. She was unable to access religious services, the library, or other recreation areas. When she was allowed out of her cell, she was handcuffed. The only time Jessica could bathe or make phone calls was during the one hour she was allowed out of her cell per day, which was supposed to be reserved for recreation and exercise.

NIJC recognizes that disciplinary segregation may be appropriate in rare, exceptional circumstances. However, absent uniform detention standards and DHS oversight, detention facilities may interpret protocols in drastically different and harmful ways.

➤ **Disciplinary segregation is used for minor, frivolous infractions.**

A survivor of domestic violence, Helena (pseudonym) was detained for 11 months while her U visa application was pending. On separate occasions, she was placed in disciplinary segregation for having an extra blanket, bra and pair of socks; placing her shampoo bottle on the windowsill; and possessing newspaper articles in her cell. She spent weeks in isolation as punishment for her “offenses.”

➤ **When officials do not properly investigate, false accusations can justify placement in disciplinary segregation.**

A Mexican national named Laura (pseudonym) was placed in disciplinary segregation for 49 days after she was accused of having sex with other inmates. Laura vehemently denied the accusation and no evidence was ever produced. Laura was never told how long she would remain in disciplinary segregation or that she could appeal the decision. Instead, Laura was regularly harassed by guards, causing her to fear leaving her cell.

⁴ See Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment at 19 (August 5, 2011) (available at: <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>)

- **Disciplinary segregation is used to retaliate against detainees who exercise their civil and religious rights.**

Farid (pseudonym), a young man from Yemen, was detained for three years while he appealed his asylum claim. Farid was observing Ramadan when he was brought into custody. Farid explained to officers that he would fast for 30 days and requested that he be excused from meals. Instead, officers placed him in disciplinary segregation for the remainder of Ramadan. He could not appeal the decision. Later, Farid was placed in disciplinary segregation after he tried to advocate on behalf of another Muslim detainee who could not speak English well. When Farid inquired about the charges against him, officers did not respond. Farid spent approximately 30 days in isolation for his “offense.” Each day, the warden would ask Farid if he was “broken” yet. On yet another occasion, Farid went on a hunger strike because the jail administrators decided to suspend his kosher meals after a kitchen employee falsely accused him of eating non-kosher food. Farid spent 10 days in segregation until he could demonstrate that the allegation was false.

The Costs of Solitary Confinement

Over the past decade, states have started to assess the costs of solitary confinement. For example, it is estimated that the state of California spends \$77,740 annually for each inmate in administrative segregation in its Pelican Bay State Prison. Annual costs for inmates in the general population are estimated to be \$58,324 per inmate.⁵ The state of Colorado spends roughly \$20,000 more per inmate per year to hold an individual in solitary confinement.⁶ By comparison, when Mississippi ended its use of solitary confinement in super-maximum-security facilities, it saved more than \$5 million.⁷ Several other states have since followed Mississippi’s lead.

Similar expenses exist in the immigration detention system. Last year, the government spent approximately \$166 per detainee per day at a capacity of 33,400 detention beds.⁸ Congress appropriated a budget of \$2.75 billion for DHS’ Detention and Removal Operations in Fiscal Year 2012, \$184 million more than the previous year and enough for DHS to keep 34,000 immigrants detained at any one time.⁹ A similar Detention and Removal budget is being considered for Fiscal Year 2013.¹⁰ Before Congress expands the budget for DHS operations, it must demand that DHS account for its spending on solitary confinement.

Conclusion

Congress can and must take immediate steps to remedy the pervasive misuse of solitary confinement in immigration detention. DHS detention standards offer only weak guidelines for the operation and oversight of a vast detention system. Congress must require DHS to issue uniform, legally enforceable standards. In addition, detention facilities that fail to meet standards should not be detaining immigrants. Finally, Congress must encourage DHS to use alternatives to detention, particularly for vulnerable populations who will be held in isolation. With these steps, we will not only protect the fundamental rights of immigrant detainees but save limited government resources.

⁵ See http://www.cdcr.ca.gov/COMIO/Uploadfile/pdfs/Pelican_Bay.pdf

⁶ See “The High Cost of Solitary Confinement,” ACLU of Colorado (available at: http://www.cslc.org/suijy-f0001-sac/supporting_documents/Leg_fact_sheets/co_solitary_fact_sheet.pdf)

⁷ See “Prisons rethink Isolation, Saving Money, Lives, and Sanity,” New York Times (March 10, 2012).

⁸ See “The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies,” National Immigration Forum (August 2011) at 1. (Hereinafter “NIF Report”)

⁹ See NIF Report at 1.

¹⁰ See HR 5855, FY13 Homeland Security Appropriations Act.