NATIONAL IMMIGRANT JUSTICE CENTER
A HEARTLAND ALLIANCE PROGRAM

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

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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.[i]

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.[ii] Among those with a criminal record, close to 20 percent were only for traffic offenses.[iii] 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.[iv]

The rest are held in dedicated immigration detention facilities run by ICE or contracted to private prison corporations.[v] 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 punative disciplinary segregation[1]—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.[vi] 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]."[vii]

[1] 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 19th 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."[viii]

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:[ix]

- 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."[x]

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,"[xi] 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.[xii]

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.[xiii] 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.[xiv] 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.[xv]

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.[xvi] Respondents in this study said that the threat of segregation and the arbitrariness of the decision to impose segregation compounded their anxiety.[xvii]

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.[xviii] 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

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

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.[xix] In contrast, the Obama administration requested only $111.59 million for ATDs.[xx] 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.[xxi] 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.[xxii] 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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[i] *Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention* at 2.
[ii] 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.
[iii] Id.
[iv] ICE, "Fact Sheet: Detention Management" (November 2011), *available at* http://www.ice.gov/news/library/ factsheets/detention-mgmt.htm.
[v] *Id.* According to ICE, about 3% of detainees are housed in Federal Bureau of Prison (BOP) facilities.
[vi] Leena Kurki and Norval Morris, "The Purposes, Practices, and Problems of Supermax Prisons," 28 Crime & Justice 385, 409 (2001).
[vii] 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).
[viii] Stuart Grassian, "Psychiatric Effects of Solitary Confinement," 22 Wash. U. J.L. & Pol'y 325, 328 (2006).
[ix] *Id.* at 335-36.
[x] *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.
[xi] Mendez Report, *supra*, at ¶ 57.
[xii] Mendez Report, *supra* note __, at ¶ 26.
[xiii] Grassian, "Psychiatric Effects," *supra* note __, at 348.
[xiv] Smith, "The Effects of Solitary Confinement," *supra* note __, at 474.
[xv] 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).
[xvi] 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).
[xvii] *Id.* at 116.
[xviii] Sharon Shalev, "A Sourcebook on Solitary Confinement" (2008) (*hereinafter* "Sourcebook") at 13, 22, *available at* http://www.solitaryconfinement.org/sourcebook.
[xix] National Immigration Forum 2013.
[xx] *Id.*
[xxi] *Id.*
[xxii] *Id.*