

June 19, 2019

The Honorable Chairman Bennie Thompson
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Ron Johnson
Chairman
Homeland Security and Governmental Affairs
U.S. Senate
Washington, D.C. 20515

Dear Chairman Thompson, Chairman Johnson, Ranking Member Rogers, and Ranking Member Peters:

The undersigned LGBTQ, immigrant, disability rights, and faith organizations call on Congress to take immediate action to address the abusive, discriminatory, arbitrary, and widespread use of solitary confinement by Immigration and Customs Enforcement and its contractors. DHS's Office of Inspector General found segregation practices at three out of four facilities it inspected violated detention standards and infringed on immigrant rights.¹ Recent reports from the Intercept and the International Consortium of Investigative Journalists detailing more than 8,400 cases over just over 5 years of ICE and its contractors placing immigrants in solitary confinement reveal the widespread misuse of the practice.² Hundreds of cases reported involved people with a disability, including mental illnesses, or LGBTQ people put in solitary confinement for medical or protective custody. And while some were confined to isolation for disciplinary reasons, the cases detailed in the reports as well as a recent complaint about the treatment of LGBTQ immigrants at the Otero County Processing Center, operated by the for-profit provider, Management & Training Corporation, indicate that the retaliatory or discriminatory use of solitary confinement is often used under the guise of discipline.³ Regardless of the purported reason, subjecting an individual to 23 hours of isolation each day for months—even years— particularly in a civil confinement setting is not only grossly inappropriate, it may constitute torture or ill-treatment according to the United Nations special rapporteur on torture.⁴ Clearly, ICE's 2013 segregation directive

¹ U.S. Department of Homeland Security Office of Inspector General, *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*, OIG 19-47 (June 3, 2019).

² Spencer Woodman, Maryam Saleh, Hannah Rappleye, and Karrie Kehoe, "Solitary Voices," *The Intercept*, May 21, 2019 available at <https://theintercept.com/2019/05/21/ice-solitary-confinement-immigration-detention/>.

³ Letter from Santa Fe Dreamers Project, Las Americas Immigrant Advocacy Center, and the ACLU of New Mexico to the Department of Homeland Security (March 25, 2019) available at https://www.aclu-nm.org/sites/default/files/field_documents/advance_copy_of_3.25.2019_las_americas_santa_fe_dreamers_project_aclu-nm_letter_to_dhs_re_otero.pdf.

⁴ U.N. Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. A/63/175 (July 28, 2008).

has proven inadequate for limiting the widespread use of solitary confinement in immigration detention.⁵

Last year, 37 members of Congress wrote to DHS expressing their concern that 1 out of every 8 transgender people in immigration detention in FY 2017 was placed in solitary confinement for some amount of time and while an analysis by the Center for American Progress found that LGBT immigrants in detention are 97 times more likely to report being sexually victimized than the general population, isolation is not a solution.⁶ According to ICE, the majority of the individuals in those cases were placed there for their own safety, but that disregards the mountain of evidence that solitary confinement itself is far from safe. The Government Accountability Office found that two-thirds of substantiated sexual abuse and assault allegations involving a transgender victim were perpetrated by a guard and that all of those incidents occurred while the individual was in so-called protective custody.⁷ The National Immigrant Justice Center's client, Kelly, was placed in solitary confinement because she is transgender and told NBC News "they claimed it was for security reasons...I told them from day one that I didn't want to be locked up almost 24 hours a day, alone in a cell, without medical attention."⁸

Solitary confinement causes irreversible psychological harm after 15 days.⁹ In other words, by the time the Field Office Director is notified after someone is kept in solitary confinement continuously for 14 days— as ICE's segregation directives requires— important damage is already done. Isolation causes anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia and psychosis, and can drive people to attempt suicide or self-harm.¹⁰ Despite this, there were 373 instances where an individual was placed in isolation because they were potentially suicidal. In 2017, Jean Jimenez-Joseph committed suicide after being held in isolation for 19 days after a suicide attempt and in 2018,

⁵ U.S. Immigration and Customs Enforcement, "Review of the Use of Segregation for ICE Detainees," Sep. 4, 2013, available at https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

⁶ Letter from Rep. Kathleen Rice to Secretary Nielsen, U.S. Department of Homeland Security (May 30, 2018) available at https://kathleenrice.house.gov/uploadedfiles/2018.05.30_lgbt_immigrants_in_ice_detention_letter_to_sec_nielsen.pdf; Sharita Gruber, "ICE's Rejection of Its Own Rules is Placing LGBT Immigrants at Severe Risk of Sexual Abuse," (Washington: Center for American Progress, 2019) available at <https://www.americanprogress.org/issues/lgbt/news/2018/05/30/451294/ices-rejection-rules-placing-lgbt-immigrants-severe-risk-sexual-abuse/>.

⁷ *Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse*, Government Accountability Office, Nov. 2013, available at <https://www.gao.gov/assets/660/659145.pdf>.

⁸ Hannah Rappleye, Andrew Lehen, Spencer Woodman, Vanessa Swales, and Maryam Saleh, "Thousands of Immigrants Suffer in Solitary Confinement in U.S. Detention Centers," *NBC News*, May 21, 2019, available at <https://www.nbcnews.com/politics/immigration/thousands-immigrants-suffer-solitary-confinement-u-s-detention-centers-n1007881>.

⁹ Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49(1) CRIME & DELINQUENCY, 124-156 (2003).

¹⁰ Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34(1) CRIME & JUSTICE, 441-528 (2006); Fatos Kaba, et al, *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104(3) AM. J. PUB. HEALTH, 442-447 (2014) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/> (finding that individuals placed in isolation were 6/9 times more likely to commit self-harm than other incarcerated individuals and 6.3 times more likely to commit suicide)

Mergensana Amar was also held in solitary confinement when he committed suicide.¹¹ A memo written by a supervisor at ICE's Health Service Corps explicitly said that another suicide victim who was placed in isolation rather than treated "could have been saved" and that his suicide "closely mirrors the previous suicide of Mr. Joseph Jimenez [sic]."¹² These harms are why the UN special rapporteur on torture calls for solitary confinement to be banned except in "very exceptional circumstances, as a last resort, for as short a time as possible"¹³ and has also said specifically the use of solitary confinement for persons with disabilities "cannot be justified for therapeutic reasons, or as a form of punishment."¹⁴ Solitary confinement has no place in a civil detention system, and especially not when used on LGBTQ people, people with disabilities including mental health issues, and other vulnerable populations

The below-signed organizations call on Congress to ensure the Department of Homeland Security immediately ends the use of solitary confinement by ICE and its contractors and exercises its existing prosecutorial discretion to ensure that LGBTQ individuals and people with disabilities are released from custodial detention in favor of parole or community-based alternatives to detention.

Sincerely,

African American Ministers In Action

Alaskans Together For Equality

The American Civil Liberties Union

American Association of People with Disabilities

Amnesty International USA

The Arc

Association of Programs for Rural Independent Living

Autistic Self Advocacy Network

Bend the Arc: Jewish Action

Cathedral of Hope United Church of Christ

¹¹ Jeremy Redmon, "GBI: ICE Detainee Who Died in Georgia Was Isolated for 19 Days," *Atlanta Journal-Constitution*, May 16, 2017 available at <https://www.ajc.com/news/breaking-news/gbi-ice-detainee-who-died-georgia-was-isolated-for-days/DcGHSwotmwlu5oi8yGJqwM/>; Maria Sacchetti, "ICE Detainee Hanged Himself After Being Taken Off Suicide Watch," *The Washington Post*, Nov. 29, 2018, available at https://www.washingtonpost.com/local/immigration/ice-detainee-hanged-himself-after-being-taken-off-suicide-watch/2018/11/28/67a62e74-edb8-11e8-baac-2a674e91502b_story.html?utm_term=.17ec49142999.

¹² Ken Klippenstein, "ICE Detainee Deaths Were Preventable: Document," *TYT Investigates*, Jun. 3, 2019, available at <https://tyt.com/stories/4vZLCHuQrYE4uKagy0oyMA/688s1LbTKvQKNCv2E9bu7h>.

¹³ U.N. Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc A/66/268 (Aug. 5, 2011).

¹⁴ U.N. Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. A/63/175 (July 28, 2008).

Center for American Progress
Center for Popular Democracy
Center for Victims of Torture
CenterLink: The Community of LGBT Centers
Congregation of Sisters of St. Agnes
Council for Global Equality
Detention Watch Network
Dominican Sisters ~ Grand Rapids
Equality California
Equality North Carolina
Equality Ohio
Equality Utah
Familia: Trans Queer Liberation Movement
Families Belong Together
Freedom Network USA
Freedom for Immigrants
Fundacion Arcoiris por la diversidad sexual
Garden State Equality
Georgia Equality
Global Justice Institute, Metropolitan Community Churches
Human Rights Campaign
Immigrant Legal Resource Center
Interfaith Center on Corporate Responsibility
Just Detention International
Lambda Legal
LatinoJustice PRLDEF
Los Angeles LGBT Center
Louisiana Trans Advocates
MassEquality

Mazzoni Center

MPact Global Action for Gay Men's Health and Rights

National Asian Pacific American Women's Forum (NAPAWF)

National Center for Lesbian Rights

National Center for Transgender Equality

National Council on Independent Living

National Immigrant Justice Center

National LGBTQ Task Force Action Fund

National Queer Asian Pacific Islander Alliance

One Colorado

OutRight Action International

People For the American Way

Positive Women's Network-USA

Region VI Coalition for Responsible Investment

Robert F. Kennedy Human Rights

San Diego Pride

Santa Fe Dreamers Project

School Sisters of Notre Dame Cooperative Investment Fund

Silver State Equality (Nevada)

Sisters of Charity of New York

Sisters of St. Francis of Philadelphia

Sisters of the Humility of Mary

Synergía - Initiatives for Human Rights

Transgender Law Center

T'ruah: The Rabbinic Call for Human Rights

Whitman-Walker Health

Worth Rises