

Ending the Practice of Solitary Confinement: Recommendations for Federal Reform

June 3, 2021

Dear President Biden and Vice President Harris:

As representatives of organizations working in public health and medicine, civil and human rights, religion and ethics, mental health, law and criminology, and immigration, often in collaboration with communities directly impacted by solitary confinement, we applaud the Biden-Harris administration's pledge to ensure humane prison conditions and to "start by ending the practice of solitary confinement, with very limited exceptions such as protecting the life of an imprisoned person."ⁱ To that end, we urge you to begin implementing plans necessary to end the practice of solitary confinement on day one of your administration.

Prolonged solitary confinement is considered a form of torture by the United Nations and leading medical and public health experts. Yet, on any given day before the COVID-19 pandemic, of the 2.3 million people incarcerated in the United States, at least 80,000 people were being held in solitary confinement for a period of more than two weeks. The COVID-19 pandemic has resulted in further use of solitary confinement (rather than medical isolation) as a containment strategy within correctional and youth facilities. The result has been nearly a 500% increase in the use of solitary confinement in 2020, with an estimated 300,000 people in solitary at any one time.

Solitary confinement generally involves the placement of a person, alone or with a cellmate, in a locked room or cell for 22 hours or more per day without meaningful access to others, for any reason, with or without the person's consent, and can occur in pretrial or post-conviction detention. Access to exercise and family visitation are either greatly curtailed or completely denied. Permanent psychological harm can result from placement in solitary confinement for even a few days or weeks. In the United States, about 20% of all incarcerated people spend time in prolonged isolation, for months, years, or even decades at a time.

The United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the "Nelson Mandela Rules," adopted in 2015, offer guidelines for ending the inhumane practice of prolonged isolation.ⁱⁱ The Mandela Rules call for UN member states to prohibit indefinite or prolonged solitary confinement (beyond 15 consecutive days) for all incarcerated people, and ban solitary altogether for vulnerable groups, including children and people with mental illnesses.

We offer the following recommendations in order to achieve your administration's goal of ensuring humane prison conditions by ending solitary confinement:

General Recommendations:

1. Appoint a *Working Group for Humane Alternatives to Solitary Confinement*, directly answerable to the Attorney General, to develop a plan to bring all federal and auxiliary

facilities holding federally charged or sentenced individuals into compliance with the UN's Mandela Rules, as a crucial step toward ending the use of solitary confinement.ⁱⁱⁱ

2. Decrease the number of people in solitary confinement by taking immediate steps to significantly reduce the federal prison, jail, juvenile detention, and ICE detention populations through clemency, compassionate release, the expansion of good time credits, and exercise of discretion along with home confinement and other alternatives to detention.

3. For those who remain incarcerated, develop a plan to contain and treat COVID-19 *without* the use of solitary confinement (including lockdowns) in federal prisons and immigration detention centers.^{iv} Provide clear directives to all federal facilities distinguishing "solitary confinement" from "quarantine" and "medical isolation," to prevent punitive conditions for those who have been exposed to or contracted the coronavirus.^v

4. Direct the Bureau of Justice Statistics to begin collecting disaggregated data on the use of solitary confinement from all federal and juvenile facilities, as well as state prisons and local jails, and begin producing an annual report within the first year of your term.

5. Require that all jurisdictions receiving federal funds for correctional or detention facilities ensure that the facilities are monitored by at least one independent oversight body that meets the requirements set forth in the ABA Resolution on Independent Prison Oversight.^{vi}

6. Appoint a new Administrator of the Office of Juvenile Justice and Delinquency Prevention who will fully and effectively implement provisions in the Juvenile Justice and Delinquency Act designed to reduce the use of isolation in facilities where youth are confined, including collecting and publishing detailed data from states and counties on youth held in isolation and providing training and incentives to jurisdictions to reduce solitary confinement of youth.^{vii}

7. Provide meaningful financial incentives to states and localities to reduce solitary confinement, institute robust oversight, and improve staff training for prisons and jails within their jurisdictions.

8. Direct the Justice Department Civil Rights Division, Special Litigation Section, to aggressively investigate and challenge abuses of solitary confinement in state prisons and local jails that may violate the U.S. Constitution, ADA, and/or CRIPA.

9. Call on Congressional leaders to hold hearings on solitary confinement and pass *The Solitary Confinement Study and Reform Act of 2019* (HR 4488) to create a National Solitary Confinement Study and Reform Commission, which will conduct a comprehensive legal and factual study on the impacts of solitary confinement in the U.S. and propose national standards and regulations for significantly reducing the use of solitary in all state and federal correctional facilities and juvenile facilities. Call on Congress to repeal the 1996 *Prison Litigation Reform Act*, which has been described as "closing the courthouse door on incarcerated people seeking protection of their civil rights."^{viii}

Recommendations Specific to U.S. Immigration and Customs Enforcement (ICE):

1. Select a Director of Immigration and Customs Enforcement with a commitment to humane practices and charge the Director with instituting a ban on the use of solitary confinement in ICE facilities (whether for administrative, protective, or disciplinary reasons).
2. Empower a senior-level position within the Department of Homeland Security to investigate and oversee all ICE detention facilities, including implementation of the *Working Group for Humane Alternatives to Solitary Confinement's* plan to reduce the use of solitary confinement.

Recommendations Specific to the Federal Bureau of Prisons:

1. Create a new senior-level position within the USDOJ to investigate and oversee the federal Bureau of Prisons, including the implementation of the *Working Group for Humane Alternatives to Solitary Confinement's* plan to reduce the use of solitary confinement.
2. Select a Director of the federal Bureau of Prisons who has a track record of reform, respect for evidence-based practices, and a commitment to culture change within the BOP. Charge the Director with initiating internal measures to immediately reverse the increase in the use of solitary confinement that took place in the BOP during the Trump administration.^{ix}
3. Appoint a prison ombudsperson within the Department of Justice but outside the Bureau of Prisons, to receive complaints and concerns regarding the federal system directly from incarcerated people and their loved ones and recommend and oversee responses.

In conclusion, ending the practice of solitary confinement would end the pain, torture, and trauma of tens of thousands of people languishing in harsh and harmful conditions. We call on you to deliver on the promise of the Biden-Harris “Strengthening America’s Commitment to Justice” plan by ending solitary confinement by executive, congressional, and administrative action.

Thank you for your leadership. We look forward to working with you to make this vision a reality.

Sincerely,

We the undersigned:

National Organizations

African American Ministers In Action
Alliance of Baptists
American Civil Liberties Union
American Friends Service Committee
American Humanist Association
Americans for Immigrant Justice
Architects / Designers / Planners for Social Responsibility (ADPSR)

The Bail Project
Bridges Faith Initiative
Campaign for the Fair Sentencing of Youth
Campaign for Youth Justice
Center for Children's Law and Policy
Center for Constitutional Rights
Center for Disability Rights
Charles Hamilton Houston Institute for Race & Justice at Harvard Law School
Christian Reformed Church Office of Social Justice
Church of Scientology National Affairs Office
Church of the Brethren, Office of Peacebuilding and Policy
Church World Service
Civil Rights Education and Enforcement Center
Coalition for Juvenile Justice
College and Community Fellowship
Columbia Justice Lab
Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces
Council on American-Islamic Relations
Criminalization of Poverty Project at the Institute for Policy Studies
Citizens United for Rehabilitation of Errants (CURE)
Defending Rights & Dissent
Disability Rights Advocates
Disciples Center for Public Witness (Disciples of Christ)
Drug Policy Alliance
The Episcopal Church
The Equitcity Racial Equity Movement
Evangelical Lutheran Church in America
Franciscan Action Network
Friends Committee on National Legislation
Health Resources in Action
Hip Hop Caucus
Human Rights Defense Center
Immigrant Legal Resource Center
Innocence Project
Islamic Circle of North America, Council for Social Justice
Jewish Council for Public Affairs
Justice For Families
Justice Policy Institute
JustLeadership USA
Juvenile Law Center
Law Enforcement Action Partnership
The Leadership Conference on Civil and Human Rights
Life for Pot
A Little Piece of Light
Mutual Aid Immigration Network
National Advocacy Center of the Sisters of the Good Shepherd
National Association of Counsel for Children
National Association of Criminal Defense Lawyers
National Council of Churches

National Crittenton
National Disability Rights Network (NDRN)
National Immigration Law Center
National Immigration Litigation Alliance
National Immigration Project of the National Lawyers Guild (NIPNLG)
The National Incarceration Association, Inc.
National Juvenile Defender Center
National Juvenile Justice Network
National Religious Campaign Against Torture
NETWORK Lobby for Catholic Social Justice
Pax Christi USA
Physicians for Human Rights
Presbyterian Church (U.S.A.)
Prison Law Office
Prison Policy Initiative
Refugee and Immigrant Center for Education and Legal Services (RAICES)
Rights4Girls
Robert F. Kennedy Human Rights
Roderick and Solange MacArthur Justice Center
The Sentencing Project
Social Workers & Allies Against Solitary Confinement (SWASC)
Sojourners
Solitary Watch
Southern Center for Human Rights
SPLC Action Fund
T'ruah: The Rabbinic Call for Human Rights
Tzedek Association
Union for Reform Judaism
Unitarian Universalist Service Committee
United Church of Christ, Justice and Witness Ministries
The United Methodist Church, General Board of Church and Society
Unlock the Box Campaign
W. Haywood Burns Institute
Washington Office on Latin America
Youth Advocate Programs (YAP), Inc.

Regional Organizations

Advocate Visitors with Immigrants in Detention
Advocates for Basic Legal Equality, Inc.
Alabama Justice Initiative
Aldea - The People's Justice Center
American Friends and Service Committee Prison Watch Program
Bay Area Asylum Support Coalition
Breaking the Chains Of Your Mind
BronxConnect
Brooklyn Defender Services
California Collaborative for Immigrant Justice
California Families Against Solitary Confinement
Center for Disability Rights

Community Alliance on Prisons
Correctional Association of New York
Daughters4Justice
Decarcerate Tompkins County, NY
Disability Rights California
Disability Rights Washington
El Refugio Ministry
End Solitary Santa Cruz County, CA
Fair Chance Project
Families United to End LWOP (FUEL)
First Parish Cambridge- Beyond Borders Sin Fronteras (BBSF)
#HALTsolitary Campaign
Hathaway-Sycamores
Healing Dialogue and Action
Immigrant and Non-Citizen Rights Clinic, CUNY School of Law
Immigrant Defenders Law Center
Immigrant Legal Defense
Immigration Services and Legal Advocacy (ISLA)
Interfaith Action for Human Rights
John Howard Association
Juvenile Justice Coalition
Lift Louisiana
Louisiana Advocates for Immigrants in Detention
Louisiana Stop Solitary Coalition
Louisiana Survivors for Reform
Mariposa Legal, Program of COMMON Foundation
Massachusetts Against Solitary Confinement
New Mexico Immigrant Law Center
New Sanctuary Coalition
Orleans Parish Prison Reform Coalition (OPPRC)
Pacific Juvenile Defender Center
Pennsylvania Prison Society
People's Organization for Progress
Prison Families Anonymous
Prisoners' Legal Services of Massachusetts
Re:Store Justice
Roots of Renewal
Rothko Chapel
Safer Foundation
Social Action Linking Together (SALT)
Social Justice Ministry, St. John Neumann Catholic Community, Reston, Virginia
Still Waters Anti-trafficking Program
Temple Beth El
The Advocates for Human Rights
The Osborne Association
The People's Justice Center (PA)
The Promise of Justice Initiative
Unitarian Universalist Massachusetts Action Network
Voices of the Experienced (VOTE)

Individual Signatories (*titles for identification purposes only*)

Brie Williams M.D., M.S., Professor of Medicine, University of California San Francisco, Director, Amend at UCSF, Co-Director, the ARCH (Aging Research in Criminal Justice Health) Network

Terry A. Kupers, M.D., M.S.P., Professor, The Wright Institute

Corey Weinstein, M.D., Private Consulting Correctional Medical Expert

Pablo Stewart, M.D., Correctional Psychiatric Consultant

Judith Resnik and Anna VanCleave, Founder and Director of the The Liman Center at Yale Law School

Kristin Henning, Professor of Law, Director, Juvenile Justice Clinic & Initiative, Georgetown Law

Andrea Armstrong, Professor of Law, Loyola University New Orleans

Michele Deitch, J.D., M.Sc., Distinguished Senior Lecturer, Lyndon B. Johnson School of Public Affairs, University of Texas at Austin

Vanessa Drummond, Assistant Project Director of Anti-Torture Initiative, American University Washington College of Law Center for Human Rights & Humanitarian Law

Juan Mendez, Anti-Torture Initiative, American University Washington College of Law Center for Human Rights & Humanitarian Law

Professor Amit Prakash, No Politics at the Dinner Table - Podcast

Colin Dayan, Professor of Law, Vanderbilt University

ⁱ *The Biden Plan for Strengthening America's Commitment to Justice* (2020), <https://joebiden.com/justice/#>.

ⁱⁱ UN Office on Drugs and Crime, Justice Section, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules)*, Rules 43-45, pp. 13-14 (2015), http://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

ⁱⁱⁱ The working group should include all stakeholders, including elected officials, civil servants, incarcerated people's rights advocates, scholars, corrections professionals, healthcare professionals, and people directly impacted by incarceration. The new plan should draw upon, but go well beyond, the report and recommendations produced at the direction of President Barack Obama and Attorney General Loretta Lynch. See U.S. Department of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing* (Jan. 2016), <https://www.justice.gov/archives/dag/report-and-recommendations-concerning-use-restrictive-housing>.

^{iv} Solitary confinement has dire health consequences. See Craig Haney et al., *Consensus Statement from the Santa Cruz Summit on Solitary Confinement and Health*, 115 Nw. U. L. Rev. 335 (2020), <https://scholarlycommons.law.northwestern.edu/nulr/vol115/iss1/9>; see also Medical Isolation and Solitary Confinement: Balancing Health and Humanity in US Jails and Prisons During COVID-19. *J Gen Intern Med.* 2020 09; 35(9):2738-2742. Cloud DH, Ahalt C, Augustine D, Sears D, Williams B. PMID: 32632787 (The Santa Cruz Summit on Solitary Confinement and Health found that "solitary confinement has been linked to a host of negative psychological and physical symptoms and problematic behaviors, including: anxiety, depression, ruminations, irritability and anger, paranoia, disturbed sleep and appetite, cognitive impairment, social withdrawal, cardiovascular disease, impaired vision, self-harm, and suicide.").

^v People in quarantine should be separated from others who have not been exposed, sometimes with a cohort group; people in medical isolation should be separated from those they could infect while they receive proper medical care, necessities including regular food and hygiene, and access to family through phone calls; people in solitary confinement are deprived of all social contact, receive no information or

attention from medical staff, and are subject to unsanitary conditions. See Unlock the Box, *Solitary Confinement Is Never the Answer* and Brie A. Williams, et al., *Correctional Facilities In The Shadow Of COVID-19: Unique Challenges And Proposed Solutions*, Health Affairs (March 26, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200324.784502/full/>.

^{vi} American Bar Association, Criminal Justice Section, *Key Requirements for the Effective Monitoring of Correctional and Detention Facilities*, 2-3 (Aug. 2008), <http://www.ongov.net/jcoc/documents/ABAResolutionandOversight104b.Final.2008.pdf> [ABA Resolution].

^{vii} 34 U.S.C. 11111(b); provisions should include collecting detailed data from states and counties on the use of isolation in juvenile facilities (34 USC 11117 (G)), collection of data on the race and ethnicity of youth held in isolation, publication of such data (34 USC 11133 (A)(29)), incentives to jurisdictions that successfully reduce the use of isolation, and provision of training and technical assistance to cities, counties, states, and tribal units on effective strategies to reduce isolation of youth (34 USC 11162 (F)).

^{viii} Meredith Booker, *20 Years Is Enough: Time to Repeal the Prison Litigation Reform Act*, Prison Policy Initiative (May 5, 2016), https://www.prisonpolicy.org/blog/2016/05/05/20years_plra/.

^{ix} For figures see *Letter to Hugh Horowitz, Acting Director, BOP, from Senators Durbin, Coons, Leahy, Warren, Booker, and Harris, on “the significant increase in the use of restricted housing in the Federal prison system,”* (March 7, 2019), <https://www.healthaffairs.org/doi/10.1377/hblog20200324.784502/full/>.

For More Information, Please Contact:

Jessica Sandoval, jsandoval@unlocktheboxcampaign.org

Rev. Ron Stief, rstief@nrcat.org