

April 9, 2013

The Honorable John McCain
241 Russell Senate Office Building
Washington, D.C. 20510-0303

The Honorable Charles Schumer
322 Hart Senate Office Building
Washington D.C. 20510

Dear Senators McCain and Schumer,

We, the undersigned immigration and criminal justice advocacy organizations, are writing to urge you to insert language in the immigration bill significantly reforming the use of solitary confinement in immigration detention facilities. Solitary confinement is the practice of placing a person in physical and social isolation for 22 to 24 hours a day with little or no human contact – generally in a small cell with a solid steel door, a bunk, a toilet and a sink – day in, day out, including administrative segregation and protective custody. The stated purpose of immigration detention is non-punitive – to assure that noncitizens appear for their hearings and do not abscond if a final order of removal is issued. Accordingly, individuals in immigration detention should not be subject to punitive conditions and certainly not a form of punishment as harsh as long-term solitary confinement, which is inappropriate in any detention setting.

The realities of solitary confinement in immigration detention are stark and imposing. If allowed to leave their cell for exercise, individuals in solitary typically are confined to a small, fenced-in cage, barely larger than a cell. Family visits are limited and almost all human contact occurs while the detainee is in restraints and behind some sort of barrier. Moreover, without access to appointed counsel, those within solitary confinement in these facilities are unable to report abuse or maltreatment.

Studies published by the American Psychological Association and many others have shown that prolonged periods of solitary can bring about disastrous and sometimes permanent mental and physical health effects. Detainees have experienced a wide-range of negative consequences after being held in isolation including: perceptual distortions and hallucinations, lack of impulse control, severe and chronic depression, weight loss, self-mutilation and lower levels of brain function. Solitary confinement is also associated with high rates of successful and attempted suicide. In California, for example, although less than 10 percent of the state's prison population was held in isolation units in 2004, those units accounted for 73 percent of all suicides.

The dramatic psychological and physiological effects of solitary confinement are compounded within the context of immigration detention. The civil nature of immigration detention, defined as neither a criminal nor punitive matter, necessitates additional protections

for vulnerable individuals and conditions of confinement that do not constitute punishment, such as solitary confinement. Further, some reports have estimated that as many as half of immigration detainees have suffered mental trauma in their home countries, which can exacerbate the harms of solitary confinement. It is also a common practice in detention facilities to use solitary as a measure to punish for minor offenses, as well as to “protect” especially vulnerable populations like juveniles, lesbian, gay, bisexual, transgender, and intersex (“LGBTI”) individuals, and persons with mental disabilities.

Immigration and Customs Enforcement’s (“ICE.”) non-binding 2011 Performance Based National Detention Standards do not adequately restrict the use of solitary confinement, and many of ICE’s contract facilities are not even required to comply with these standards. Congress must provide clear legislative direction to ICE to limit solitary confinement of immigration detainees in all immigration detention facilities, including contract facilities.

Solitary confinement is inconsistent with the civil nature of immigration detention. At the same time, the well-known physical and psychological consequences of such treatment on human beings raises serious moral and legal questions about its use in any context – criminal or civil. As such, we ask that specific policy changes be adopted to end this inhumane and unjust practice:

- Set and enforce limits on solitary confinement and other segregation practices to be consistent with the civil purpose of immigration detention;
- Implement a ban on the use of non-voluntary solitary confinement as a means of protecting particularly vulnerable immigration detainees, such as persons with serious mental health problems, juveniles and LGBTI individuals;
- Set and enforce strict time limits for use of voluntary solitary confinement as protective housing and require that such housing include access to exercise, programming, and privileges equal to that available to the general population;
- Require daily mental health monitoring of those in solitary confinement;
- Implement data reporting requirements and make information about segregation practices publicly available;
- Implement a strict time limit on use of solitary confinement for any individual detainee of no more than 15 consecutive days or 15 days in any 30 day period.

Enacting these policy changes would reduce the use of solitary confinement and rectify a significant injustice. We urge you to work with your colleagues to incorporate these recommendations within the immigration reform bill about to be considered by the Senate.

Sincerely,

AdvoCare, Inc.

American Civil Liberties Union

Center for Black Equity

CURE-Women Incarcerated

FedCure

Human Rights Campaign

Immigration Equality

International CURE

Just Detention International

Justice Strategies

National Religious Campaign Against Torture

National Association of Social Workers

Peace Over Violence

The Center for Constitutional Rights

T'ruah: The Rabbinical Call for Human Rights

United Church of Christ Justice and Witness Ministries

Uri L'Tzedek

cc: Senate Judiciary Committee

The Honorable Marco Rubio

The Honorable Robert Menendez

The Honorable Michael Bennett