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**Statement of the American Immigration Lawyers Association
Submitted to the Senate Judiciary Committee
Hearing “Legacy of Harm: Eliminating the Abuse of Solitary Confinement”**

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Contact:

Gregory Chen
Senior Director of Government Relations
gchen@aila.org; 202-716-5818

Jennifer Ibañez Whitlock
Supervisory Policy and Practice Counsel
jwhitlock@aila.org; 202-507-7533

[The American Immigration Lawyers Association](#) (AILA) is the national bar association of more than 16,000 attorneys and law professors who practice and teach immigration law. Our mission is to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of AILA members. This statement draws upon the experiences of several AILA attorneys who represent people who have been subject to solitary confinement while awaiting immigration hearings.

This hearing raises deep concerns about the specific problem that the Department of Homeland Security (DHS) is using solitary confinement extensively without adequate protective measures and is causing tremendous harm to people, including many who have mental health and other vulnerable conditions. In addition, this hearing demonstrates a broader problem with the DHS’s widespread and unnecessary use of physical detention. AILA calls on Congress and the Administration to move away from detention to effectuate compliance with immigration laws. Detention is exceptionally costly and cannot be justified when Congress should instead fund effective alternatives to detention that facilitate the government’s enforcement aims without depriving people of their liberty.

Solitary Confinement in Immigration Detention

For the purpose of this statement, AILA [defines solitary confinement](#) as the confinement of a person for 22 hours or more a day without meaningful human contact. Immigration and Customs Enforcement (ICE) does not use the term “solitary confinement” but sets [policy](#) using the term “segregation.” ICE policy and the detention standards permit the use of [administrative and disciplinary](#) segregation. In 2012, Congress held the first-ever congressional hearing on solitary confinement. At that time, ICE had the nation’s largest detention capacity in its history with funding for a daily average of [34,000 detention beds](#). In the twelve years since the hearing,

Congress has increased funding for ICE detention and currently funds the agency to detain 41,500 people daily. [In 2023](#), ICE held 273,220 noncitizens in custody. The human rights abuses experienced by noncitizens in ICE detention are [well-documented](#) and demonstrate that the agency has used detention at unacceptably high level, often unnecessarily, causing serious hardship, harm, and even death to the people in its custody.

The recent release of a [groundbreaking report](#) from the Physicians for Human Rights (PHR), with the work of students and faculty of the Immigration and Refugee Clinical Program at Harvard Law School and members of the Peeler Immigration Lab at Harvard Medical School, demonstrates the sheer breadth of the use of solitary confinement. Drawing upon government data, the report found that between 2018 and 2023, ICE made more than 14,000 placements in solitary confinement. The average time a person was confined in solitary was 27 days – which far exceeds the 15-day threshold that the United Nations deems as “torture.” Close to 700 noncitizens were placed in solitary confinement for stretches of at least 90 days, and 42 placements lasted over a year. Multiple [complaints](#) to oversight agencies and [investigatory reports](#) have detailed the physical and mental harms experienced by people in solitary confinement. These findings are shocking and should compel the Administration and lawmakers to take immediate action to investigate and stop these practices that are causing pain and suffering.

In addition, the PHR report found that an estimated [56 percent](#) of individuals placed in solitary confinement had mental health conditions—up from 35 percent in 2019. One AILA member described how their client stopped receiving his medication for a mental health disorder while in custody. The person began to experience symptoms and was sent to solitary confinement where their medical care was further delayed. In the throes of a mental health crisis and locked away from the general population, a facility guard mocked this person with derogatory names. All this was relied to counsel after the fact because it is not part of any ICE policy to notify counsel of record when an individual is placed into solitary confinement.

Another aspect of solitary confinement that AILA members have repeatedly raised is its use as retaliation for minor violations and as a threat to compel behavior in detained people. One AILA member shared that guards at a particular facility regularly threaten to place people in solitary confinement for minor violations or a perceived lack of compliance of facility rules. Further, it is well known at that facility that people from black-majority countries are frequently targeted for such retaliation, a [problem documented elsewhere](#).

Recommendations

AILA urges Congress and the Biden Administration to act immediately to implement far more restrictive policies and practices governing the use of solitary confinement. Through its excessive use of solitary confinement, ICE has committed severe human rights abuses—which as stated above, the UN defines as torture. ICE is using solitary without meaningful guidelines to ensure safe and humane conditions and the protection of the people in its custody.

First, DHS should establish an interagency working group tasked with reforming policy and practice to ensure the dramatic reduction in solitary confinement. The composition of this

working group should include, at a minimum, DHS leadership and oversight agencies such as the Office of Civil Rights and Civil Liberties (CRCL) and the Office of the Immigration Detention Ombudsman (OIDO).

Second, DHS should conduct an investigation into the use of solitary confinement in its facilities and produce a report in no less than three months. The investigation should start [with the five facilities](#) named in the PHR report as having the most egregious lengths of stays in solitary confinement. These facilities were the Denver Contract Detention Facility in Aurora, CO; Otay Mesa Detention Facility in San Diego, CA; Buffalo Service Processing Center in Batavia, NY; Northwest ICE Processing Center in Tacoma, WA; and Eloy Federal Contract Facility in Eloy, AZ.

Third, DHS should review ICE's 2013 [segregation directive](#) and its detention standards to identify the gaps in its policies that have permitted such extensive use of solitary confinement. For example, ICE's directive states that alternatives to placement in "segregated housing" must be carefully considered. Yet three years ago, ICE was put on notice by the DHS Office of Inspector General (OIG) that in 72 percent of cases, [there was no evidence alternatives had ever been considered](#). In other words, in more than 7 out of 10 cases, ICE failed to comply with its own policy requiring careful assessment of whether a person should be placed in such a highly restrictive setting. This conclusion should have triggered concerted swift action by DHS to correct solitary confinement practices. Three years later, it is undeniable that corrective action was not taken, and that the persistent and pervasive use of solitary continues.

Further, the DHS policy review should include whether it is acceptable to place someone in solitary because they ask to be separated from the general population for their own safety, or if there are other alternatives. Those alternatives should include a documented re-evaluation of whether detention is justified and necessary, and if it would be appropriate to release the person from physical custody on their own supervision or by using a case management or other monitoring program. One AILA member reported that her client, who was seeking humanitarian protection in the United States, was fearful of individuals in the general detained population based on past persecution in their home country. Because ICE offered no alternative, the client was placed for several months in solitary confinement while their immigration case proceeded.

Fourth, DHS should be required to maintain a more regular and comprehensive oversight presence in facilities to monitor the use of solitary confinement. The monitoring process should require consistent and frequent checks on the condition of each person in solitary confinement by a qualified evaluator acting independent from ICE and the detention facility. The five facilities named above all share one thing in common: they are private for-profit facilities. Without more robust monitoring, these facility operators and non-ICE staff are currently left to police themselves.

Halt ICE's Overreliance on Detention for Immigration Enforcement Purposes

Underlying the problem with ICE's use of solitary confinement is the systemic overuse of detention for immigration enforcement purposes that results in too many people being deprived of liberty and subject to the government's physical custodial control when they could be released

from detention on their own recognizance or by using other alternatives to detention. AILA urges DHS to [reduce](#) the use of immigration detention. Consistent with this shift, Congress should decrease funding for detention and direct DHS to improve upon and expand alternatives to detention that enable it to facilitate noncitizens' compliance with immigration laws.

In particular, DHS should expand alternatives to detention like community-based [case management programs](#) that are highly effective, more humane, and less burdensome on the individual than physical detention. For example, the Case Management Pilot Program (CMPP) operated by CRCL/FEMA. Case management programs are implemented by legal and [social work professionals](#) trained in identifying and helping to meet the needs of noncitizens so they can competently and reliably comply with their immigration obligations. They [cost about one fifth](#) the cost of detention and have demonstrated close to [100 percent compliance](#) rates. ICE also administers an [alternative to detention program](#) which should be utilized to reduce detention, though AILA has voiced concern that ICE has improperly subjected large numbers of people to monitoring and tracking when such methods have not been shown to be necessary.

Additionally, Congress should fund the Administration to provide legal representation for all people in removal proceedings who are indigent. Legal representation ensures legal proceedings are fairer and also advance the government's interest in a faster, efficient process. [Court data consistently show](#) that most people are unrepresented in their removal proceedings. Critically, immigrants with representation are more likely to demonstrate they are eligible for legal relief and for those in detention to achieve release from prolonged custody. A 2016 [study by the American Immigration Council](#) found that immigrants were five times more likely to obtain legal relief if they were represented by counsel. People who were detained were ten-and-a-half times more likely to succeed.

Conclusion

AILA urges Congress to continue the urgently needed oversight of solitary confinement and immigration detention practices. It should also continue to fund alternatives to detention, in particular those that use a community-based case management model, while reducing funding for jail-like detention. Congress should also appropriate funding to guarantee legal representation for people in proceedings who cannot afford legal counsel. While the government has a legitimate interest in ensuring compliance with immigration enforcement laws, DHS's detention practices are wholly unacceptable and cannot go unchecked. We urge Congress and the Administration to act without delay to implement more humane, fair, and efficient policies.