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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

February 11, 2022

Tae D. Johnson  
Acting Director  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security  
500 12th Street SW  
Washington, D.C. 20536

Dear Acting Director Johnson:

We write to request information about the use of solitary confinement at U.S. Immigration and Customs Enforcement (ICE) facilities, and to express our serious concerns with the findings of a recent Department of Homeland Security Office of Inspector General (OIG) report titled “ICE Needs to Improve Its Oversight of Segregation Use in Detention Facilities.”<sup>1</sup> OIG’s findings call into question ICE’s compliance with internal policies meant to reduce the unnecessary use of solitary confinement, which can cause irreparable harm to individuals in ICE custody—including those suffering from mental illness and other medical conditions.

OIG’s investigation revealed a number of troubling failures regarding ICE’s oversight of administrative and disciplinary segregation, two types of solitary confinement that involve placing detainees in isolated holding cells for as long as 22 to 24 hours a day with limited human contact. For example, OIG was unable to determine whether ICE considered alternatives to solitary confinement for detainees with mental illness or other vulnerabilities because ICE failed to abide by its own reporting and record-retention policies. OIG also found that ICE lacked clear and consistent policies for the use of solitary confinement, undermining internal directives meant to ensure that solitary confinement is used only as a last resort. And notably, OIG stated that “ICE’s own reporting policy prevents transparency with Congress and the public about the prevalence of segregation use.”<sup>1</sup>

These findings are troubling in their own right, but the OIG report also suggests that ICE is gratuitously overusing solitary confinement. For example, OIG determined that two detainees had been held in administrative segregation for “periods of 22 to 23 hours a day . . . for more than 300 days.”<sup>2</sup> The consequences of such treatment can be severe. Research has found that long-term isolation can result in serious harm to both mental and physical health.<sup>3</sup> Experts have found that solitary confinement can be especially dangerous for medically vulnerable

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<sup>1</sup> U.S. Dep’t of Homeland Security, Office of Inspector General, OIG-22-01, “ICE Needs to Improve Its Oversight of Segregation Use in Detention Facilities” (October 13, 2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-10/OIG-22-01-Oct21.pdf>.

<sup>2</sup> Id. at 5.

<sup>3</sup> Katja Ridderbusch, “COVID precautions put more prisoners in isolation. It can mean long-term health woes,” NPR (Oct. 4, 2021), <https://www.npr.org/sections/health-shots/2021/10/04/1043058599/rising-amid-covid-solitary-confinement-inflicts-lasting-harm-to-prisoner-health>.

populations, such as the mentally ill.<sup>4</sup> ICE's own standards acknowledge this to a degree, stating that solitary confinement is a "serious step that requires careful consideration of alternatives" and that "should occur only when necessary."<sup>5</sup> Nevertheless, OIG found that in one sample of detention files for persons placed in solitary from 2015 through 2019, there was no evidence that ICE considered alternatives in 342 of 474 cases.<sup>6</sup>

ICE's excessive and seemingly indiscriminate use of solitary confinement is a longstanding problem that persists despite periodic updates to the agency's detention standards.<sup>7</sup> In response to the OIG report, ICE stated that it would do again what it has done before and update its policies. The agency also stated that it would improve the recording and tracking of the use of segregation. While this would be an improvement, we are concerned that policy revisions alone may be insufficient to meaningfully reduce the use of solitary confinement at ICE facilities.

To enable us to fully understand the nature of ICE's use of solitary confinement, the scope of its failure to conduct adequate oversight, and the consequences for the health and safety of detainees, we ask that you respond to the following questions by March 4, 2022:

1. OIG found no indication that alternatives to segregation had been considered in the majority of cases OIG reviewed. What steps is ICE taking to ensure that alternatives are considered in all cases?
2. ICE's apparently widespread failure to abide by its own standards on segregation suggests that there is a serious disconnect between policy directives and the decisions made at detention facilities. What steps is ICE taking to address this failure and ensure that personnel at detention facilities abide by ICE policy?
3. According to OIG, several of the possible justifications ICE uses for placing a detainee into administrative segregation are related to mental illness. Given that those with mental health problems are particularly at risk in solitary confinement, what alternatives will ICE develop to avoid further endangering these individuals by isolating them in segregated housing?
4. In its response to OIG's report, ICE notes that it "operates a network of more than 200 detention facilities with several different contractual parties." Please describe in detail how ICE intends to improve its oversight of the various contractual parties who are involved in operating these facilities.

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<sup>4</sup> Jeffrey L. Metzner and Jamie Fellner, "Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics," *The Journal of the American Academy of Psychiatry and the Law*, Vol. 38, Issue 1 (Mar. 2010), <http://jaapl.org/content/38/1/104>.

<sup>5</sup> U.S. Immigration and Customs Enforcement, Directive 11065.1, "Review of the Use of Segregation for ICE Detainees" (Sept. 4, 2013), [https://www.ice.gov/doclib/detention-reform/pdf/segregation\\_directive.pdf](https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf).

<sup>6</sup> OIG-22-01 at 5.

<sup>7</sup> Ian Urbina, "The Capricious Use of Solitary Confinement Against Detained Immigrants," *THE ATLANTIC* (Sept. 6, 2019), <https://www.theatlantic.com/politics/archive/2019/09/ice-uses-solitary-confinement-among-detained-immigrants/597433/>.

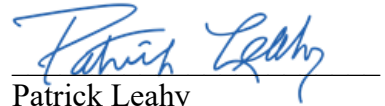
5. What initiatives, projects, or operations, if any, are currently in place to evaluate or consider methods for limiting the use of administrative or disciplinary segregation?
6. What information, if any, does ICE maintain regarding the impact that segregation has on detainee health and wellness? If ICE has not analyzed this issue, please provide an explanation.
7. Please provide the number of ICE detainees currently being held in either administrative or disciplinary segregation, the length of time each detainee has been held in segregation, and the segregation placement reasons for each detainee.
8. Please provide ICE's current list of segregation placement reasons, along with any relevant documentation and training materials.

Thank you for your prompt attention to this matter.

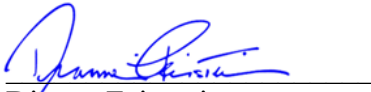
Sincerely,



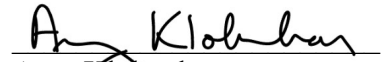
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Chair



Patrick Leahy  
United States Senator



Dianne Feinstein  
United States Senator




Amy Klobuchar  
United States Senator



Christopher A. Coons  
United States Senator



Mazie K. Hirono  
United States Senator



Cory A. Booker  
United States Senator



Alex Padilla  
United States Senator

cc: The Honorable Charles E. Grassley  
Ranking Member

The Honorable Alejandro Mayorkas  
Secretary of the Department of Homeland Security