

Buried Alive: Solitary Confinement in the US Detention System

Executive Summary



It's an awful thing, solitary. It crushes your spirit and weakens your resistance more effectively than any other form of mistreatment.

~ Senator John McCain



PHR shared
the 1997
Nobel Peace Prize

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Solitary confinement is a generic term used to describe a form of segregation or isolation in which people are held in total or near-total isolation. People in solitary confinement are generally held in small cells for 23 hours a day and rarely have contact with other people.

Solitary confinement has historically been used to control and discipline detainees in a variety of settings, including federal and state prisons, local jails, and immigration and national security detention facilities. Unlike incarcerated prisoners, immigration and national security detainees are held not as punishment for a crime but as a preventive measure. Indeed, it is unlikely that these detainees will ever be charged with a crime. For these people, solitary confinement then becomes entirely punitive, with dire consequences for their mental and physical health. Immigration and national security detainees are particularly likely to be held in isolation for prolonged periods because their precarious legal status makes them less able to challenge their conditions of confinement, including placement in isolation.

A review of the medical literature on solitary confinement provides convincing evidence that isolation has severe psychological and physical effects. These effects are exacerbated if the person has previously been subject to torture and abuse, as is often the case with many immigration and national security detainees.

Psychology professor, Craig Haney, concludes that “there is not a single published study of solitary or supermax-like confinement in which nonvoluntary confinement lasting for longer than 10 days, where participants were unable to terminate their isolation at will, that failed to result in negative psychological effects.”¹ Both medical and prison experts agree that the harm inflicted on a person kept in solitary confinement outweighs any benefit in all but the most extreme cases. Social interaction is neither a right nor a privilege – it is a fundamental human need. “Simply to exist as a normal human being,” writes Dr. Atul Gawande, “requires interaction with other people.”²

Recent studies illustrate the deleterious psychological and physiological consequences of solitary confinement. Symptoms commonly associated with solitary confinement include:

- hyperresponsivity to external stimuli
- perceptual distortions, illusions, and hallucinations
- panic attacks
- difficulties with thinking, concentration, and memory
- intrusive obsessional thoughts
- overt paranoia
- problems with impulse control, including random violence and self-harm
- flashbacks, chronic hypervigilance, and hopelessness
- post-traumatic stress disorder (PTSD)

The health effects of solitary confinement are primarily psychological. Yet researchers have also noted a number of corresponding physiological consequences among inmates held in

solitary confinement. Inmates and detainees held in solitary for even a short period of time commonly experience:

- sleep disturbances, headaches, and lethargy
- dizziness and heart palpitations
- appetite loss, weight loss, and severe digestive problems
- diaphoresis
- back and joint pain
- deterioration of eyesight
- shaking and feeling cold
- aggravation of pre-existing medical problems

Moreover, self-harm and suicide are more common in solitary than among the general prison population as a result of the psychological trauma inmates suffer. The Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), and the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) all prohibit torture and other cruel, inhuman or degrading treatment or punishment,³ while Article 10 of the ICCPR specifies that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”⁴ Given the severe psychological and physical trauma that may result from solitary confinement, it is not surprising that international and regional human rights bodies have consistently held that solitary confinement should be the very rare exception, not the rule, and have repeatedly found conditions of solitary confinement to violate international prohibitions against torture.

The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment explains that torture or other cruel, inhuman, or degrading treatment or punishment includes “the holding of a detained or imprisoned person

Sitting in a nearly empty cell — a metal sink, the blank stare of the white walls, fluorescent lights that never turn off — all you have are your own thoughts. Sometimes they race through your head like freight trains; other times a thought can get stuck in a loop, tormenting you for days or weeks at a time, grating the inside of your skull like metal on flesh. Your days are restless, your eyes constantly wandering around your cell, and you never, ever stop asking yourself — when am I going to get out?

~ Sarah Shourd, American hiker formerly imprisoned in Iran

in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.”⁵ The Basic Principles for the Treatment of Prisoners explicitly addresses solitary confinement, stating that “[e]fforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.”⁶ In 1992, the UN Human Rights Committee concluded that “prolonged solitary confinement of the detained or imprisoned person” may amount to torture or other cruel, inhuman, or degrading treatment or punishment.⁷

In recent years, two Special Rapporteurs on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment have issued reports assessing the use of solitary confinement around the world. In his 2008 interim report, Manfred Nowak concluded after receiving reports of solitary confinement from a diverse array of countries that “the prolonged isolation of detainees may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture.”⁸ In 2011, Juan Mendez devoted his entire interim report to the use of solitary confinement.⁹ Mendez concluded that “the social isolation and sensory deprivation that is imposed by some States does, in some circumstances, amount to cruel, inhuman and degrading treatment and even torture.”¹⁰

While much reporting has been done on the use of solitary confinement in US prisons, less attention has been paid to the use of isolation and segregation among immigration and national security (or “law of war”) detainees. This is in part due to the nature of the detentions, which involve vulnerable populations from foreign countries, perceived as the “other,” assumed to be guilty of illegal activity, and having no political voice in the United States. Thus, the detentions generally are not transparent, lack accountability, and in some settings are secret or classified.

This report sheds a light on the use of solitary confinement in immigration and national security detention settings. Specifically, it documents the regulations and policies regarding the use of isolation, and provides ample evidence for how solitary confinement is used in practice. The results show that solitary confinement in both settings is used excessively and arbitrarily, often in contravention of regulations, and, in most cases, with little regard to the resulting negative consequences for the health of the detainees.

The over-reliance on solitary confinement in both immigration and national security detention settings reflects an abdication by federal, state, and local governments of their moral and legal responsibility to treat those in their custody humanely.



Conclusions and Recommendations

Even relatively short periods in solitary confinement can cause severe and lasting physiological and psychological harm. Moreover, in many cases, the resulting harm rises to the level of torture or cruel, inhuman, and degrading treatment, in violation of domestic and international law. The unequivocal position of Physicians for Human Rights is that solitary confinement should not be used at all in immigration and national security detention.

However, recognizing that policymakers are unlikely to prohibit the use of solitary confinement, Physicians for Human Rights offers the following principles and recommendations, which we consider to be the minimum level of protection necessary to avoid causing the greatest harm.

General Principles:

- Solitary confinement should be used only in very exceptional cases, for as short a time as possible, and only as a last resort.
- Solitary confinement should never be used as a means of controlling or punishing mentally ill detainees.
- People held in solitary confinement must have the same or *greater* access to medical and mental health care as the general incarcerated or detained population.
- A prisoner or detainee should never be kept in solitary confinement longer than nine days, absent a clear threat to safety and security.
- Solitary confinement units must provide adequate space, lighting, heating, and ventilation, in accordance with UN Standard Minimum Rules for the Treatment of Prisoners.
- When solitary confinement is to be used, its maximum length must be communicated to the detainee.
- Detainees must have the opportunity to challenge their placement in solitary confinement before a neutral adjudicator.
- Qualified medical and mental health personnel who are independent from and accountable to an outside authority must regularly review the medical and mental health condition of detainees in solitary confinement, both at the start of the solitary confinement and daily thereafter.
- Health and security professionals violating these principles must be subject to review and sanction by the appropriate ethics board governing their conduct.

PHR Urges Congress to:

- Prohibit the use of solitary confinement in immigration detention and national security ("law of war") detention facilities.
- Harmonize standards, using the above "General Principles," regarding use of solitary confinement in the United States and by US personnel through legislation that applies to all immigration detention facilities, correctional institutes, state and county jails, and national security detention facilities.
- Require that a full medical and psychological evaluation by qualified health professionals be done on any detainee before placement in solitary confinement for any length of time.
- Set mandatory protocols for daily medical care of detainees in solitary confinement and ongoing assessment of its harmful impact on them.
- Repeal mandatory detention laws to ensure that immigration detainees with mental illnesses or who may be placed in solitary confinement to protect them from the general population may be released from detention
- Repeal or amend the provisions of the Expedited Removal process that result in asylum seekers who have been

victims of torture, abuse, or unjust imprisonment in their home countries being held for prolonged periods in immigration detention facilities, often in solitary confinement.

- Require facilities that hold immigration and national security detainees to track the use of solitary confinement from the moment of placement in solitary to release; comprehensive statistics that result from this tracking must be regularly reported to the public and reviewed by an independent auditor.
- Repeal the requirement that a certain number of immigrants (currently 34,000 per night) be held in immigration detention.
- Continue to fund the Public Advocate position to help ensure that detainees are not held in solitary confinement without reason or for prolonged periods of time.
- Enact or require ICE (Immigration and Customs Enforcement) to implement civil detention standards that take into account the non-criminal nature of immigration detention, limit or eliminate the use of solitary confinement, and ensure that conditions of detention are humane.

PHR Urges Immigration and Customs Enforcement to:

- Allow independent organizations to visit detainees in solitary confinement at all immigration detention facilities.
- Ensure that immigration detainees placed in solitary confinement have the same access to legal materials and information, including the Legal Orientation Program and "Know Your Rights" presentations, as detainees in the general population.
- Stop using jails and jail-like facilities, which rely too much on solitary confinement as a control mechanism, to detain immigrants.
- Establish the office of Ombudsman, independent of its detention operations, who would be empowered to hear complaints from detainees in solitary confinement and make recommendations regarding the use and conditions of solitary confinement in immigration detention.
- Ensure that health services are independent of the detention facility and adequately staffed, particularly with mental health professionals.

PHR Urges the Department of Defense and Other Government Agencies Holding Detainees on National Security Grounds to:

- Eliminate Appendix M from the Army Field Manual 2-22.3.
- Allow independent organizations to visit detainees in solitary confinement at all such detention facilities.

- Ensure that detainees placed in solitary confinement have the same access to legal materials and information given detainees in the general population.
- Establish an Ombudsman, independent of detention operations, who would be empowered to hear complaints from detainees in solitary confinement and make recommendations regarding the use and conditions of solitary confinement in detention facilities.
- Ensure that detainees in solitary confinement have access to a mental health care professional who is independent of the detention facility.
- Track the use of solitary confinement from the moment of placement in solitary to release; comprehensive statistics that result from this tracking must be regularly reported to the public and reviewed by an independent auditor.

See Physicians for Human Rights' website for the full report: <http://physiciansforhumanrights.org/solitary>.

Endnotes

1. Craig Haney, *Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement*, *Crime & Delinquency* 49:124-156, 132 (2003).
2. Dr. Atul Gawande, *HellHole*, *The New Yorker* (March 30, 2009).
3. Universal Declaration of Human Rights, G.A. Res. 217A (III), at 71, art. 5, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter "UDHR"]; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 31st Sess., Supp. No. 16, art. 7, U.N. Doc. A/6316 (December 16, 1966), entered into force March 23, 1976 [hereinafter "ICCPR"]; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., 93d mtg., art. 1, U.N. Doc. A/39/51 (December 10, 1984), entered into force June 26, 1987 [hereinafter *Convention Against Torture*]. Importantly for any discussion of prison conditions, CAT qualifies "torture" with the statement that it does not "include pain or suffering arising only from, inherent in or incidental to lawful sanctions."
4. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., 93d mtg., art. 11, U.N. Doc. A/39/51 (December 10, 1984), entered into force June 26, 1987.
5. See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173, annex, art. 1 & 6, 43 U.N. GAOR, Supp. No. 49, 76th plen. mtg., UN Doc. A/43/49 (December 9, 1988), available at <http://www.un.org/documents/ga/res/43/a43r173.htm>.
6. Basic Principles for the Treatment of Prisoners, G.A. Res. 45/111, annex, art. 7, 45 U.N. GAOR Supp. No. 49A, 68th plen. mtg., UN Doc. A/45/49 (December 14, 1990), available at <http://www.un.org/documents/ga/res/45/a45r111.htm>.
7. Human Rights Committee, General Comment 20, Article 7, 44th Sess., U.N. Doc. HRI/GEN/1/Rev. 1 at 30 (1994), at art. 6.
8. Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 63rd Sess., UN Doc. A/63/175 (July 28, 2008), at 77.
9. Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 66th Sess., UN Doc. A/66/268 (August 5, 2011).
10. *Id.* at ¶ 20.





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