Physicians for Human Rights

Buried Alive: Solitary Confinement in the US Detention System

April 2013

physiciansforhumanrights.org

PHR
Physicians for Human Rights

About Physicians for Human Rights

Physicians for Human Rights (PHR) is an independent nonprofit organization that uses medical and scientific expertise to investigate human rights violations and advocate for justice, accountability, and the health and dignity of all people.

PHR's Asylum Program and its network of hundreds of volunteer health professionals have helped thousands of survivors of torture and other brutal forms of persecution gain asylum in the United States by providing medical evaluations to corroborate their claims of persecution.

PHR's Anti-Torture Program seeks to strengthen international human rights norms in US national security law, policy, and practice, particularly in interrogation and detention settings, and to protect US health care professionals from complicity in the abuse and mistreatment of detainees.

Our Impact

1986 — Led investigations of torture in Chile, gaining freedom for heroic doctors there
1988 — First to document the Iraqi use of chemical weapons on Kurds, providing evidence for prosecution of war criminals
1996 — Exhumed mass graves in the Balkans for International Tribunals, and sounded the alarm about refugee camps in Bosnia and Kosovo.
1996 — Provided evidence of genocide for the Rwanda Tribunal
1997 — Shared the Nobel Peace Prize for the International Campaign to Ban Landmines
2003 — Warned US policymakers on health and human rights conditions prior to and during the invasion of Iraq
2004 — Documented genocide and sexual violence in Darfur in support of international prosecutions
2010 — Investigated the epidemic of violence spread by Burma's military junta
2012 — Trained doctors, lawyers, police, and judges in the Democratic Republic of the Congo, Kenya, and Syria on the proper collection of evidence in sexual violence cases
2013 — Won first prize in the Tech Challenge for Atrocity Prevention with MediCapt, our mobile app that documents evidence of torture and sexual violence

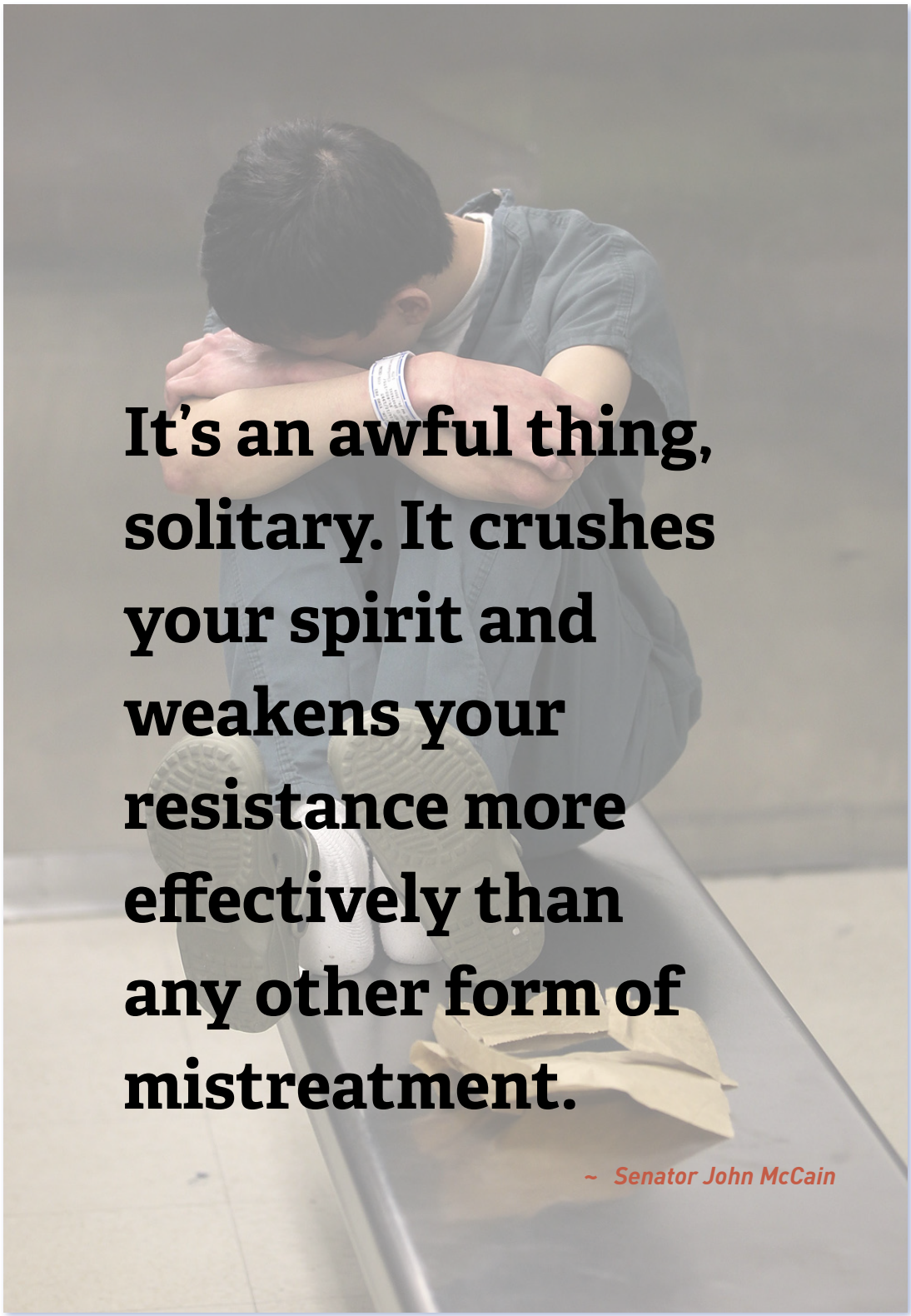
ISBN: 1-879707-73-X
© 2013 Physicians for Human Rights

PHR shared the1997 Nobel Peace Prize

2 Arrow Street
Suite 301
Cambridge, MA 02138
617.301.4200

1156 15th Street, NW
Suite 1001
Washington, DC 20005
202.728.5335

physiciansforhumanrights.org


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

Foreword

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*?

The Iranian government held me in solitary confinement for 410 days. For that entire time I was imprisoned alongside my now-husband Shane Bauer and our friend Josh Fattal. We were captured on July 31, 2009, while hiking behind a waterfall in the proximity of an unmarked border between Iraq and Iran. I was on a break from my teaching job in Damascus, Syria — our friend Josh was visiting from the States — and we decided to travel to the semi-autonomous Iraqi region of Kurdistan, a part of the Middle East with a burgeoning tourist industry where the mountains are unusually green and no American has been killed or kidnapped in recent decades.

The soldiers drove us to Evin Prison in Tehran, where for 13½ months I spent 23 hours a day in a private cell and one hour in a slightly larger open-ceiling cell, where a camera watched as I ran in circles under a blue sky crisscrossed with thick bars. They said the isolation was for my own safety — that there were no "appropriate" cellmates for me — but I was never safe from my own mind.

In prolonged isolation, the human psyche slowly self-destructs. On my worst days, I screamed and beat at the walls. I experienced hallucinations — bright flashing lights and phantom footsteps — nightmares, insomnia, heart palpitations, lethargy, clinical depression, and passive suicidal thoughts. I would pace my cell incessantly, or crouch like an animal by the food slot at the bottom of my cell door, listening for any sound to distract me. When I finally got books and television, I found it difficult to concentrate. I would sometimes spend an entire afternoon trying to read the same page, until I got fed up and threw my book against the wall.

The only thing I thought about for over a year in solitary was the day that I would no longer have to be alone, but, ironically, it wasn't that simple. When I was finally released, I found it hard to make eye contact or be touched. My breathing remained labored and many of the symptoms I experienced in prison — insomnia, hypertension, and anxiety — persisted on the outside. Like many people with post-traumatic stress disorder, I sometimes drank too much to try and escape my symptoms. More than once I became belligerent, dangerously paranoid, or hopelessly depressed — sometimes walling myself up in my house for days at a time.

When I began to research the use of solitary confinement in the United States, I was shocked to learn that tens of thousands of people are subject to no-touch torture or prolonged isolation on any given day. I learned that immigrants and people deemed a "national security risk" are held in indefinite detention without legal representation or the right to due process, just like I had been. How could I fail to draw a connection between their treatment and my own?

When Josh, Shane, and I were picked up near the unmarked Iran-Iraq border, the instant the soldiers looked at our passports it was clear the odds were stacked against us. Due to decades of animosity between our governments, being an American under suspicion by the Iranian government puts you at a distinct disadvantage. Likewise, being profiled as "illegal" — an immigrant living without papers in the United States — puts you at a disadvantage in our legal system. You can be subject to "civil" confinement in conditions identical to prison — including solitary confinement, which is often applied arbitrarily as a disciplinary measure — for months or years in pretrial detention and ultimately deportation as the result of something as small as a traffic violation.

A host of factors — many of which I experienced myself as a foreigner imprisoned in Iran — can add to harmful psychological effects of isolation for immigrant and national security detainees. One is language — when I was arrested I didn't speak a word of Farsi. Even after over a year in detention I could barely communicate my basic needs. Likewise, many detainees in our country aren't fluent in or can't speak English. Not being able to speak the language of the guards and other prison and legal authorities puts detainees at a distinct disadvantage. It increases isolation — effectively walling you off from what little opportunity you have for social interaction — and also makes it harder to secure a lawyer, advocate for your rights, challenge your conditions, and defend yourself effectively in court.

In addition, immigrant and national security detainees are often victims of prejudice and racism while in detention based on their "illegal" status, race, ethnicity, or country of origin. When I was in prison, a certain Iranian guard refused to touch or speak to me. Every day, she made me pick up my tray of food from the floor, rather than handing it to me as she did for the other prisoners. Once, I got angry and confronted her with the help of another guard who spoke some English. I asked her why she hated me. She said it was because I was "American…and I crossed the border." The situation is not all that different for immigrant and national security detainees in the United States, especially considering that the dominant discourse in the country labels them as "terrorists" or "illegals" — a few examples among a trove of unsavory xenophobic and racist expletives — based on the widely held belief that they are our ideological enemies and/or the source of our country's economic woes.

Even though — like many detainees in our country — I had no idea when I would get out of solitary confinement or prison itself, I never lost hope completely. I knew that our case was visible enough that we would never be forgotten, that countless people were fighting for us on the outside, and that eventually the Iranian government would be forced to let us go. For immigrant and national security detainees in this county, however, the opposite is true. They have no way of knowing how long it will take before they have their day in court or what the outcome will be. Their isolation alone is enough to cause lasting, irreparable psychological damage, yet they are also subject to prejudice, unable to communicate, and transported against their wills to detention facilities sometimes hundreds or even thousands of miles from home — essentially invisible. My situation was unique and in many ways unprecedented. Sadly, however, being stripped of one's rights, deprived of liberty, and treated like a criminal solely on the basis of one's country of origin is far from unusual, even in our own backyard.

Sarah Shourd *is a writer and grassroots organizer with the human rights organization United4Iran. Captured in 2009 by Iranian forces while hiking behind a tourist site in semi-autonomous Iraqi Kurdistan, Sarah, her fiance Shane Bauer, and their friend Josh Fattal, were held in incommunicado detention in Tehran's notorious Evin Prison without legal representation or trial for allegedly having crossed the Iranian border. Sarah was held in solitary confinement for 410 days before finally being released by President Ahmadinejad in Sept. 2010.*
Mr. Bauer and Mr. Fattel were released in September 2011.

Acknowledgements

The principal authors of this report are Mike Corradini, former PHR Asylum Advocacy Associate, and Kristine Huskey, former PHR Director of the Anti-Torture Program, and Christy Fujio, PHR Asylum Program Director and Istanbul Protocol Legal Adviser. Nakissa Jahanbani also contributed to the writing and editing of this report. Other contributors include Andrea Gittleman, Jillian Tuck, Megan Gibson, James Meara, Elizabeth Hira, and Casey Shupe.

This report draws heavily on *Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention*, co-authored by PHR and the National Immigrant Justice Center (NIJC).

The authors are grateful to our reviewers, Catherine D. DeAngelis, MD, MPH, PHR Board Member; Michele Heisler, MD, MPA, PHR Board Member; and Stephen Greene, PHR Acting Media Relations Director — their comments and suggestions made this final manuscript possible. We are also grateful to PHR Director of International Policy and Partnerships and Senior Advisor Susannah Sirkin, PHR Senior Medical Advisor Vincent Iacopino, MD, and PHR Policy Director Hans Hogrefe for their review and comments. The report was prepared for publication by Gurukarm Khalsa, PHR Web Editor/Producer.

PHR would like to thank the Jacob & Valeria Langeloth Foundation, the Herb Block Foundation, the Open Society Foundation, and the Atlantic Foundation for their generous support of this project.

Contents

Definitions viii

Abbreviations ix

Executive Summary 1

Conclusions and Recommendations 3

Methodology 6

A. Immigration 6

B. National Security 7

I. Solitary Confinement, Segregation, and Separation 8

A. Background 8

B. Legal Issues and Trends in US Prisons 9

C. Purposes 10

II. Standards and Practices of Solitary Confinement, Isolation, Segregation, and Separation 11

A. US Immigration Detention 11

i. Regulations and Policies 12

ii. Solitary Confinement in Practice 13

a. health care 14

B. US National Security Detention 15

i. Solitary Confinement as an Interrogation Technique 16

ii. Regulations and Policies 20

a. Guantánamo 20

b. Bagram 21

c. Due Process 22

iii. Solitary Confinement in Practice 23

C. International Standards for Solitary Confinement 27

III. Consequences of Solitary Confinement 31

A. Mental Health 31

B. Physical Health 34

Conclusions and Recommendations 35

Appendix A 37

Definitions

Administrative segregation is the practice of separating a detainee from the rest of the detention population for a period of time for allegedly non-disciplinary reasons. It may occur upon arrival at the facility in the form of "initial segregation." The setting and restrictions are not meant to be punitive. Administrative segregation is typically regulated by the custodial authorities in both immigration and national security settings; in the latter context, interrogators have also been involved in determinations regarding administrative segregation.

Appendix M is the codification of guidelines in the 2006 revised Army Field Manual covering "unlawful enemy combatants" who don't meet the U.S. government's criteria for prisoners of war. The techniques permitted by Appendix M create conditions where an interrogator could inflict serious physical and mental harm on a detainee.

Disciplinary segregation is used to separate people who have violated a detention facility rule. Stipulations for being placed under disciplinary segregation vary between facilities. ICE detainees are often afforded a hearing prior to placement, while those held in a national security setting are not. Detainee behavior resulting in disciplinary segregation can range from tampering with their handcuffs to violence against facility staff or other detainees.

Isolation is a generic term used to describe the action of being confined alone, separate from the rest of the detention center population.

Segregation refers to the general practice of separating people deemed to be vulnerable or dangerous to themselves or others from the general population in a prison or detention facility. Segregation takes different forms in different facilities, but is most commonly a designated housing unit separate from the general population.

Separation is a term used in Appendix M of the Army Field Manual to describe an interrogation technique whereby the detainee is placed in isolation or segregation to facilitate the interrogation.

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. These cells can be located in dedicated segregation units, within either administrative or disciplinary segregation, but people may also be locked in their cells in their assigned housing unit. In all cases, they are subject to stringent restrictions on recreation, visitation, reading, religious practice, and other privileges that may be available to the facility's general population. Solitary confinement is sometimes referred to as "the hole," "Supermax," "Secure Housing Unit (SHU)," "Special Housing Unit,"or by other terms.

Special Management Units or Special Housing Units are largely regarded as the institutionalization of segregation or isolation and essentially refer to someone's location in isolation or the state of being in isolation. They are used in detention settings, jails, and federal and state prisons to separate detainees and inmates for various reasons, including administrative and disciplinary segregation.

Abbreviations

ACA	American Correctional Association
ACLU	American Civil Liberties Union
AFM	Army Field Manual
APA	American Psychological Association
CAT	United Nations Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment
CCR	Center for Constitutional Rights
CDF	Contract Detention Facility
CIA	Central Intelligence Agency
CPT	European Committee for the Prevention of Torture
DoD	Department of Defense
DoJ	Department of Justice
DoS	Department of State
ECHR	European Court of Human Rights
FBI	Federal Bureau of Investigation
FOIA	Freedom of Information Act
FOUO	For Office Use Only
GAO	Government Accountability Office
ICCPR	International Covenant on Civil and Political Rights
ICE	US Immigration and Customs Enforcement
ICRC	International Committee of the Red Cross
IGSA	Inter-governmental Service Agreement
JIG	Joint Interrogation Group
LGBT	Lesbian, Gay, Bisexual and Transgender
NDS	National Detention Standards
NIJC	National Immigrant Justice Center
OLS	Office of Legal Counsel
PHR	Physicians for Human Rights
PBNDS	Performance-Based National Detention Standards
PTSD	Post-Traumatic Stress Disorder
SHU	Special Housing Unit
SMU	Special Management Unit
SOPs	Standard Operating Procedures
SPC	Service Processing Center
UDHR	Universal Declaration of Human Rights

A cell for a noncompliant detainee is pictured inside the prison at Camp 5 in the Guantánamo Bay US Naval Base, June 26, 2006.

Executive Summary

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

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).

- 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 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

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, at art. 11.
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) [hereinafter *Body of Principles*], *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), [hereinafter Basic Principles] *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), [hereinafter *Mendez Report*].
10. *Id*. at ¶ 20.

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.

Dec. 4, 2006 A detainee peers through a hole used to pass food into cells at Camp Delta at Guantánamo. Brennan Linsley / AP

Methodology

This report was designed to expose and document the harm occurring to people due to the over-use of solitary confinement in both immigration and national security detention.

A. Immigration

This report draws on three sources of information to illustrate the ways in which segregation and solitary confinement are used in immigration detention: open record requests made to all immigration detention facilities in the US; field visits to immigration detention centers, including interviews with staff and detainees; and reports produced by other advocacy organizations that had conducted recent visits to detention facilities and assessed conditions of segregation and solitary confinement.

Open record requests sought the following information:

- Policy manuals, staff training materials, detainee handbooks, and any other documents that describe the use of segregation and solitary confinement
- Architectural drawings of segregation units
- The number of detainees held in segregation by US Immigration and Customs Enforcement (ICE) in 2011, the justification for such placement, and the length of time each detainee was segregated
- Log books, case memoranda, incident reports, periodic reviews, and medical assessments of ICE detainees held in segregation.

More than half (168) of the approximately 250 facilities holding immigration detainees responded, but most indicated that the facilities did not maintain the records requested or that staff could not retrieve such information without going through each detainee's file. Several facilities agreed to provide information for fees in excess of $20,000, claiming that they would need to hire staff to review each file to determine if someone was an immigration detainee or a prisoner serving a criminal sentence. Thirty-two facilities from 23 states provided documents that detailed policies and practices related to the use of solitary confinement.

A research team comprised of medical and mental health professionals and attorneys from Physicians for Human Rights (PHR) toured immigration detention facilities and spoke with ICE officials, jail staff, medical personnel, local law enforcement officials, and segregated detainees. The research team interviewed people in segregation and solitary confinement at the following facilities: Florence Service Processing Center, Florence, AZ; Hampton Roads Regional Jail, Hampton Roads, VA; Houston Contract Detention Facility, Houston, TX; Mira Loma Detention Center, Lancaster, CA; Santa Ana City Jail, Santa Ana, CA; Suffolk County House of Corrections, Boston, MA; and York County Prison, York, PA.

In addition to inspecting these facilities, the authors solicited direct accounts from immigration detainees who had previously spent time in solitary confinement, including clients of the National Immigrant Justice Center (NIJC) from: Dodge County Detention Facility, Juneau, WI; Houston Processing Center, Houston, TX; McHenry County Correctional Facility, Woodstock, IL; North Georgia Detention Center, Gainesville, GA; Oakdale Federal Detention Center, Oakdale, LA; Theo Lacy Facility, Orange, CA; and Tri-County Detention Center, Ullin, IL.

The facilities above were selected to achieve a diversity of geographic locations, population sizes and characteristics, and facility types. Researchers visited two Service Processing Centers (SPCs), two Contract Detention Facilities (CDFs), and six local jails that house immigration detainees through Intergovernmental Service Agreements (IGSAs). Because of the large number of facilities used to detain immigrants and the limited number of researchers available, the authors designed a convenience sample of detention facilities instead of using a randomly selected set. Many detention facilities are located in remote areas or in regions where researchers were not available to conduct visits.

The research team used an audit tool (see Appendix A) containing questions regarding each facility's average daily population of immigration detainees; its segregation capacity and current administrative and disciplinary segregation population; the number of detainees in segregation with diagnosed mental health problems and the resources available for these detainees; the frequency of medical and mental health rounds in segregation, and the types of health professionals who conduct rounds; and whether detainees are cleared by medical and mental health personnel before being placed in segregation.

For detainee interviews, the research team used a questionnaire to gather information about each detainee's personal and immigration history. Questions relating to segregation focused on the time spent in segregation and/or solitary confinement; the procedure used for placing the detainee in segregation; the procedure for complaints about conditions or abuse in segregation; and the conditions of segregation itself, including cell size, food, access to recreation, access to legal counsel and information, access to family members (either in person or by phone), and access to medical and mental health care. Interviewers also asked subjective questions relating to how detainees felt while in segregation.

Because many people who shared their stories remain in detention and are fighting their immigration cases, their names have been omitted from this report. We have included the names of former detainees who won their cases and wished to speak publicly about their experiences.

B. National Security

An extraordinary amount of government secrecy is associated with operations and/or practices involving detainees picked up in the "war on terrorism" and thus such information is not easily accessed by the public. Much of this information is either classified, considered to be FOUO ("for official use only"), kept secret or confidential, or simply difficult to discover except through a Freedom of Information Act request ("FOIA request") and/or litigation involving such a request. As a result, this report draws on numerous sources of information to illustrate the ways in which segregation, isolation, separation, and/or solitary confinement are used in national security detention facilities. The national security sections of this report primarily focus on detainee operations at the Guantánamo and Bagram detention facilities due to the availability of information and the attention that both facilities have received because of the number of detainees held there, as well as the documented incidents of torture and abuse.

The information contained in this report is from government sources gathered directly from government websites or from nongovernmental organizations, educational institutions, or individuals. Three databases were primarily relied upon:

- "The Torture Database" maintained by the American Civil Liberties Union (ACLU), which consists of over 100,000 pages of government documents obtained by FOIA requests and subsequent litigation relating to the treatment, death, and rendition of detainees in US custody abroad that was begun in 2003 by the ACLU, PHR, and other civil-rights and human–rights organizations. As of the writing of this report, the Torture Database contains 4,935 documents dating from 2001 to 2009.[11]
- Documents contained in the "United States Military Medicine in War on Terror Prisons" website (2007), which is edited by Dr. Steven Miles and Leah Marks and housed in the Human Rights Library of the University of Minnesota. As stated on the site, "This site is a library of government documents pertaining to the roles of Armed Forces Medical Personnel who worked in US Armed Forces prisons in Iraq, Afghanistan, and at Guantánamo Bay from 2001 to 2006. This archive does not address matters pertaining to military medicine on the battlefields or medical care to non-detainees. It is restricted to documents addressing medical activities and is not a compilation of all documents pertaining to the War on Terror prisons."[12]

11. The Torture Database is *available at* http://www.thetorturedatabase.org/search/apachesolr_search.
12. The website is *available at* http://www1.umn.edu/humanrts/OathBetrayed/index.html. Many of these documents and events are discussed and set into context in *"Oath Betrayed: Torture, Medical Complicity, and the War on Terror"* Random House, 2006 by Steven H. Miles.

- "The Torture Archive" of the National Security Database at the George Washington University. The Torture Archive contains documents from several sources on United States government policy toward rendition, detainees, interrogation, and torture. The archive currently includes records disclosed through the American Civil Liberties Union's successful lawsuits against the Department of Defense and other federal agencies, and almost 20,000 pages of documents produced by the Combatant Status Review Board and the Administrative Review Board.[13]

Because many of the currently publicly available documents, including those obtained through FOIA requests, appear to cover only the period from 2001 to 2009, PHR submitted its own FOIA request in 2012 to several US government departments and agencies for the disclosure of documents dated after 2009 relating to the conditions of confinement and treatment of detainees in US military custody overseas. Thus far, PHR has received no documents in response and intends to file a lawsuit to compel disclosure.

I. Solitary Confinement, Segregation, and Separation

A. Background

For much of recorded history, solitary confinement has been used as a system of disciplining and controlling inmates. Its use in the early days of the United States was no different. In the beginning of the 19th century, American prisons instituted two systems for the rehabilitation of criminals: the Auburn and Pennsylvania models.

The Auburn system, developed in New York, permitted inmates to work together during the day, but forced them to remain completely silent.[14] In contrast, inmates housed in prisons following the Pennsylvania model spent the entire duration of their incarceration alone in their cells. The idea was to force prisoners to contemplate their crimes and seek forgiveness from God, eventually allowing them to return to society as reformed Christian citizens.[15] Shortly after the Pennsylvania model was implemented at the Cherry Hill Prison in Philadelphia, reports began to emerge of prisoners experiencing hallucinations, dementia, and other mental disorders.[16] The Pennsylvania model became the favored system in Europe, where inmates also began to experience signs of mental illness.[17]

> an inmate in solitary confinement "is a man buried alive ... dead to everything but torturing anxieties and horrible despair.
>
> *Charles Dickens*

While some early observers blamed the mental disturbances observed in inmates held in solitary confinement on race or other factors, others saw a connection to the conditions of their confinement. In 1826, Alexis de Tocqueville visited a prison in New York that used solitary confinement, and noted that the practice "devours the victims incessantly and unmercifully; it does not reform, it kills."[18] Upon visiting the Cherry Hill Prison in 1842, Charles Dickens wrote that an inmate in solitary confinement "is a man buried alive ... dead to everything but torturing anxieties and horrible despair."[19] Several years later, Hans Christian Andersen visited a Pennsylvania-model prison in Sweden and described it as "a well-built machine, a nightmare for the spirit."[20]

13. The Torture Archive is *available at* http://www.aladin0.wrlc.org/gsdl/collect/torture/torture.shtml.
14. Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 Crime and Justice 441, 456-57 (2006).
15. *Id.* at 456-57.
16. *Id.* at 457. Physicians examining these prisoners concluded that their mental disorders were likely caused by other factors, noting that a high proportion of the inmates in Cherry Hill were of the "mulatto race" and prone to masturbation, which was believe to cause insanity.
17. *Id.* at 458.
18. Elizabeth Vasiliades, *Solitary Confinement and International Human Rights: Why the U.S. Prison System Fails Global Standards*, 21 A. U. Int'l L. Rev. 71, 73 (2005).
19. Charles Dickens, "Philadelphia, and Its Solitary Prison," *American Notes* (1842), *available at* http://www.victorianweb.org/authors/dickens/pva/pva344.html.
20. Scharff Smith, *The Effects of Solitary Confinement, supra* note 14, at 460.

In the second half of the 19th century, attitudes toward solitary confinement shifted away from approval and toward condemnation. Though it continued to be used in parts of Europe, particularly in Scandinavia, solitary confinement was largely abandoned in the United States in the first half of the 20th century.[21] The experiences of prisoners of war during World War II revived solitary confinement as a subject for scientific studies, which generally concluded that it caused severe psychological harm.[22]

The re-emergence of solitary confinement in the modern US penal system was largely the result of a riot at the Marion Penitentiary in Illinois. In October 1983, two guards at Marion were killed by inmates in separate incidents.[23] The ensuing lockdown of the facility was never lifted, leading Marion to become the nation's first "supermax" prison, where prisoners are typically kept in isolation for 23 hours a day.[24]

Though precise statistics on the use of solitary confinement are unavailable, it is estimated that approximately 80,000 criminal inmates in the United States are held in restricted housing, including solitary confinement.[25] As other forms of incarceration, including immigration and national security detention, have expanded, they have relied heavily on corrections practices, including solitary confinement, even when those practices are inappropriate for the setting or even counterproductive to the goals of detention.

B. Legal Issues and Trends in US Prisons

As early as 1890, the US Supreme Court noted that prisoners subject to solitary confinement:

> *[F]ell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.*[26]

Yet, as noted, solitary confinement has been used in US prisons since the nation's founding. As a general matter, legal claims opposing solitary confinement as a violation of the Constitution typically cite to the Eighth Amendment, which protects against "cruel and unusual punishment," and the Fifth and Fourteenth Amendments, which protect against "deprivation of life, liberty, or property without due process."[27]

The Supreme Court has never determined that solitary confinement as a practice alone is "cruel and unusual punishment," thus violating the Eighth Amendment. It has, however, considered whether prisoners have a constitutional right to challenge being transferred to solitary confinement. In an early case, the court found that typically prisoners cannot challenge a transfer to more adverse conditions of confinement.[28] Recently, however, in Wilkinson v. Austin, the Supreme Court addressed confinement conditions at a supermax prison in Ohio. The Court found that the conditions of isolation were such a "significant hardship" that they conferred prisoners with a liberty interest and thus concluded that "prison officials cannot confine inmates in long-term solitary confinement in a super maximum prison without first giving them the opportunity to challenge their placement." [29]

The institutionalization of "administrative segregation" in recent decades can be seen in super-max facilities built solely for that purpose, such as Colorado State Penitentiary, Pelican Bay State Prison in

21. *Id.* at 467-9.
22. *Id*.
23. *Id*. at 442-3.
24. *Id*. at 443.
25. *See* American Civil Liberties Union, *End the Use of Solitary Confinement, available at http://www.aclu.org/files/pdfs/prison/20120411_solitary_confinement_two-pager.pdf.*
26. In re Medley, 134 U.S. 160, 168 (1890).
27. US Const., amends. V, VIII, XIV.
28. Meachum v. Fano, 427 U.S. 215, 225 (1976).
29. *Torture: The Use of Solitary Confinement in US Prisons,* Center for Constitutional Rights, *available at http://ccrjustice.org/files/CCR-Factsheet-Solitary-Confinement.pdf*.

California, or the Tamms Correctional Center in Illinois. In 1995, a federal district court concluded that conditions at Pelican Bay "may well hover on the edge of what is humanly tolerable."[30] Yet, the court concluded there was no constitutional basis for the courts to shut down the unit or to alter it substantially; rather, it held that courts must defer to the states in the matter of how best to incarcerate offenders."[31]

Recently investigations and criticisms of the utility of solitary confinement have put the practice under a microscope. In 2012, the Center for Constitutional Rights (CCR) filed a class-action lawsuit against California challenging the use of prolonged isolation at Pelican Bay prison.[32] Early this year, a federal district judge held that Indiana's confinement of mentally ill prisoners in solitary confinement is cruel and unusual punishment, violating the Eighth Amendment.[33] Also this year, the New York State Bar Association House of Delegates issued a report recommending restrictions on the use of solitary confinement across New York State, such as limiting its duration to no more than 15 days. [34]

In June 2012, the Senate Judiciary Committee held the first congressional hearing on the use of solitary confinement.[35] And, in February 2013, Senator Dick Durbin (D-IL) announced that the Federal Bureau of Prisons would undergo a "comprehensive and independent assessment" of its use of solitary confinement in US federal prisons, noting that "the United States holds more prisoners in solitary confinement than any other democratic nation" and that the "dramatic expansion of solitary confinement is a human rights issue we [cannot] ignore."[36] Senator Durbin's announcement followed the closure of the Tamms, which had been criticized for its extremely harsh and isolating conditions.[37]

C. Purposes

While the original concept of solitary confinement as a path to moral rehabilitation has been largely abandoned, its proponents cite a number of reasons for holding prisoners and detainees in isolation. Many of these justifications are common to all three detention scenarios—incarceration, immigration detention, and national security detention—while some appear only in certain types of detention.

First, solitary confinement is used as a management tool to separate allegedly dangerous (to others) or vulnerable (at risk of harm from others) people from the general population in a prison or detention facility. The frequent result is that many mentally ill prisoners and detainees are held in long-term solitary confinement in lieu of receiving mental health care.[38]

Second, solitary confinement is used to punish those who break prison or detention facility rules. Those who favor solitary confinement as a disciplinary measure argue that, in addition to creating a safer envi-

30. Madrid v. Gomez, 889 F.Supp. 1146, 1280 (N.D. CA. 1999), Wilson v. U.S. Dist. Court For the Eastern Dist. of California, 520 U.S. 1230, 117 S.Ct. 1823 (1997), *cert. denied.*
31. *Id.*
32. Center for Constitutional Rights, *Torture: The Use of Solitary Confinement in US Prisons, available at http://ccrjustice.org/files/CCR-FactsheetSolitary-Confinement.pdf.*
33. ACLU, Press Release, *ACLU of Indiana, Indiana Protection Services Win U.S. District Court Case Regarding Inhumane Treatment of Prisoners* (Jan. 3, 2012), *available at http://www.aclu.org/prisoners-rights/aclu-indiana-indiana-protection-and-advocacy-services-win-us-district-court*
34. New York State Bar Association*, State Bar Association Calls for Restrictions on Use of Long-Term Solitary Confinement* (Jan. 25, 2013), *available at http://www.nysba.org/AM/Template.cfm?Section=News_Center&template=/CM/ContentDisplay.cfm&ContentID=147342.*
35. United States Senate Judiciary Committee, "Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences" (June 19, 2012). Subcommittee on the Constitution, Civil Rights, and Human Rights, *available at http://www.judiciary.senate.gov/hearings/hearing.cfm?id=6517e7d97c06eac4ce9f60b09625ebe8.*
36. *Durbin Statement on Federal Bureau of Prisons of Assessment of Its Solitary Confinement Practices,* 2/4/2013, press release, *available at http://solitarywatch.com/2013/02/05/federal-bureau-of-prisons-to-undergo-review-of-solitary-confinement-practices/.*
37. James Ridgeway and Jean Casella, *Supermaxed Out: Adios to an Isolation Facility* (Feb. 29, 2012), *available at http://www.motherjones.com/politics/2012/02/illinois-close-supermax-security-prison-tamms*; McKinney, Dave, *Ex-inmate on controversial prison: 'Tamms never leaves my head'* (Feb. 25, 2012), *available at http://www.suntimes.com/10862646-417/tamms-never-leaves-my-head.html.*
38. Human Rights Watch, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illnesses,* 147 (Oct. 22, 2003), *available at* http://www.hrw.org/sites/default/files/reports/usa1003.pdf.

ronment for facility staff and other prisoners or detainees, solitary confinement also acts as a deterrent and reduces disruptive behavior.

Third, in the traditional criminal justice system, solitary confinement is sometimes used during pre-trial detention as a method of forcing suspects to cooperate in a criminal investigation or confess to a crime in exchange for a reduced sentence. In immigration and national security detention, solitary confinement can be similarly used as a coercive measure, even though these detainees are unlikely to ever be charged with a crime, face trial, or receive a prison sentence. Indeed, in national security detention, solitary confinement – referred to as "separation" – is an officially designated interrogation technique.[39]

Finally, solitary confinement may also be used when officials suspect that a prisoner or detainee's communications or contacts could result in someone's injury or death or in property damage. This concern is particularly prevalent in national security settings, where authorities fear that detainees might pass messages on to their "associates" that would result in acts of terror. Thus, solitary confinement is sometimes used with the stated purpose of preventing terrorist acts or the disclosure of classified information – even when those acts are merely speculative.[40]

II. Standards and Practices of Solitary Confinement, Isolation, Segregation, and Separation

A. US Immigration Detention

Immigration detention is the fastest-growing detention system in the United States.[41] Every night, nearly 34,000 people are held in immigration detention facilities across the country. About two-thirds of these people are held in a network of over 250 state and local facilities, which contract with ICE to house immigration detainees, often alongside criminal inmates.[42] The rest are held in dedicated immigration detention facilities run by ICE or contracted to private prison corporations.[43]

The purpose of immigration detention is not to punish people who have violated criminal or immigration laws, but to ensure that immigrants attend all of their immigration court hearings and comply with orders issued by immigration judges. Some immigration detainees have no legal immigration status; others have permanent residence or another type of immigration status, but the government believes it has the legal authority to remove them from the country. Most immigration detainees have no criminal record,[44] or have committed only minor crimes or traffic violations, often many years before being detained by ICE. Still others have come to the United States seeking protection from persecution and torture in their home countries, only to be thrown into detention pending the outcome of their asylum claims.

Most immigration detention facilities are indistinguishable from jails. Men and women are confined behind high walls lined with razor wire and have little freedom of movement or direct contact with family. ICE-contracted detention facilities hold a wide range of immigrants alongside criminal inmates, including asylum seekers; lawful permanent residents; people with mental health conditions; lesbian, gay, bisexual, and transgender (LGBT) people; elderly immigrants; and survivors of human trafficking.

39. Army Field Manual 2-22.3 (FM 34-56), Headquarters, Department of the Army (Sept. 6, 2006) [hereinafter AFM 2-22.3 (FM 34-56)], *available at http://www.fas.org/irp/doddir/army/fm2-22-3.pdf.*
40. US Department of Justice, *Fact Sheet: Prosecuting and Detaining Terror Suspects in the U.S. Criminal Justice System* (June 9, 2009), *available at http://www.justice.gov/opa/pr/2009/June/09-ag-564.html.*
41. *Lost in Detention*, PBS Frontline (October 18, 2011), *available at http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/map-the-u-s-immigration-detention-boom/.*
42. US Immigration and Customs Enforcement (ICE), *Fact Sheet: Detention Management* (Nov. 2011), *available at http://www.ice.gov/news/library/factsheets/detention-mgmt.htm.*
43. *Id.* According to ICE, about 3% of detainees are housed in Federal Bureau of Prisons (BOP) facilities.
44. Transactional Records Access Clearinghouse (TRAC), *ICE Targets Fewer Criminals in Deportation Proceedings*, *available at http://trac.syr.edu/immigration/reports/268/.*

i. Regulations and Policies

In theory, conditions in immigration detention facilities are governed by three sets of standards — the 2000 National Detention Standards (NDS),[45] and the 2008[46] and 2011[47] Performance-Based National Detention Standards (PBNDS). Most facilities continue to operate under the 2000 and 2008 standards, though ICE has been moving to require that all facilities housing immigration detainees comply with the 2011 standards. While none of these standards explicitly permit or prohibit the use of solitary confinement, they all contain provisions that allow for different types of segregation.

All sets of PBNDS contain provisions for "Special Management Units" (SMUs) that distinguish between administrative and disciplinary segregation. This analysis looks only at the 2011 PBNDS, with the expectation that ICE will continue to implement these standards across all facilities over the next year.

According to the 2011 PBNDS, administrative segregation may be used as protective custody or for "[a]ny detainee who represents an immediate, significant threat to safety, security or good order."[48] In contrast, disciplinary segregation may be used "only after a finding by a disciplinary hearing panel that the detainee is guilty of a prohibited act or rule violation classified at a 'greatest,' 'high' or 'high-moderate' level."[49] Placement in administrative segregation, which requires only supervisory approval (as opposed to a full hearing), may be indefinite. Placement in disciplinary segregation, which requires that the detainee be afforded a disciplinary hearing, is limited to a maximum of 30 days per violation, though it may be extended indefinitely with the approval of facility staff. The 2011 PBNDS prohibit the placement of detainees with serious mental illnesses in segregation "on the basis of such mental illness."[50]

The 2011 standards contain a number of provisions to govern the conditions within SMUs. Many of these conditions are treated as "privileges" when they are discussed in the segregation context, and provisions exist for the denial of these privileges. For example, detainees in both administrative and disciplinary segregation must be offered at least one hour of recreation outside their cells every day, though those in disciplinary segregation are entitled to recreation only five days a week.[51] However, the recreation privilege may be suspended if it "may unreasonably endanger safety or security." [52] In either case, recreation may be "solitary," and there is no requirement that recreation be outdoors.

All three sets of standards are modeled on rules that govern correctional facilities. Specifically, they are derived from the American Correctional Association (ACA) pre-trial detention standards for jails and prisons. The standards are not tailored to fit the very different objectives of immigration detention and largely fail to take into account the profound differences between immigration detainees and criminal inmates.

Perhaps more important, many facilities that house immigration detainees simply ignore the PBNDS in favor of their own standards. This is especially true in facilities that house immigration detainees alongside criminal inmates – in other words, prisons and jails that rent excess bed space to ICE. These state and local standards are often much stricter than the PBNDS, and make no distinction between criminal inmates and immigration detainees.

For example, ICE detention standards state that people should be placed in disciplinary segregation only after they have had a disciplinary hearing and a review panel has determined that they have violated a

45. US Immigration and Customs Enforcement, *2000 Detention Operations Manual* [hereinafter *2000 NDS*], *available at* http://www.ice.gov/detention-standards/2000/.
46. US Immigration and Customs Enforcement, *2008 Performance-Based National Detention Standards* [hereinafter *2008 PBNDS*], *available at* http://www.ice.gov/detention-standards/2008/.
47. US Immigration and Customs Enforcement, *2011 Performance-Based National Detention Standards* [hereinafter *2011 PBNDS*], *available at* http://www.ice.gov/detention-standards/2011/.
48. *Id*. at 149.
49. *Id*.
50. *Id*. at 150.
51. *Id*. at 161-62.
52. *Id*.

facility rule. Many county jail policies, however, provide that only serious infractions, such as murder, arson, or escape from jail, require a hearing. People who commit "minor" violations can be placed in solitary confinement at the discretion of jail guards, without any hearing. The list of minor violations and sanctions varies considerably from facility to facility.

In reality, guards have almost unfettered power over immigrant-detainees, who have virtually no legal recourse for unfair custody decisions. Investigators from PHR and NIJC found instances in which jails justified the use of solitary confinement to discriminate against non-English-speaking immigrants and to punish immigration detainees for violations as trivial as dressing improperly or putting their feet on tables. Under some current policies, placement in 23-hour lockdown could result from such infractions as failure to speak English when able to; watching Spanish channels on TV; sitting on counters, tables, or railings; leaning back on chairs; horseplay; pulling pranks; or singing loudly.[53]

Ultimately, guards can determine that someone is a "threat to the security, safety, or orderly operation of the facility" and place a detainee in administrative segregation, which can be indefinite.[54]

ii. Solitary Confinement in Practice

Though immigration detention serves a fundamentally different purpose from criminal incarceration, jails often place overly harsh restrictions on immigration detainees who are segregated from the general population. These restrictions can include denial of recreation opportunities, access to lawyers and legal materials, and family visitation — all in direct contravention of the PBNDS.

Recreation practices highlight the sedentary and isolated reality of detainees' day-to-day lives in solitary confinement. Detainees in disciplinary segregation at Cobb County Jail in Georgia, for example, are only allowed to exercise outside once every 30 days, and even then they may be placed in "double restraints," with cuffs on their wrists and ankles. At the Fairfax County Jail in Virginia, recreation is automatically suspended during the entire disciplinary segregation period.[55] At the Hampton Roads Regional Jail, also in Virginia, detainees in segregation units spend their recreation periods alone in a large room, one hour a day, five days a week. This indoor space complies with ICE detention standards, which do not require outdoor recreation. While detainees in the segregation unit at York County Prison in Pennsylvania are allowed outdoor recreation, one detainee reported that "[t]hey put you in a cage like an animal. It's smaller than your cell. There's nothing to do but walk up and down."

Researchers from PHR and NIJC also found that several jails deny detainees in segregation any access to legal information and counsel. At the Seneca County Jail in Ohio, guards may deny detainees who are "uncooperative" access to the law library until "their behavior and attitude warrants resumed access."[56] Detainees in segregation at York County Prison reported that they were prohibited from speaking with their attorneys during their first 30 days in segregation. Similarly, a Massachusetts attorney reported that detainees in solitary confinement at the Bristol County House of Corrections were not allowed to use a phone – even to call their lawyers. It is worth noting that all three sets of detention standards specifically state that detainees in segregated housing may not be denied legal visits or access to legal materials.[57]

53. *Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention,* Nat'l Immigrant Justice Ctr. & Physicians for Human Rights (Sept. 2012), *available at* http://physiciansforhumanrights.org/library/reports/invisible-in-isolation.html.
54. Neither ICE detention standards nor county jail policies place a time limit on administrative segregation. Though policies do not explicitly state that this can lead to indefinite solitary confinement, it often does.
55. Fairfax County Sherriff's Office Standard Operating Procedure, Subject: Administration of Discipline, Attachment 1, Minimum and Maximum Penalties for Conviction of Violations of the Code of Inmate Offenses: Major Offenses – Class I – Hearing Officer, No. 5 (May 2006) (on file with author). See also, Fairfax County Sherriff's Office Standard Operating Procedure, Subject: Administration of Discipline, Attachment 2, Minimum and Maximum Penalties for Conviction of Violations of the Code of Inmate Offenses: Minor Offenses – Class – II – Hearing Officer, No. 5 (May 2006) (on file with author). For the definitions of major and minor offenses, see, Fairfax County Sherriff's Office Standard Operating Procedure, Subject: Code of Inmate Offenses (Jan. 2007) (on file with author).
56. Seneca County Jail Policy and Procedure Manual: Disciplinary Segregation, No. 13(e) (Oct. 30, 2009) (on file with author).
57. *See* 2011 PBNDS at 168; 2008 PBNDS, "Special Management Unit," at 7; 2000 NDS, "Special Management Unit (Disciplinary Segregation)," at 5-6; 2000 NDS, "Special Management Unit (Administrative Segregation)," at 8-9.

Immigration detainees in segregation and solitary confinement may also be subjected to excessive force, harassment, or abuse by corrections officers. The investigation conducted by PHR and NIJC revealed the following incidents:

- In the North Georgia Detention Center, one transgender detainee told researchers that she was grabbed by a guard while in the bathroom. The guard attempted to handcuff her while her pants were still around her ankles, and the detainee urinated on herself and the floor. She asked to clean herself up but the guard refused and told her to keep quiet about what happened.
- In the Butler County Jail in Ohio, a detainee with suspected mental health problems was forced to the ground after guards asked him to stop yelling in his cell. He suffered a "knee strike" from one deputy and "three closed-hand strikes aiming for his upper body mass … [ultimately] landing on his face."[58] A report from this incident indicates that the officers used "defensive tactics."
- A detainee formerly held at the Theo Lacy Facility in California asked a corrections officer why he had reduced the recreation time for LGBT detainees from two hours to 45 minutes. The officer responded: "Because you need to learn not to be faggots" and "it's not a pretty picture to see you [in the dayroom]."[59]
- A transgender detainee previously held in solitary confinement at the Florence Service Processing Center in Arizona told investigators that the guards' insistence on calling her "Mister" or "Sir" was particularly traumatic.[60]

a. health care

The harmful mental and physical health consequences of even a relatively short time in solitary confinement have been well-documented and are discussed in detail below. These consequences may be exacerbated for immigration detainees, many of whom are suffering from preexisting psychological trauma. Further compounding the problem is the paucity of mental health care in detention facilities. PHR and NIJC's investigation and research revealed consistent reports of inadequate mental health care in solitary confinement units:

- A detainee at the North Georgia Detention Center reported that the facility had no ability to care for people with mental illnesses, and instead placed them in segregation;[61]
- At the Irwin County Detention Center in Georgia, detainees with mental illnesses were afraid to discuss their symptoms because they feared being put in segregation;[62]
- One detainee in the Mira Loma Detention Center in California reported that, while in segregation for arguing with a guard, he was placed on "mental observation" after another detainee falsely claimed that he was suicidal. According to the detainee, he was never evaluated by mental health professionals to determine whether he was truly suicidal.[63]

In the 2011 PBNDS, ICE took steps to address gaps in mental health care, recognizing that isolated detainees require daily face-to-face medical assessments.[64] The standards also state that "[d]etainees with serious mental illness may not be automatically placed in an SMU [Special Management Unit] on the basis of such mental illness. Every effort shall be made to place detainees with serious mental illness in a setting in or outside of the facility in which appropriate treatment can be provided, rather than an SMU, if separation from the general population is necessary."[65]

58. Butler County Sherriff's Office, Jail Incident Reports (1/14/2012) (on file with author). *See also,* Columbus ICE Notification on Detainee (1/14/2012) (on file with author).
59. Heartland Alliance's National Immigrant Justice Center, Submission to the Department of Homeland Security's (DHS's) Office of Civil Rights and Civil Liberties Regarding Mistreatment and Abuse of Sexual Minorities in DHS Custody (Apr. 3, 2011).
60. *Id.*
61. American Civil Liberties Union of Georgia, *Prisoners of Profit: Immigration and Detention in Georgia*, 80 (May 2012), *available at* http://www.acluga.org/files/2713/3788/2900/Prisoners_of_Profit.pdf.
62. *Id.* at 90.
63. Mira Loma Detention Center, Sample Questionnaire for Individuals in ICE Custody Held in Segregation, p. 8 (June 27, 2012) (on file with author).
64. 2011 PBNDS at 158.
65. 2011 PBNDS at 149.

Yet even the 2011 PBNDS do not go far enough to protect immigration detainees from the harms associated with segregation and solitary confinement. The 2011 PBNDS do not require mental health assessments to be conducted by licensed physicians or psychiatrists, so many facilities assign nurses or medical assistant or technicians to provide mental health care. Moreover, ICE standards do not require immigration detention facilities to have mental health staff available on-site, so many do not.[66] In many facilities, including the Houston Contract Detention Facility, staff transport detainees in need of mental health services to a nearby mental health facility. Afterward, the detainees are returned to the segregation unit.

Finally, the recommendation that medical personnel evaluate people before placing them in segregation is considered an "optimal" level of compliance. However, there does not appear to be any incentive for detention facilities to comply with optimal standards of treatment.

B. US National Security Detention

In response to the terrorist attacks of September 11, 2001, and in the course of its ongoing conflict with Al-Qaeda, the Taliban, and associated forces, the United States has detained several thousand people at facilities in Afghanistan, Guantánamo Bay, and secret CIA detention sites. According to US officials, these "national security" detentions are pursuant to the laws of war.[67] Consequently, there is no expectation that these detainees will ever be charged or subject to trial except in the case where a detainee is suspected of a war crime. Rather, national security detainees (or "law of war" detainees) are held in custody until the "end of hostilities," which, in the case of the "war against terrorism," may never occur. Thus, the detainees at Guantánamo, the Bagram Theater Internment Facility in Afghanistan (also called Parwan Detention Facility, or, simply, Bagram), and other detention sites in Afghanistan and elsewhere are essentially held in a state of indefinite detention.

Like immigration detainees, detainees held pursuant to the laws of war are not being detained as punishment for having committed a crime or terrorist act. Rather, these detainees are being held ostensibly to prevent their return to the "battlefield", or, in other words, to prevent them from rejoining Al-Qaeda or other terrorist organizations.[68]

In the early days of US military operations in Afghanistan, and as the first detainees were arriving at Guantánamo, President Bush announced that, despite the detainees' status as unlawful combatants, they would be treated humanely and in accordance with the principles of the Geneva Conventions.[69] Later, the Detainee Treatment Act of 2005 established that detainees in the custody of any US department or agency would not be subject to cruel, inhuman, or degrading treatment or punishment.[70] In 2009, President Obama issued Executive Order 13491, reaffirming that Common Article 3 of the Geneva Conventions applies as a minimum standard to all detainees in US custody.[71] Among other prohibitions and protections, Common Article 3 prohibits the use of cruel, humiliating, and degrading treatment, torture, and outrages

66. 2011 PBNDS at 236.
67. *See, for example,* National Defense Authorization Act for Fiscal Year 2012, Pub. L. 112-81, 125 Stat. 1298 (2011); Remarks of John O. Brennan, Assistant to the President for Homeland Security and Counterterrorism, *Strengthening our Security by Adhering to our Values and Laws*, Harvard Law School, (Sept. 16, 2011); *see also Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).
68. *See* The White House, Office of the Press Secretary, ***Remarks by the President on National Security*** (May 21, 2009), *available at http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-On-National-Security-5-21-09/*; *See also Hamdi v. Rumsfeld*, 542 U.S. 507, 519 (2004) ("Because detention to prevent a combatant's return to the battlefield is a fundamental incident of waging war"); Peter James Spielmann, ***US: 200 Teens Detained in Afghan War,*** (Dec. 8, 2012) (US report to the United Nations stating that detentions are to prevent combatants from returning to the battlefield), *available at http://news.yahoo.com/us-200-teens-detained-afghan-war-051713331.html.*
69. *See* President George W. Bush, Memorandum, ***Humane Treatment of Taliban and al Qaeda Detainees***, 5 (Feb. 7, 2002), *available at http://www.pegc.us/archive/White_House/bush_memo_20020207_ed.pdf.*
70. Detainee Treatment Act of 2005, Pub. L. No. 109-148, 119 Stat. 2739 (2005) (codified as amended in scattered sections of 10, 28 & 42 U.S.C.).
71. Executive Order 13491, Ensuring Lawful Interrogations (Jan. 22, 2009), *available at http://www.whitehouse.gov/the_press_office/EnsuringLawfulInterrogations/.*

upon personal dignity.[72] Importantly, Executive Order 13491 also limits all interrogations and treatment relating to interrogations by all US officials, including CIA and FBI operatives, in any armed conflict to the interrogation techniques outlined in the US Army Field Manual 2-22.3, which addresses intelligence collection operations by the military.[73]

Despite multiple public commitments by US officials over the years to treat detainees humanely and prohibit cruel and degrading treatment, clear evidence of torture and systematic abuse of detainees at Guantánamo, Bagram, and other detention sites has been made public through FOIA requests, Senate investigations, civil and criminal detainee litigation, and media investigations. The information from these sources, as well as from other publicly available documents, demonstrates that solitary confinement was used in all US detention facilities and that, in many cases, it was used excessively and abusively. In some cases, people spent months or years in isolation. Solitary confinement, along with other harsh conditions of confinement, was integral to the "enhanced interrogation" program. In fact, as discussed in more detail below, solitary confinement (called "isolation" or "separation") is an acceptable interrogation "technique" in national security detention.

The use of "segregation" for in-processing, administrative, and disciplinary purposes is also permitted under applicable DoD standard operating procedures ("SOPs") and directives. Despite the seemingly clinical term, "segregation" can effectively be solitary confinement at places like Guantánamo and other detention sites due to the physical structure of the camps and cells, the general restrictions on recreation and reading and religious materials, and the general isolation from the outside world, including the detainees' own families. Such realities will be addressed in detail below.

The following sections look at the regulations and the practices surrounding the use of solitary confinement in two of the most prominent national security detention facilities: Camp Delta at Guantánamo Bay, Cuba (Guantánamo), and the Bagram Theater Internment Facility in Afghanistan (Bagram).[74] The first section, on solitary confinement as an interrogation technique, will be followed by sections addressing Guantánamo and Bagram regulations, concluding with a look at solitary confinement in practice.

i. Solitary Confinement as an Interrogation Technique

After 9/11, the "enhanced interrogation" program used on people captured in Afghanistan and other locations in the "war on terror" was created and implemented for the specific purpose of "breaking" detainees, that is, disorienting them so profoundly that they became dependent on their interrogators.[75] Documents indicate that isolation as an interrogation technique was approved by both the Central Intelligence Agency (CIA) and the Department of Defense (DoD) and was incorporated into DoD regulations that governed detainee operations at Guantánamo and Bagram. There is also evidence that the CIA used solitary confinement as an interrogation technique, but full documentation of the CIA interrogation program is currently classified.[76]

72. Convention Relative to the Treatment of Prisoners of War, including Annexes I–V. August 12, 1949. 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter Third Geneva Convention].
73. Executive Order 13491, supra note 71 at Sec. 3(b); FM 2-22.3 (FM 34-52), Headquarters, Department of the Army, Washington, D.C. (Sept. 6, 2006).
74. This report primarily addresses regulations governing Guantanamo and Bagram facilities because there is very little publicly available information regarding other US-run detention sites, with the exception of Camp Bucca in Iraq. In November 2012, Wikileaks posted previously undisclosed DoD policies and regulations for US-run Camp Bucca in Iraq. This report, however, does not address Camp Bucca in part because early on in the Iraq conflict, the US determined that the Geneva Conventions applied and Iraqi soldiers held the status of prisoners of war (POWs) under the Conventions. It is unclear whether Iraqi (or other nationality) detainees currently in US custody in Iraq are classified as POWs, "unlawful enemy combatants" or "unprivileged enemy belligerents." It should be noted that it's possible that DoD regulations, if any, governing solitary confinement are different for different detention sites.
75. Physicians for Human Rights, *Break Them Down*, 17 (May 2005), *available at* http://physiciansforhumanrights.org/library/reports/us-torture-break-them-down-2005.html.
76. Diane Feinstein, *Feinstein Statement on CIA Detention, Interrogation Report* (Dec. 13, 2012), *available at* http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=46c0b685-a392-4400-a9a3-5e058d29e635.

In October 2002, believing that the interrogation techniques in Army Field Manual (FM) 34-52[77] "were ineffective against detainees," Major General Michael Dunlavey, commander of the intelligence task force at Guantánamo, requested the approval of additional techniques for use on Guantánamo detainees.[78] Secretary of Defense Donald Rumsfeld responded by authorizing the use of 16 additional techniques at Guantánamo, which included the use of isolation as well as stress positions and other "environmental manipulation."[79]

However, as a result of concerns, Secretary Rumsfeld rescinded the majority of the recently approved measures and directed that the more aggressive techniques, which included isolation, be used only with his approval.[80]

A few months later, in April 2003, Rumsfeld authorized the use of isolation as a technique, limiting it to "unlawful combatants at Guantánamo" and subject to "general safeguards."[81] While Secretary Rumsfeld noted that the use of isolation required detailed implementation instructions, such as the length of isolation, he did not mandate a time limit other than to suggest that 30 days is the "general" maximum duration for such a technique.[82] He further noted that some nations view the technique of isolation as inconsistent with Geneva Convention III but he maintained that "the provisions of Geneva are not applicable to the interrogation of unlawful combatants."[83] Indeed, while Rumsfeld concluded that the detainees should be treated "consistent with the principles of the Geneva Conventions," he made it clear that the treatment need only comport with such principles "to the extent appropriate and consistent with military necessity.[84]

Around the same time, the Central Intelligence Agency (CIA) issued guidelines for interrogation for use on detainees captured in the "war on terror," identifying isolation as a permissible "Standard Technique."[85] According to the guidelines, "Standard Techniques" were characterized as those that "do not incorporate physical or substantial psychological pressure" and included, but were not limited to, isolation, sleep deprivation, and other manners of treatment, such as being subjected to loud music.[86] The CIA guidelines did not impose any limitation on the length of isolation, even though limitations were specifically stated with respect to other techniques. Nor did the guidelines address whether the Standard Techniques could be used in combination or back to back with brief reprieves between applications of the

77. At that time, the Army Field Manual, FM 34-52, did not list isolation as an interrogation technique.
78. *Investigation into FBI Allegations of Detainee Abuse at Guantanamo Bay, Cuba Detention Facility*, 4 (Apr. 1, 2005), amended June 9, 2005, [hereinafter *Schmidt-Furlow Report*], *available at* http://www.defense.gov/news/Jul2005/d20050714report.pdf; The Independent Panel to Review Department of Defense Detention Operations, The Honorable James R. Schlesinger, Chairman, *Final Report of the Independent Panel to Review DoD Detention Operations,* 7 (Aug. 2004) [hereinafter *Schlesinger Report*] (citing US Army Field Manual on Intelligence Interrogation, FM 34-52, Headquarters, Department of the Army, Washington, D.C., (Sept. 28, 1992)).
79. *Schlesinger Report* at 7 and Appendix E.
80. *Id*. at 7.
81. "Memorandum for the Commander, US Southern Command; Subject: Counter-Resistance Techniques in the War on Terrorism" (Apr. 16, 2003), from Donald Rumsfeld to Commander US Southern Command, *available at* http://www1.umn.edu/humanrts/OathBetrayed/Rumsfeld%204-16-03.pdf. General Safeguards included:
"(i) limited to use only at strategic interrogation facilities;
(ii) there is a good basis to believe that the detainee possesses critical intelligence;
(iii) the detainee Is medically and operationally evaluated as suitable (considering all techniques to be used in combination);
(iv) interrogators are specifically trained for the technique(s); (v) a specific interrogation plan (including reasonable safeguards, limits on duration, intervals between applications, termination criteria and the presence or availability of qualified medical personnel) has been developed;
(vi) there is appropriate supervision; and,
(vii) there is appropriate specified senior approval for use with any specific detainee (after considering the foregoing and receiving legal advice)." Id. at Tab B.
82. *Id*. at Tab A.
83. *Id*. (Noting isolation as an interrogation technique may be inconsistent with Articles 13, 14, 34 and 126 of Geneva Convention III).
84. *Id*. at 1.
85. CIA, *Guidelines on Interrogations Conducted Pursuant to the [redacted]* (Jan. 28, 2003), *available at* http://www.thetorturedatabase.org/files/foia_subsite/pdfs/DOJOLC001043.pdf.
86. *Id*. at ¶ 1. Other techniques included reduced caloric intake (as long as amount maintains the "general health" of the detainee), deprivation of reading material, use of loud music or white noise (at a level not to damage the detainee's hearing), and the use of diapers for limited periods.

same technique. Advance approval was required for the use of a Standard Technique but only "whenever feasible."[87] Moreover, the guidelines did not indicate who within the agency was authorized to provide advance approval for Standard Techniques.[88]

With respect to army regulations governing detainee operations at Guantánamo, the 2002 Camp Delta Standard Operating Procedures (SOPs), which were not issued until November 11, 2002 — 10 months after the first detainees were brought to Guantánamo — do not set forth any specific regulations addressing the use of isolation, separation, or solitary confinement as an interrogation technique. This does not suggest that isolation for interrogation purposes was not used when Guantánamo was first opened for detainee operations.

With respect to the use of isolation for interrogation purposes, the 2003 and 2004 Camp Delta SOPs are largely the same, other than a change in the name of the security unit where detainees could be housed for such purposes.[89] Based on available information, it appears that the 2004 Camp Delta SOPs are the current SOPs governing detainee operations at Guantánamo, and therefore, the following discussion of isolation as an interrogation technique relies on the 2004 Camp Delta (Guantánamo) SOPs.

At least since early 2003, upon arrival at Guantánamo, all detainees were subject to a "Behavior Management Plan," which lasted a minimum of 30 days. The purpose of the plan was to "enhance and exploit the disorientation and disorganization felt by a newly arrived detainee in the interrogation process" by "concentrat[ing] on isolating the detainee and fostering dependence of the detainee on his interrogator."[90] In the first two weeks, detainees were placed in isolation in a "Special Housing Unit (SHU)," denied contact with International Committee for the Red Cross (ICRC) representatives or a chaplain, denied books, mail, and prayer beads and cap, and given few basic comfort items.[91] The second two-week period, continued the process of "isolating the detainee" by keeping him in a SHU at the interrogator's discretion and giving the interrogator complete control over the detainee's contact with other human beings.[92] Thus, although the regulations suggest that initial isolation may last only 30 days, the regulations also give the interrogator control over when to take the detainee out of isolation, with no indication that approval to extend the initial segregation beyond 30 days is required.

Under the 2004 Camp Delta SOPs, detainees can be placed in segregation for interrogation purposes at any time, in addition to or after the initial segregation period.[93] Such detainees are classified as "Level 5" and are housed in a "segregation block for Intel purposes."[94] The Joint Interrogation Group (JIG) determines a detainee's privileges, rewards, or loss of the same, as well as the type of cell in which a Level 5 detainee on a segregation block is placed.[95] The initial period of time for which a detainee can be placed in segregation for interrogation purposes without ICRC access—visual or restricted—is 30 days.[96] However, according to the SOPs, "military necessity" could justify an extension after the first 30 days.[97] As described below, many detainees at Guantánamo were in isolation for periods appreciably longer than 30 days.

87. *Id.* at ¶ 4.
88. In contrast, the guidelines specify that prior approval in writing from "the Director of the CIA, DCI Counterterrorist Center, with the concurrence of the Chief, CTC Legal Group, is required for the use of any Enhanced Techniques," which are techniques that *do* incorporate physical or psychological pressure beyond Standard Techniques and included waterboarding. *Id.* at ¶ 1.
89. In 2004, the name of high security units changed from Maximum Security Units (MSUs) to Special Housing Units (SHUs). *Compare* Camp Delta Standard Operating Procedures, 2-2, 4-20, Headquarters, Joint Task Force Guantánamo Bay, Cuba (Mar. 28, 2003), *to* Camp Delta Standard Operating Procedures, 4-20, Headquarters, Joint Task Force-Guantanamo (JTF-GTMO), Guantánamo Bay, Cuba (Mar. 1, 2004) [hereinafter *2004 Camp Delta SOPs].*
90. *2004 Camp Delta SOPs,* at 4-20; *see also id.* at 9-1.
91. *Id.* at 4-20.
92. *Id*.
93. *2004 Camp Delta SOPs,* at 8-7, 9-2.
94. *Id.*
95. *Id.* at 8-9.
96. *Id*. at 9-2.
97. *Id.*

Less is known of the regulations governing interrogation and the use of solitary confinement for such purpose at Bagram, in part because key documents are not publicly available.[98] Based on available documents, some of which are redacted, Bagram detainees can be subject to "separation" for the purpose of intelligence gathering.[99] The Bagram Standard Operating Procedures (Bagram SOPs) state that separation is a "restricted interrogation technique" and "serves a distinctly different purpose from segregation for in-processing, administrative or disciplinary purposes."[100] "Separation allows for the removal of detainees from the general population in order to enhance intelligence gathering efforts."[101]

On January 22, 2009, just two days after his inauguration, President Obama issued Executive Order 13491, which limits interrogation-related treatment of any person in the control of any US official, including the CIA, to techniques authorized and listed in Army Field Manual 2-22.3 ("AFM").[102] The order also revoked all executive directives, orders, and regulations that were inconsistent with the order, including those issued by the CIA.[103]

June 30, 2004 A detainee, his prosthetic leg on the floor below him, sleeps inside his cell at Camp Five, the maximum-security detention and interrogation facility at Guantanamo. Andres Leighton / AP

Though Executive Order 13491 appears to suggest a move away from the use of "enhanced interrogation techniques," in fact, the AFM contains an appendix, separate from general provisions that address interrogation techniques, which allows isolation to be used for interrogation purposes.[104] Appendix M of the AFM permits the use of "separation" as a "restricted Interrogation technique" with the purpose of gaining "actionable intelligence in the war on terrorism."[105] Under Appendix M, a detainee can be subject to physical separation for up to 30 days, with extensions permitted.[106] Moreover, Appendix M suggests that a detainee could be subject to several

98. *See* Combined/Joint Task Force (CJTF)-101 Detainee Operations Standard Operating Policy and Procedures (SOP), Department of Defense, Headquarters, Combined/joint Task Force (CJTF)-101 Task Force Guardian, Bagram Airfield, Afghanistan, May 24, 2008 (listing Annex A as containing "Interrogation Policy and Procedures"). Annex A (Interrogation Policy and Procedures) does not appear to be publicly available. "Appendix 1 (General Safeguards) to Annex A (Intelligence Interrogation Policy and Procedures) to the CJTF-101 Detainee Operations Standard Operating Procedure (SOP) is available but is heavily redacted.
99. Annex D (Segregation Policy and Procedures) to the JTF 435 Detainee Operations Standard Operating Procedure (SOP), [hereinafter *Bagram SOPs*], *available at* http://www.aclu.org/files/pdfs/natsec/bagram20100514/08bagramcentcom_140-144.pdf.
100. *Id.* at para 1.
101. *Id*.
102. Executive Order 13491, *supra* note 71.
103. *Id.*
104. Army Field Manual 2-22.3 (FM 34-56), Headquarters, Department of the Army (Sept. 6, 2006) [hereinafter AFM 2-22.3 (FM 34-56)], *available at* http://www.fas.org/irp/doddir/army/fm2-22-3.pdf.
105. *Id.* at Appendix M. *See also* Department of Defense Directive, Number 3115.09, October 11, 2012 (reaffirming the use of "separation" as a restricted interrogation technique in accordance with Appendix M of the AFM), *available at* http://www.dtic.mil/whs/directives/corres/pdf/311509p.pdf.
106. AFM 2-22.3 (FM 34-56), at Appendix M29.

30-day periods as long as there is a "break" between periods. The regulations neither suggest nor mandate an appropriate length of time for such a break.[107] It should be recognized that Executive Order 13491 does not necessarily revoke the presiding SOPs at Guantánamo and Bagram with respect to the use of separation as an interrogation technique. Notably, according to Appendix M, "separation" as an interrogation technique is not permitted for use with people who are considered enemy prisoners of war and covered under Geneva Conventions III.[108]

The use of isolation as an interrogation technique appears to have permeated US agencies across the board. The ACLU recently disclosed that, despite an FBI policy prohibiting coercive techniques, a 2011 FBI primer on overseas interrogation encourages FBI agents to request that detainees in foreign custody be put in isolation for interrogation purposes.[109] Thus, the use of solitary confinement — whether it's referred to as segregation, separation, or isolation — as an interrogation technique is wholly permissible under current US regulations. As discussed below, these regulations, together with others allowing for administrative and disciplinary segregation, has resulted in treatment that was abusive and, in many cases, rose to the level of torture.

ii. Regulations and Policies

In addition to solitary confinement's use as an interrogation technique, it has also been used on "unlawful enemy combatants" or "unprivileged enemy belligerents" in detention sites for "administrative" or "disciplinary" purposes. It should be recognized that these terms — administrative segregation and disciplinary segregation — may not carry the same meaning as when used in US prison settings, or reflect the same or even similar totality of conditions. Additionally, as previously mentioned, Guantánamo and Bagram each has its own standard operating procedures and each uses the terms somewhat differently, as set forth below.

a. Guantánamo

As detailed above, upon arrival at Guantánamo, all detainees were subject to a "Behavior Management Plan," for which the purpose was to enhance and exploit the disorientation and disorganization felt by a newly arrived detainee.[110] In addition to this initial segregation period of 30 days, which could be extended at the request of an interrogator,[111] the governing SOPs allow for administrative and disciplinary segregation as well. Detainees may be housed in administrative segregation "due to behavior . . . either for their own protection or for security or safety reasons."[112] Detainees in administrative segregation could be housed in segregation for up to 90 days, with their status reviewed every 30 days.[113] A detainee could be placed in disciplinary segregation for up to 15 days, for, among other conduct, "tampering with" his restraints or spitting at another person, or for 25 days for throwing urine or feces, with the ability to extend it for another 30 days if the detainee commits any offense while in segregation.[114]

107. *Id.* at M-30.
108. *Id.* at INTRODUCTION.
109. FBI Counterterrorism Division, *Cross Cultural, Rapport-Based Interrogation (Version 5),* 7-8 (Feb. 23, 2011), obtained through FOIA litigation initiated by the ACLU of Northern California, the Asian Law Caucus and the San Francisco Bay Guardian, *available at* http://www.aclu.org/files/fbimappingfoia/20120727/ACLURM036782.pdf. *See also* Letter from ACLU to FBI Director Robert Mueller, noting "The primer also repeatedly cites and encourages FBI interrogators to read the CIA's 1963 KUBARK manual, a manual long disavowed and disparaged for its promotion of severe prisoner abuse, including through the use of isolation, which the KUBARK manual itself explicitly recognizes is a "coercive technique" with profound psychological effects, such as hallucinations and delusions," *available at* http://www.aclu.org/files/assets/ltr_to_mueller_re_interrogation__primer_8_2_2012_0.pdf.
110. *2004 Camp Delta SOPs*, at ¶ 4-20, Behavior Management Plan. *See also id.* at ¶ 8-7 "Detainee Classification System and Chapter 9 Segregation Operations / Section I – In-Processing / 9-1. In-Processing And Documentation ("New detainees will be placed in segregation for processing for up to thirty days.").
111. *Id.* at Chapter 9 Segregation Unit Operations/Section II-Operations/9-4. Extension Request Processing, at 9.2. "If a detainee has discipline or is required to remain in a segregation cell for longer than 30 days, an extension letter will be submitted."
112. *Id.* at Chapter 9 Segregation Unit Operations / Section II – Operations / 9-3. Block Operations, at 9.1.
113. *Id.* at Chapter 8 Detainee Behavioral Management / 8-7. Detainee Classification System, at 8.3.
114. *Id.* Delta Block Behavior Management Matrix – Offense Category, at 30.8 and Detainee Movement and Discipline Matrix at B.7. Chapter 9 / Segregation Operations / Section I – In-Processing / 9-1. In-Processing And Documentation.

The SOPs describe cell blocks at Guantánamo as being "maximum security (individual) cells or medium security (twelve person rooms)," noting that "maximum-security blocks are designated as Segregation designed specifically for segregation and isolation of detainees for disciplinary or intelligence gathering purposes."[115]

The SOPs also contain provisions governing ICRC detainee visitation rules. While typically ICRC representatives are supposed to be given access to all detainees, the SOPs governing Guantánamo specifically limit ICRC contact for certain detainees, and in some cases permit no contact with ICRC representatives, further exacerbating their isolation.[116]

b. Bagram

Publicly available information about the Bagram Theater Internment Facility (also called the Parwan Detention Facility), particularly regulations and policies governing solitary confinement and information on the actual use of solitary confinement, is far from comprehensive. Unclassified documents indicate that the Bagram regulations permit several forms of isolation for various purposes, including for incoming detainees, and for administrative or disciplinary reasons, as well as for interrogation purposes.[117] With respect to practices, there is almost no unclassified or publicly available information detailing whether and to what extent detainees have been held in solitary confinement at Bagram.

Initial segregation of a Bagram detainee, also known as "in-processing segregation," is mandated to ensure the health and safety of the detainee population.[118] Though the regulations provide that such segregation "will not normally last more than 10 days," it is not limited to 10 days or any specific number of days and, moreover, extensions are permissible.[119]

In addition to initial segregation, a detainee may be subject to administrative segregation, which is permissible for a variety of reasons, many of which are expansive and vague categories themselves:

> *medical, protective custody, prevention of injury, aggressive behavior, psychological disorders, and for detainees "who otherwise cannot be controlled" or whose "emotional state, adjustment to confinement, or mental or physical characteristics warrants such action."*[120]

115. *Id.* Chapter 2 Command and Control / 2-2 Physical Plant, at 2.1.
116. "The following rules apply to ICRC personnel while they are at any part of Camp Delta.
a. ICRC personnel are allowed to talk to detainees on all blocks at the detainee's cell as long as there is no interference with the safeguard of U.S. Forces or detainees, except for detainees placed segregation.
b. ICRC personnel are allowed to talk to detainees who are placed in segregation for disciplinary reasons only with the exception of the following:
(1) Detainees placed in segregation by the JIG will be listed on the segregation log. Their level of allowable contact with ICRC will be listed on the segregation log.
(2) If the log is unavailable, the PL or SOG will contact the JIG during duty hours for clearance. They will also receive from the JIG what visitation level the ICRC has with the detainee.
(3) Detainees will not be allowed to leave the segregation block for ICRC visits.
c. ICRC representatives may visit other detainees on a block after visiting a specific detainee. They may visit any detainee on the block as long as that detainee's level of visitation permits the visit."
Camp Delta Standard Operating Procedures, Chapter 17 International Committee Of The Red Cross (ICRC) / 17-3. ICRC Visitation Rules, at p17.1.
In 2009, however, with the issuance of Executive Order 13491, all US departments and agencies are required to provide the ICRC with timely notice and access to any individual detained in armed conflict in the custody of the United States. Executive Order 13491, *supra* note 71.
117. Annex D (Segregation Policy and Procedures) to the JTF 435 Detainee Operations Standard Operating Procedure (SOP), ¶ 1. Purpose and Applicability, *available at* http://www.aclu.org/files/pdfs/natsec/bagram20100514/08bagramcentcom_140-144.pdf.
"This annex reiterates the policy and procedures under which detainees may be placed in single occupancy segregation cells within the Detention Facility in Parwan (DFIP). Segregation of detainees is used for in-process, administrative, or disciplinary purposes and serves a distinctly different purpose from the restricted interrogation technique separation. Separation allows for the removal of detainees from the general population in order to enhance intelligence gathering efforts." Annex D (Segregation Policy and Procedures) to the JTF 435 Detainee Operations Standard Operating Procedure (SOP), ¶ 1. Purpose and Applicability, *available at* http://www.aclu.org/files/pdfs/natsec/bagram20100514/08bagramcentcom_140-144.pdf
118. *Id.* at ¶ 3. Initial Segregation.
119. *Id.*
120. *Id.* at ¶ 4. Administrative Segregation.

Detainees 15 years old or younger are automatically placed in administrative segregation until they are released or reach the age of 16. Administrative segregation can last up to 30 days and thereafter requires high-level approval.[121] While the regulations state that such segregation beyond 30 days should occur only in extreme circumstances, they also state that administrative segregation ends when the reasons for segregation cease to exist and, thus, administrative segregation could last for months, if not years.[122]

Detainees in administrative segregation do not lose "normal privileges," including recreation, but enjoy them only "so far as the health, welfare, control, and physical facilities permit."[123] The regulations, however, do not state what "normal privileges" entail. While detainees in administrative segregation receive outdoor recreation afforded to medium-security detainees, exceptions are permitted. Moreover, the regulations do not state such exceptions, and furthermore, because so little has been disclosed about detainee operations at Bagram, what constitutes "recreation" for medium-security detainees is unknown.

Detainees can be placed in disciplinary segregation in accordance with an offenses "matrix," which, while specifying offenses and corresponding lengths of time, is either classified or is not publicly available.[124] The regulations, however, state that disciplinary segregation can last up to 20 days without the approval of the Joint Task Force commander, indicating that such segregation could last longer.[125]

At Bagram, all types of segregation are subject to "general safeguards," such as requiring a record of inspection of each detainee placed in segregation, but only for those in disciplinary segregation or detainees considered a suicide or escape risk.[126] Such records, however, while required by regulation, are either classified or are not publicly available. Detainees in administrative or disciplinary segregation can be interrogated but the governing procedures are also classified or not publicly available.[127] Lastly, the regulations also address visits by ICRC representatives, but whether such visits are restricted or there are certain categories of detainees that are not entitled to ICRC visits (like certain detainees in Guantánamo) is unknown, as the applicable appendix and annex is similarly classified or not publicly available.[128]

c. Due Process

Importantly, the SOPs for neither Guantánamo nor Bagram contain provisions enabling the detainee to challenge any aspect of his conditions of confinement, including determinations regarding alleged offenses committed while in detention or subsequent disciplinary measures, such as segregation, meted out in response. Even with respect to administrative detention, which allegedly may be for the detainee's own safety, due to the belief that he is suicidal, there are no publicly available documents that indicate who makes the initial decision (e.g., a psychologist, corpsman, or a commanding officer or other superior officer who has no mental health expertise or experience), or whether the detainee can challenge such decisions. Additionally, the Military Commissions Act of 2006 prevents detainees from bringing any claim in court relating to their detention, such as conditions of confinement.[129]

121. *Id.* at ¶ 4.b. Procedural Safeguards for the Implementation of Administrative Segregation.
122. *Id.* at ¶¶ 4.c and 4.b.(4). Procedural Safeguards for the Implementation of Administrative Segregation.
123. *Id.* at ¶ 4.
124. *Id.* at ¶ 5.
125. *Id.* at ¶ 5.a.(2)
126. *Id.* at ¶ 6.a.
127. *Id.* at ¶ 7.
128. Id. at ¶ 8.
129. Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600, sec. 7 (2006) (codified as amended in scattered sections of 10, 18 & 28 U.S.C.).

> "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*[130]

There is no dispute that official US policies and regulations permit the segregation, isolation, and/or separation of detainees at Guantánamo, Bagram, and other detention sites. This section addresses how these policies and regulations were, and continue to be, implemented — that is, how solitary confinement has been used in practice.

Like many other documents that reveal torture and abuse of detainees, information about the use of solitary confinement was initially kept secret and disclosure of the practice has been piecemeal. There are no publicly available or declassified government records that comprehensively track the use of segregation, isolation, or separation of detainees for any purpose in US custody, despite the fact that DoD regulations unambiguously require such detailed records for individuals in military custody.[131] For example, the 2004 Camp Delta SOPs require "welfare checks" of every detainee in segregation or SHU and further require that the welfare checks be documented on a specific form.[132] At least with respect to Guantánamo, such records should exist, yet they were not disclosed in response to a comprehensive FOIA request by ACLU. Therefore, it's uncertain whether they were simply not maintained or are considered classified or confidential.[133]

Regarding Bagram, it is unknown whether similar records documenting people in segregation or separation are required by regulation or even exist. Given the serious consequences of prolonged isolation, the failure to require documentation of detainees subject to such conditions is of significant concern. In any event, no comprehensive data for Guantánamo or Bagram is available to contradict the overwhelming evidence that detainees were subjected to prolonged segregation, isolation, and/or separation. Moreover, it is important to note that many people who were subjected to these abusive practices — whether for interrogation or other purposes — were eventually released without charge or trial, having committed no crimes or presented any danger.

Though detainee operations at Guantánamo and Bagram were kept extremely secret in the early years, by 2004, allegations of detainee abuse and corresponding internal investigations were beginning to become public. These early investigations resulted in several government reports, such as the Schmidt-Furlow Report and the Schlesinger Report, both of which make clear that prolonged isolation of detainees was occurring at Guantánamo and Bagram.[134] In one case at Guantánamo, the Schmidt-Furlow report concludes:

> *...the AR15-6 finds that the creative, aggressive, and persistent interrogation of the subject of the first Special Interrogation Plan resulted in the cumulative effect being degrading and abusive treatment. Particularly troubling is the combined impact of the* **160 days of segregation** *from other detainees, 48 of 54 consecutive days of 18-20-hour interrogations, and the creative application of authorized interrogation techniques.* **(Emphasis added).**[135]

130. John McCain, Faith of My Fathers: A Family Memoir, 206, William Morrows Publishing (2000).
131. *2004 Camp Delta SOPs,* at ¶. 5-3.
132. *Id*. at ¶. 5-3(e). "GTMO Form 509-1 Inspection Record of Prisoner in Segregation will be utilized to document welfare checks of detainees who are in a SHU cell. Conduct checks every 10 minutes and document on GTMO Form 509-1."
133. Numerous organizations, including the ACLU, have submitted FOIA requests for which records or logs of segregation should have been included. Thus, it can be surmised that such records were never kept or have been intentionally withheld as classified or confidential.
134. *Schmidt-Furlow Report,* at 18-20; *Schlesinger Report*, at 68.
135. *Schmidt-Furlow Report,* at 20.

Other government documents reveal similar findings for other detainees:

> *In September or October of 2002 FBI agents observed that a canine was used in an aggressive manner to intimidate detainee [redacted] and, in November 2002, FBI agents observed Detainee [redacted] after he had been subjected to* **intense isolation for over three months***. During that time period, [redacted] was* **totally isolated** *(with the exception of occasional interrogations) in a cell that was always flooded with light. By late November, the detainee was evidencing behavior consistent with extreme psychological trauma (talking to non-existent people, reporting hearing voices, crouching in a corner of the cell covered with a sheet for hours on end). It is unknown to the FBI whether such extended isolation was approved by appropriate DoD authorities.* **(Emphasis added).**[136]

The Schlesinger Report indicates that detainees were similarly subjected to prolonged isolation at Bagram: "Interrogation techniques intended only for Guantánamo came to be used in Afghanistan and Iraq. . . . In Afghanistan techniques included removal of clothing, isolating people for long periods of time, use of stress positions, exploiting fear of dogs, and sleep and light deprivation."[137] Other sources confirm that the use of prolonged isolation on detainees at Bagram was extremely abusive, if not torture.[138] The treatment of Omar al-Faruq, a detainee held at a CIA interrogation center at Bagram Air Base, was described by one Western government official as "not quite torture, but about as close as you can get."[139] This official also stated that, over a three-month period, Al-Faruq was fed very little while being subjected to sleep and light deprivation, prolonged isolation, and room temperatures ranging from 100 degrees to 10 degrees Fahrenheit.[140]

At least until President Obama ordered the shuttering of all secret detention facilities,[141] extreme isolation appears to have occurred at all detention sites. A 2006 written opinion by DoJ's Office of Legal Counsel (OLC) notes that the CIA was using solitary confinement and isolation for "security purposes" and that the CIA had taken measures to counteract any "potentially adverse effects of limited human interaction."[142] OLC went on to recognize that "[i]n some cases, *solitary confinement may continue for years* and may alter the detainee's ability to interact with others." *(Emphasis added)*.[143] The OLC memorandum also notes that at least 96 people had been in CIA overseas facilities.[144]

In early 2009, President Obama ordered an investigation into conditions of detention at Guantánamo, to ensure that all detainees there were being held in conformity with Common Article 3 of the Geneva Conventions.[145] After conducting an investigation, Admiral Patrick Walsh ultimately issued a report that found Guantánamo in compliance with Common Article 3.[146] The "Walsh Report" has been widely criticized for apparently failing to seriously consider concerns about ongoing conditions, including those

136. Letter from T.J. Harrington, Deputy Assistant Director, Counterterrorism Division, FBI, *available at http://www.aclu.org/files/projects/foiasearch/pdf/DOJFBI002181.pdf.*
137. *Schlesinger Report*, at 68. See also Human Rights First, *Detained and Denied in Afghanistan,* 8 (May 2011), *available at http://www.humanrightsfirst.org/wp-content/uploads/pdf/Detained-Denied-in-Afghanistan.pdf.*
138. *See generally*, Human Rights Watch, *'Enduring Freedom': Abuses by U.S. Forces in Afghanistan*, (March 2004), Vol. 16, No. 3(c).
139. Don Van Natta Jr., *THREATS AND RESPONSES: INTERROGATIONS; Questioning Terror Suspects In a Dark and Surreal World*, The New York Times, March 9, 2003.
140. *Id*. See also Hillary Andersen, *Red Cross confirms 'second jail' at Bagram, Afghanistan*, BBC News (May 11, 2010), *available at http://news.bbc.co.uk/2/hi/south_asia/8674179.stm* ("They told consistent stories of being held in isolation in cold cells where a light is on all day and night.").
141. Executive Order 13491, *supra* note 71 at Sec. 4(a). Of course, it is unknown whether all secret CIA detention facilities have shut down or whether new such facilities have opened in recent years.
142. US Department of Justice, *Memorandum for John A. Rizzo, Acting General Counsel, Central Intelligence Agency from Office of Legal Counsel*, 5, 13-18 (Aug. 31, 2006), *available at http://www.aclu.org/torturefoia/released/082409/olc/08312006%20Letter%20to%20Rizzo%20from%20OLC.pdf.*
143. *Id*. at 17.
144. *Id*. at 1.
145. Executive Order 13492, *Review and Disposition of Individuals Detained at Guantanamo Naval Bay Base and Closure of Detention Facilities*, Sec. 6 (Jan. 22, 2009), *available at http://www.gpo.gov/fdsys/pkg/FR-2009-01-27/pdf/E9-1893.pdf.*
146. *Review of Department Compliance with President's Executive Order on detainee conditions of confinement*, (Feb. 23, 2009) [hereinafter *Walsh Report*], *available at http://www.defense.gov/pubs/pdfs/REVIEW_OF_DEPARTMENT_COMPLIANCE_WITH_PRESIDENTS_EXECUTIVE_ORDER_ON_DETAINEE_CONDITIONS_OF_CONFINEMENTa.pdf.*

relating to solitary confinement and isolation.[147] Moreover, in finding that conditions at Guantánamo were not violating Article 3's prohibition on cruel, inhuman, degrading, and humiliating treatment, the Walsh Report failed to take into account the cumulative effect of such conditions, both the aggregate number of different harsh conditions and the fact that detainees had been subjected to them for many years. Additionally, the report appeared to wholly ignore authoritative medical opinion and international consensus on the psychological and physical consequences of such conditions, specifically isolation. These consequences will be addressed in detail below.

Despite evidence to the contrary, the Walsh Report specifically found that detainees at Guantánamo "are never placed in solitary confinement or isolation" and that the detention cells, except Camp 7, "permit easy communication and interaction with other detainees in adjoining cells."[148] First, such a conclusion simply ignores the physical reality of the camps and cells, particularly as configured in the first decade of the prison's existence. As a starting point, Camp 5 was initially modeled after maximum security prisons in the US and Camp 7 was modeled after "supermax" prisons.[149] While Camp 6 can be configured to minimum, medium, or maximum security, it was used as a maximum-security prison for several years after it first opened, following three suicides and a reported attack on guards in Camp 4.[150]

Notwithstanding their potential for common space, Camps 5, 6, and 7 are all made up of single-occupancy cell units and, at least for the first 10 years of their imprisonment, detainees were intentionally subjected to very isolated living conditions. Detainees in Camps 5 and 6 were largely confined to their individual cells, which are approximately 12 feet by 8 or 7 feet, respectively, with concrete walls. While Camp 5 cells have a small opaque slit for a window, letting in filtered light, Camp 6 cells have no windows facing outside.[151] The cell doors are made of solid steel. Meals, all of which were eaten alone, came through a small slot in the door. While in their cells, the men cannot talk to one another without great difficulty. They must shout through concrete walls to be heard, and doing so exposes them to disciplinary measures that could result in the imposition of a 24-hour lockdown in their cells and loss of privileges, which might include items such as toothpaste, soap, and blankets.[152]

In the early years at Guantánamo, recreation time for detainees was minimal — in some cases less than an hour a day, and in extreme cases only a few times a week.[153] In recent years, detainees have not been allowed more than two or four hours of recreation a day but in the past, such recreation was largely done alone, often at night, in cage-like conditions.[154] Under such conditions, detainees rarely had physical contact with other human beings or opportunities to exercise their minds or bodies, and in some extreme cases, they rarely saw sunlight.

Recently, the US Government Accountability Office (GAO) issued a report—one of the first reports by a US agency outside of the Department of Defense — regarding current conditions of confinement for detainees at Guantánamo.[155] The GAO report confirms that segregation continues to exist at Guantánamo, with

147. *See, e.g.*, Center for Constitutional Rights, press release, *CCR Releases Independent Report on Current Conditions at Guantanamo, Calls for Closure of Camps 5, 6, and Echo* (Feb. 23, 2009), *available at* http://ccrjustice.org/newsroom/press-releases/ccr-releases-independent-report-current-conditions-guant%C3%A1namo,-calls-closure; Human Rights First, *Rights Group Re-issues Call for Independent Monitoring of Detention Conditions at Guantanamo* (Feb. 24, 2009), *available at* http://www.humanrightsfirst.org/2009/02/24/Rights-Group-Re-issues-Call-for-Independent-Monitoring-of-Detention-Conditions-at-Guantanamo/.
148. *Walsh Report* at 45. (Emphasis added).
149. Camp 5: Joint Task Force Guantanamo, *Overview*, 3 (Aug. 28, 2012), *available at* http://www.jtfgtmo.southcom.mil/xWEBSITE/fact_sheets/GTMO%20Overview.pdf; Camp 7: DOD. DoD News Briefing With Adm. Walsh From The Pentagon (Feb. 23, 2009), Transcript, *available at* http://www.defense.gov/transcripts/transcript.aspx?transcriptid=4359.
150. Human Rights Watch, *Locked Up Alone, Detention Conditions and Mental Health at Guantanamo*, 11 (June 2008), [hereinafter *Locked Up Alone*], *available at* http://www.hrw.org/sites/default/files/reports/us0608_1.pdf.
151. *Locked Up Alone*, at 9-13.
152. Center for Constitutional Rights, *Current Conditions of Confinement at Guantanamo: Still in Violation of the Law*, 4-5 (Feb. 23, 2009), [hereinafter *Current Conditions of Confinement*], *available at* http://ccrjustice.org/files/CCR_Report_Conditions_At_Guantanamo.pdf.
153. Cullen Murphy, Todd S. Purdum, David Rose, and Phillippe Sands. *Guantanamo: An Oral History*, Vanity Fair, January 11, 2012, Sami Al-Hajj at 3, *available at* http://www.vanityfair.com/politics/2012/01/guantanamo-bay-oral-history-201201.
154. *Current Conditions of Confinement* at 4-5; *See also Locked Up Alone* at 10-11.
155. US Gov't Accountability Office, GAO-13-31, *Report to the Chairman, Senate Committee on Intelligence, US Senate, Guantanamo Bay*

as many as 20-50 detainees in segregated conditions at Camps 5 and 7.[156] Camp 5 is still used primarily as a maximum-security prison, where most of the detainees are held in segregated cells "to encourage compliance with facility rules."[157] Detainees who were convicted by military commissions are also held in segregation in Camp 5. According to the report, detainees in segregated housing have access to two hours of recreation a day with one other detainee.[158] One cell block on Camp 5 was converted to shared housing in mid-2012 and currently holds one to 20 detainees.[159] Camp 7 holds 10-20 detainees and continues to be a supermax security prison with segregated cells for high-value detainees.[160] Detainees may get up to four hours of recreation a day, but usually take it alone or perhaps with another detainee in a separate but adjacent area.[161] Camp 6 is currently operated as a medium-security facility, housing 110-130 detainees.[162] According to the GAO report, detainees in Camp 6 have access to the recreation yard and shared housing unit for 20 hours a day.[163]

Narratives

"Being away from family, away from our homeland, and also away from the outside world and losing any contact with anyone, also being forbidden from the natural sunlight, natural air, being surrounded with a metal box all around is not suitable for a human being."[164]

"Mr. Lahmar's continued heavily isolated confinement is having a serious, adverse impact on his physical and mental health. Under the current conditions of his confinement, based on our conversations with him in August and November 2006, Mr. Lahmar lives in an 8' by 6' cell. A fluorescent light in his cell is kept on twenty-four hours a day and the only window in his cell has been painted over, limiting the natural light in his cell. Mr. Lahmar receives no family mail, is not allowed to keep the legal mail that he does receive, and, despite repeated requests, has been denied a pen to write us as his counsel. Denying him access to writing materials is interfering with our ability to represent him. It appears that his reading material is limited to the Koran. He was only sometimes offered opportunities to exercise... Mr. Lahmar's physical health has deteriorated significantly and noticeably."[165]

"Isolation has also been used as a continual method of coercion against Mohammed. He is currently in isolation in Camp 6, where he has been detained for at least a year, because interrogators are still trying to compel him to testify against his father... Mohammed's isolation, coupled with the history of physical and mental abuse recounted above, has taken a serious emotional toll on him over the years... The increasingly damaging effects that isolation and abuse are having on Mohammed's ability to function became more readily apparent in late December 2007. . . . In March 2008, we received reports from other detainees that Mohammed was banging his head against the walls of his cell for hours on end and that he was smearing his cell with excrement."[166]

Since 2009 Tariq Ba Odah (ISN 178), has been housed in Camp 5 to isolate him from other prisoners due to his 6-year, peaceful hunger-strike to protest his indefinite detention without charge. Mr. Ba Odah is

Detainees, Facilities and Factors for Consideration If Detainees Were Brought to the United States (November 2012), [hereinafter *GAO Guantanamo Report*], *available at* http://www.gao.gov/assets/660/650032.pdf.

156. *GAO Guantanamo Report at 15.*
157. *Id.* at 16.
158. *Id.* at 17-18
159. *Id.* at 15-16.
160. *Id.* at 15.
161. *Id.* at 21.
162. *Id.* at 15.
163. *Id.* at 20.
164. *Locked Up Alone*, at 27.
165. *Locked Up Alone*, at 48.
166. Petitioner's Emergency Motion for Independent Psychiatric Evaluation and Medical Evaluation, Production of Medical Records and Additional Urgent Relief, 4, Tumani v. Bush, Civ. No. 05-526 (RMU), (Feb. 9, 2009), *available at* http://ccrjustice.org/files/2009-02-06%20Tumani%20-%20Emergency%20Motion%20for%20Order%20for%20Relief.pdf.

strapped to a restraint chair and force-fed through his nose each day. He has been told that "if [he] stops his strike, [he would] be moved to the common area with friends, and recreation time" — basic rights Mr. Ba Odah lacks in Camp 5. Mr. Ba Odah is allowed out of his cell for just 2-4 hours per day, during which time only one other prisoner is permitted to be in the recreation area. However, Mr. Ba Odah is often too weak to take advantage of the little recreation time he is given. As a result, he goes extended periods of time with little or no human contact.

Mr. Ba Odah's experience during his hunger strike is much like the experiences of many other Guantánamo hunger strikers, of which there have been many over the last decade.[167] The health care of hunger-striking detainees has been at the center of much litigation brought through their habeas cases. This issue is a substantial one and not the focus of this report but numerous reports indicate that hunger-striking detainees have been placed in isolation as an attempt to induce them to stop their hunger strike.[168] Because the regulations allow for administrative segregation in the case of a detainee's health, such segregation can be "justified" even if the isolation is not genuinely for the purpose of ensuring the safety or health of the hunger-striking detainee or other detainees.

Very little is known about the health care of detainees at Guantánamo and other detention sites, particularly the health care of those placed in solitary confinement, whether for interrogation or administrative or disciplinary segregation. Like many immigration detainees, several men in US custody were tortured or abused prior to and/or during their detentions. The mental health consequences of such abuse are exacerbated by solitary confinement and these consequences can be further compounded by inadequate mental health care during periods of isolation. Moreover, detainees, particularly those at Guantánamo, are arguably justified in placing little trust in mental health care professionals, given overwhelming evidence of complicity by psychologists in the interrogations at Guantánamo.[169]

C. International Standards for Solitary Confinement

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 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,[170] 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."[171]

---

167. *See generally*, Kristine Huskey and Dr. Stephen N. Xenakis, Brig. Gen. (ret.), *Hunger Strikes: Challenges to the Detainee Health Care Policy*, 30 Whittier L. Rev. 783 (2009)(describing mass hunger strikes involving as many as 85-100 detainees at a time and hunger strikes that went on for months, or years in some cases).
168. *See, e.g.,* Carol Rosenberg, *Hunger-Striking Guantanamo Detainees are Being Force-Fed at Night During Ramadan* (Aug. 24, 2010), *available at http://articles.sun-sentinel.com/2010-08-24/news/fl-guantanamo-force-feeding-20100824_1_hunger-strikers-prisoners-on-hunger-strike-force-fed;* Tim Golden, *Tough US Steps in Hunger Strike at Camp in Cuba,* New York Times (February 9, 2006), *available at http://www.nytimes.com/2006/02/09/politics/09gitmo.html?ex=1140152400&en=7da93e437ca060fd&ei=5070.*
169. Leonard Rubenstein and Stephen N. Xenakis, *Roles of CIA Physicians in Enhanced Interrogation and Torture of Detainees* (2010), Journal of American Medical Association, 304(5), *available at http://www.jhsph.edu/research/centers-and-institutes/center-for-public-health-and-human-rights/_pdf/Rubenstein_CIA%20Physicians%20Torture_JAMA_July2010.pdf*; Jeremy Hugh Baron, *Interrogation of prisoners after 2003: the role of health professionals* (2007), Journal of the Royal Society of Medicine, *available at http://www.jrsm.rsmjournals.com/content/100/6/265.full.*
170. 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 "CAT"]. 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.
171. Convention Against Torture, at art. 11.

Beginning in 1955, the United Nations issued several sets of guidelines for the treatment of prisoners. For example, the Standard Minimum rules for the Treatment of Prisoners emphasizes that the primary goal of confinement should be the promotion of rehabilitation, and states that "[d]iscipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life."[172] In 1988, the UN General Assembly passed the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which, like the Standard Minimum Rules, contains an absolute prohibition against torture and other cruel, inhuman, or degrading treatment or punishment in the prison setting.[173] The Body of Principles further explains that torture or other cruel, inhuman, or degrading treatment or punishment includes "the holding of a detained or imprisoned person 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."[174] Two years later, the Basic Principles for the Treatment of Prisoners explicitly addressed 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."[175] And 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]."[176]

"the prolonged isolation of detainees may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture."

Manfred Nowak, UN Special Rapporteur

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."[177] In 2011, Juan Mendez devoted his entire interim report to the use of solitary confinement.[178] After investigating the use of solitary confinement around the world, 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."[179] While he does not go so far as to call for an absolute prohibition on solitary confinement, Mendez recommends several safeguards and limits to its use:

- A prisoner or detainee should never be kept in solitary confinement for longer than 15 days, the limit between "solitary confinement" and "prolonged solitary confinement," at which point some of the harmful psychological effects of solitary confinement can become irreversible[180]
- If solitary confinement is to be used, it must be only in exceptional circumstances; its duration must be as short as possible, and for a definite term that is communicated to the detainee[181]
- Solitary confinement should only be imposed as a last resort, where less restrictive measures could not be employed for disciplinary purposes[182]

172. Standard Minimum Rules for the Treatment of Prisoners, E.S.C. Res. 2076, U.N. ESCOR, 62d Sess., Supp. No. 1, art. 27, 58 & 65, UN Doc. E/5988 (1977) [hereinafter *Standard Minimum Rules*], *available at http://www2.ohchr.org/ english/law/treatmentprisoners.htm.*
173. *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) [hereinafter *Body of Principles*], *available at http://www.un.org/documents/ga/res/43/a43r173.htm.*
174. *Id*. at art. 6.
175. 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), [hereinafter Basic Principles] *available at http://www.un.org/ documents/ga/res/45/a45r111.htm.*
176. Human Rights Committee, General Comment 20, Article 7, 44th Sess., U.N. Doc. HRI/GEN/1/Rev. 1 at 30 (1994), at art. 6.
177. 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.
178. *Mendez Report, supra* note 9.
179. *Id*. at ¶ 20.
180. *Id*. at ¶¶ 26 and 79.
181. *Id*. at ¶ 75.
182. *Id*. at ¶ 91.

- While it may be necessary to segregate detainees with mental disabilities from the general population, solitary confinement should never be used on the mentally ill[183]
- 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 initiation of solitary confinement and on a daily basis thereafter [184]

Mendez concludes that solitary confinement can never be justified as a means of punishment or discipline, "because it imposes severe mental pain and suffering beyond any reasonable retribution for criminal behaviour."[185]

Regional human rights monitoring bodies and courts have often found that solitary confinement, especially when prolonged or indefinite, can constitute torture and/or cruel, inhuman, or degrading treatment or punishment. In Europe, the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) prohibits torture and inhuman or degrading treatment or punishment.[186] In 2006, the Council of Europe issued the European Prison Rules, a set of voluntary guidelines intended to govern conditions of incarceration in the European Union.[187] Rule 60.5 states that solitary confinement "shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible."[188] The rules also contain provisions recognizing that solitary confinement poses serious risks to the mental and physical health of prisoners, and provides for the health monitoring of inmates in solitary confinement.[189]

In addition, the European Committee for the Prevention of Torture (CPT) has issued reports in which it examines the use of solitary confinement by member states. In its second general report, the committee concluded that "solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible."[190] Likewise, the European Court of Human Rights (ECHR) has concluded that solitary confinement violates the European Convention's prohibition against torture in at least three cases.[191]

The Inter-American human rights system has long recognized that solitary confinement often constitutes torture and/or cruel, inhuman, or degrading treatment or punishment. Article 5 of the American Convention on Human Rights states that "No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."[192] The Inter-American Court of Human Rights has found solitary confinement to violate Article 5 in a number of cases.[193]

The international human rights framework that limits the use and conditions of solitary confinement in penal settings applies equally, if not with greater force, in the immigration detention setting. Indeed, the possibility that solitary confinement will violate international human rights prohibitions against torture

183. *Id*. at ¶ 86.
184. *Id*. at ¶ 100.
185. *Id*. at ¶ 72.
186. Convention for the Protection of Human Rights and Fundamental Freedoms, art. 3, Nov. 4, 1950, E.T.S. 5
187. Council of Europe: Committee of Ministers, *Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules* (Jan. 11, 2006), *available at https://wcd.coe.int/ViewDoc.jsp?id=955747.*
188. *Id*. at rule 60.5.
189. *Id*. at rule 43.3. The Rules also recognize the ethical issues involved in having medical personnel monitor the health of inmates in solitary confinement, noting concerns by Denmark about the role of medical staff in deciding that prisoners are fit for further solitary confinement. *See id.* at rule 43.2.
190. European Committee for the Prevention of Torture, 2nd General Report on the CPT's Activities Covering the Period 1 January to 31 December 1991, ¶ 56 (CPT/Inf (92)3, 1992), *available at http://www.cpt.coe.int/en/annual/rep-02.htm.*
191. *See* Iorgov v. Bulgaria, App. No. 40653/98, Eur. Ct. H.R. (2004), ¶ 86-87; G.B. v. Bulgaria, App. No. 42346/98, Eur. Ct. H.R. (2004), ¶ 87; A.B. v. Russia, App. No. 1439/06, Eur. Ct. H.R. (2011), ¶ 112-13.
192. Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, at art. 5(2).
193. *See* Velazquez-Rodriguez Case, 1988 Inter-Am. Ct. H.R. (ser. C) No. 4 (1988), at 156; Loayza-Tamayo Case, 1997 Inter-Am. Ct. H.R. (ser. C) No. 33 (1997), at 58; Cantoral-Benavides Case, 2000 Inter-Am. Ct. H.R. (ser. C) No. 69 (2000), at 104.

and cruel, inhuman, or degrading treatment or punishment is even greater when applied to people who are deprived of liberty for administrative, rather than punitive, purposes.

While UN, European, and Inter-American human rights bodies have not focused on solitary confinement in immigration detention to the extent they have examined the issue in prisons, several institutions have noted that immigration detention systems are often inappropriately punitive in nature.[194] The Standard Minimum Rules, while not explicitly addressing immigration detention, provide that persons imprisoned as a result of any non-criminal process "shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order."[195]

The European Committee for the Prevention of Torture has stated that the European Prison Rules, which restrict the use of solitary confinement, apply equally to immigration detainees, though it notes that the commentary to the rules states that immigration detainees should not be held in prison in the first place.[196] The CPT notes in its standards for immigration detention that "[t]he purpose of deprivation of liberty of irregular migrants is … significantly different from that of persons held in prison," and thus the conditions of their detention "should reflect the nature of their deprivation of liberty, with limited restrictions in place and a varied regime of activities." [197] The standards further state that immigration detainees should have their freedom of movement restricted as little as possible within detention facilities.[198]

Likewise, the Inter-American Commission has criticized the use of solitary confinement in immigration detention, particularly in the United States. In a 2010 report, the commission stated that "the conditions of [immigration] detention ought not to be punitive or prisonlike," while noting that "this principle is not observed in immigration detention in the United States." [199] The report also recognized the confusing terminology used in the US immigration detention system that often conflates segregation with solitary confinement: "[T]he Inter-American Commission is deeply troubled by the use of confinement ("administrative segregation" or "disciplinary segregation") in the case of vulnerable immigration detainees, including members of the LGBT community, religious minorities and mentally challenged detainees. Using confinement to protect a threatened population amounts to a punitive measure. Equally troubling is the extent to which this measure is used as a disciplinary tool."[200]

Moreover, the US government has vehemently condemned the use of solitary confinement and related forms when used by other countries in prison or detention facilities. In the US Department of State's country reports for 2011, the State Department expressed concern about a number of countries that had engaged in the use of segregation, isolation, and solitary confinement. For example, the US State Department Country Report on Human Rights on Libya states, "The Qadhafi government's security personnel routinely tortured and abused detainees and prisoners, including…solitary confinement…." [201]

194. ECOSOC, U.N. Comm'n on Human Rights, *Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro, Submitted Pursuant to Commission on Human Rights Resolution 2002/62*, U.N. Doc. E/CN.4/2003/85 (Dec. 30, 2002) (*prepared by* Gabriela Rodriguez Pizarro), ¶ 54 ("Administrative detention should never be of a punitive nature"); Special Rapporteur on the Human Rights of Migrants, August 2010 report A/65/222, ¶ 87 ("Migration-related detention should not bear similarities to prison-like conditions").
195. *Standard Minimum Rules, supra* note 172, at art. 94.
196. Council of Europe, *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Text of the Convention and Explanatory Report*, European Treaty Series, No. 126, CPT/Inf/E (2002), Rev. 2010, ¶ 78, [hereinafter *CPT Explanatory Report*], *available at* http://www.cpt.coe.int/en/documents/eng-convention.pdf.
197. *Id*. at ¶¶ 78-79; *see also* European Convention on Human Rights, at art. 5(1)f (deprivation of liberty of immigrants is allowed for "the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition").
198. *Id*. at ¶ 79.
199. Inter-American Commission on Human Rights, *Report on Immigration in the United States: Detention and Due Process*, Doc. 78/10 (December 30, 2010), [hereinafter *Inter-American Commission Report*] ¶ 243.
200. *Id*. at ¶ 337 (internal citation omitted).
201. Department of State, Country Reports on Human Rights Practices for 2011, *Libya*, *available at* http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186437 at Section c. *See also*, Department of State, Country Reports on Human Rights Practices for 2011, *Bahrain*, *available at* http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186421; *Syria*, *available at* http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186449; *Israel*, *available at* http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186429; *Pakistan*, *available at* http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186473.

Regarding Iran, the US Country Report asserts, "UN special rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment noted with concern the various commonly applied methods of mistreatment, including…prolonged solitary confinement."[202] The US State Department also expressed concern about Bahrain ("Detainees asserted that security officials…placed them in solitary confinement…"); Syria ("Political prisoners also reported they…faced solitary confinement if authorities found them in possession of impermissible items."); Israel ("NGOs continued to criticize these and other detention practices they termed abusive, including isolation…"); and Pakistan ("Human rights organizations reported that methods of torture included…prolonged isolation…").[203]

III. Consequences of Solitary Confinement

A. Mental Health

Since solitary confinement first came into use in the United States in the 19th century, researchers and observers have documented its harmful psychological and physiological effects on inmates. Early observers noted that, even among prisoners with no prior history of mental illness, those held in solitary confinement exhibited "severe confusional, paranoid, and hallucinatory features," as well as "random, impulsive, often self-directed violence."[204]

More recent studies have confirmed its deleterious psychological and physiological consequences. Dr. Stuart Grassian, a noted expert on the psychological effects of solitary confinement, has identified a group of symptoms commonly associated with solitary confinement:

- 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[205]

This combination of symptoms – some of which Grassian notes are found in virtually no other psychiatric illnesses – together form a unique psychiatric syndrome resulting exclusively from solitary confinement, which some observers have termed "prison psychosis."[206]

While the mental health effects of even a short, defined period of time in solitary confinement can be disastrous, many people are held in isolation for prolonged or indefinite lengths of time. These people "are in a sense in a prison within a prison,"[207] and the effects on mental health are correspondingly severe. The consequences of prolonged isolation include symptoms of post-traumatic stress such as flashbacks, chronic hypervigilance, and hopelessness, as well as continued intolerance of social interaction after release.[208] The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment recently concluded that solitary confinement essentially becomes "prolonged" at 15 days,

202. Department of State, Country Reports on Human Rights Practices for 2011, *Iran*, *available at* http://www.state.gov/documents/organization/186637.pdf.
203. Department of State, Country Reports on Human Rights Practices for 2011, *Bahrain*, *available at* http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186421 at Section c. *See also*; Department of State, Country Reports on Human Rights Practices for 2011, *Syria*, *available at* http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186449# at Section Prison and Detention Center Conditions; *Israel*, *available at* http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186429# at Section c; *Pakistan*, *available at* http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186473#.
204. Stuart Grassian, Psychiatric Effects of Solitary Confinement, 22 Wash. U. J.L. & Pol'y 325, 328 (2006).
205. Id. at 335-36.
206. Id. at 337; see also Mendez Report, supra note 9, at ¶ 62.
207. *Mendez Report, supra* note 9, at ¶ 57.
208. *Grassian, Psychiatric Effects, supra* note 203, at 353.

after which some of the harmful psychological effects of solitary confinement may become irreversible.[209] In 1997, a survey of studies resulted in the conclusion that every study of involuntary solitary confinement for more than 10 days documented negative psychiatric symptoms in its subjects.[210]

The harmful effects of solitary confinement can be even more pronounced among inmates and detainees who suffer from preexisting personality disorders or other mental health problems, such as those caused by torture or abuse.[211] Because segregation and solitary confinement are often used as a management tool for mentally ill prisoners and detainees, those with preexisting psychiatric disorders often end up in solitary confinement. When placed in solitary confinement, those inmates and detainees can have their mental health problems exacerbated, and such people will tend to experience a deterioration of their mental health.[212]

Studies have also shown that the psychological impact of solitary confinement continues after inmates are released. One notable study found that lasting personality changes resulting from solitary can permanently impair social interaction, diminishing[213] a released inmate's ability to safely and successfully reintegrate into general society. This is an especially important consideration for detainees who are not serving a sentence, such as immigration and national security detainees, most of whom will eventually be released from detention.

While the mental health effects of solitary confinement among criminal inmates have been comprehensively studied, much less data exists regarding the psychological effects of segregation and solitary confinement on immigration and national security detainees.

Many people in immigration detention have survived persecution and torture in their countries of origin. Others are survivors of human trafficking, domestic violence, sexual assault, and other crimes — some of which occurred in the United States. They are often alone and terrified, unsure if they will be deported, and they frequently suffer from severe anxiety, depression, and post-traumatic stress disorder (PTSD). Likewise, many national security detainees were subjected to torture and abuse by foreign authorities before being turned over to US custody. Some detainees were subjected to torture and abuse by US military or officials while in US custody. Records indicate that some detainees at Guantánamo suffer from PTSD because of their treatment before and while in US custody.[214] Some of these men are then put into isolation or segregation for disciplinary problems. Without treatment, immigration and national security detainees alike will experience deteriorating psychological states during their weeks, months, or years in detention.

In one groundbreaking study of detained asylum seekers, most of whom have survived torture and persecution before fleeing to the United States and requesting asylum, investigators found extremely high rates of anxiety, depression, and PTSD symptoms.[215] The use of segregation and solitary confinement in immigration detention was potentially re-traumatizing for these asylum seekers, particularly for those

209. *Mendez Report, supra* note 9, at ¶ 26.
210. Craig Haney and Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. Rev. L. & Soc. Change 477, 525 (1997)).
211. Grassian, *Psychiatric Effects, supra* note 203, at 348.
212. Scharff Smith, *The Effects of Solitary Confinement, supra* note 14, at 474.
213. Sharon Shalev, *A Sourcebook on Solitary Confinement,* 13, 22 (2008), *available at* http://www.solitaryconfinement.org/sourcebook.
214. *See* Drs. Vincent Iacopino and Stephen N. Xenakis, Brig. Gen. (ret.), *Neglect of Medical Evidence of Torture in Guantanamo Bay: A Case Series*, 3, PLoS Med 8(4) (2011), *available at* http://www.plos.org/media/press/2011/plme-08-04-Iacopino.pdf?s_src=CAT%2520press%2520release&s_subsrc=PLoS.
215. Physicians for Human Rights and The Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers*, 56-57 (2003) (hereinafter *From Persecution to Prison*). *available at* http://physiciansforhumanrights.org/library/reports/from-persecution-to-prison.html. Among the surveyed population, researchers found clinically significant symptoms of anxiety in 77%; depression in 86%; and PTSD in 50%; Forty-four percent had symptoms of all three disorders. Id. at 57. A similar study of formerly-detained asylum seekers in Australia likewise found that prolonged detention contributed to a risk of ongoing depression, PTSD, and other mental health issues even after the period of detention had ended. Zachary Steel et al., "Impact of Immigration Detention and Temporary Protection on the Mental Health of Refugees," 188 British J. of Psychiatry 58, 62 (2006).

who were forcibly isolated as part of the persecution they experienced in their countries of origin.[216] Respondents in this study frequently indicated that the arbitrary nature of the decision to impose segregation compounded the anxiety they already felt as a result of being detained.[217]

While detention conditions for immigration and national security detainees are similar in many ways to those of criminal inmates, a number of additional variables might exacerbate the psychological harm they suffer from solitary confinement.

Immigration detainees, for example, often have no indication of how long they will be detained or whether they will be deported at the end of their proceedings in Immigration Court. Most lack legal representation, and must navigate the complex immigration system by themselves.[218] Perhaps most importantly, immigration detention is not punishment for having committed a crime; rather, it is civil confinement used to ensure that immigrants appear in Immigration Court and comply with the orders of immigration judges. Because they are not being punished for a crime, many detainees are confused as to why they are being held in facilities that, in most cases, are identical to jails. While this deprivation of liberty alone is enough to inflict psychological damage on many detainees, the further deprivation inherent in segregation and solitary confinement might reasonably be expected to compound the psychological stress of immigration detention.

Similarly, most national security detainees held in the "war against terrorism" do not know how long they will be detained or whether they will eventually be tried before a federal court, military commission, or other tribunal, or subject to a status review board. Most will never be charged with any crime, yet many live in conditions akin to maximum or supermax prisons. These men have no physical contact and limited phone contact with their families and no indication of whether they will ever see their families again. Yet, as with immigration detention, national security detention is not "punishment" for a crime but rather a way to keep alleged combatants off the "battlefield" until the end of hostilities. In the case of detainees at Guantánamo and other detention sites, however, it is unclear when, if ever, the "hostilities" will conclude, and thus their detention is a death sentence without a trial. Many reports indicate that the level of desperation and despair among Guantánamo detainees is extremely high.[219] Indeed, there have been seven suicides and scores of suicide attempts since the detention facility opened 11 years ago.[220]

In the case of national security detainees, isolation is often used as an interrogation technique, either alone or in combination with other techniques, aimed at manipulating the senses. The effect of isolation in this context can affect a person's psychological and physical well-being so negatively that it may rise to the level of torture or abusive treatment. In response to disclosures about "enhanced interrogation techniques," the American Psychological Association (APA) has condemned the use of isolation as an interrogation technique, saying that it may constitute torture or cruel, inhuman or degrading treatment.[221] The APA resolution also "absolutely prohibits" psychologists from "knowingly planning, designing,

216. *Id*. at 115. Among study subjects, 40% had experienced forced isolation in their home countries.
217. *Id*. at 116.
218. The Vera Institute for Justice estimates that between October 1, 2006 and September 30, 2007 84% of immigration detainees lacked representation. *Report Summary, Improving Efficiency and Promoting Justice in the Immigration System: Lessons from the Legal Orientation Program*, Vera Inst. of Justice (May 2008), *available at* http://www.vera.org/sites/default/files/resources/downloads/LOP_Evaluation_May2008_final.pdf.
219. Natasha Lennard, *Over 100 Guantanamo Detainees on Hunger Strike*, SALON.COM, (March 12, 2013) *available at* http://www.salon.com/2013/03/12/over_100_guantanamo_detainees_on_hunger_strike/; *see, e.g.*, Jason Leopold, *Sold Into "a Piece of Hell:" A Death of Innocence at Gitmo*, Truthout (Oct. 18, 2012), *available at* http://truth-out.org/news/item/12171-sold-into-a-piece-of-hell-a-death-of-innocence-at-gitmo.
220. Jason Leopold, *Latif Autopsy Report Calls Gitmo Death a Suicide: Questions Remain*, Truthout, (Nov. 26, 2012), *available at* http://truth-out.org/news/item/12967-latif-autopsy-report-calls-gitmo-death-a-suicide-mystery-endures; Carol J. Williams, *Guantanamo Bay Detainee Dies, the 9th Fatality at the Prison*, L.A. Times (Sept. 10, 2012), *available at* http://articles.latimes.com/2012/sep/10/nation/la-na-gitmo-20120911.
221. *Reaffirmation of the American Psychological Association Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and its Application to Individuals Defined in the United States Code as "Enemy Combatants,"* American Psychological Association, Resolution adopted by APA on August 19, 2007 and amended by APA on February 22, 2008, *available at* http://www.apa.org/about/policy/torture.aspx.

participating in or assisting in the use of all condemned techniques at any time and may not enlist others to employ these techniques in order to circumvent this resolution's prohibition."[222]

B. Physical Health

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 time commonly experience sleep disturbances, headaches, and lethargy. EEG studies of prisoners in solitary confinement demonstrate that their brain waves slowed markedly after as little as a week of isolation.[223]

In one study, researchers found that over 80% of isolated inmates in the sample population suffered from all three of these ailments, while more than half suffered from dizziness and heart palpitations as well.[224] Inmates in solitary confinement often suffer from appetite loss, weight loss, and severe digestive problems, sometimes resulting from their inability to tolerate the smell or taste of food in an environment of near-total sensory deprivation. Other common signs and symptoms include diaphoresis, back and joint pain, deterioration of eyesight, shaking, feeling cold, and aggravation of preexisting medical problems.[225] Moreover, as a result of the psychological trauma common among inmates in solitary confinement, self-harm and suicide are more common in solitary than among the general prison population.[226]

Because inmates and detainees in solitary confinement are often kept in separate wings of prisons and detention facilities and are, by definition, separated from other inmates, they are more likely to be subjected to excessive force and other physical abuse by corrections officers and guards, since fewer people would witness such abuse.[227] And because inmates in solitary have more limited access to medical services, both preexisting illnesses and those resulting from time spent in solitary confinement often go untreated.

222. *Id*.
223. Dr. Atul Gawande, *HellHole,* The New Yorker, (March 30, 2009). EEG-like studies of prisoners in detention camps in the former Yugoslavia during the 1990s showed that the highest amount of brain abnormalities existed in prisoners who had undergone head trauma or solitary confinement.
224. Shalev, *supra* note 212, at 11.
225. *Id*. at 15.
226. Haney and Lynch, *supra* note 209, at 525.
227. Leena Kurki and Norval Morris, "The Purposes, Practices, and Problems of Supermax Prisons," 28 Crime & Justice 385, 409 (2001).

Conclusions and Recommendations

That even relatively short periods in solitary confinement can cause severe and lasting physiological and psychological harm is indisputable. 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 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.

Appendix A

Segregation Audit

Date__/___/___ Facility _____
Auditor_____

Item	Response	Comments
Average Daily Population (total/female)	/	
Segregation capacity (total/punitive/admin/other)	/ / /	Lock in time / / / Same housing area as criminal inmates?
Segregation census today (total/punitive/admin/other) For punitive, # on violent infraction For admin, reasons	/ / /	
Number in segregation today w/ mental health diagnosis		Any suicide watch? Any time limit on length of watch in cell?
Resources for detainees with MH diagnosis in segregation	same cells? suicide proof? periodic eval by mh? Officer training?	Does security know who has MH problem? Does medical know who has MH problem? Does MH or Medical know who is in seg on a given day?
Seg Medical rounding - frequency - rn/np/md/pa/ - Interpreters	- - -	Cell side, out of cell? All detainees / only those with complaints?
Seg Mental health rounding -frequency -lcsw/phd/md -Interpreters	- - -	Cell side, out of cell? All detainees / only those with complaints?
Medical clears all patients before seg?		Times in last month did not clear Times in last month withdrew clearance
Mental Health clears all patients before seg?		Times in last month did not clear Times in last month withdrew clearance

2 Arrow Street, Suite 301
Cambridge, MA 02138 USA
+1 617.301.4200

1156 15th Street NW, Suite 1001
Washington, DC 20005 USA
+1 202.728.5335

physiciansforhumanrights.org

PHR
Physicians for Human Rights