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June 21, 2019

Mark Morgan
Acting Director
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street, S.W.
Washington, D.C. 20536

Dear Acting Director Morgan:

I write today to request additional information regarding the treatment of detainees - especially detainees with special vulnerabilities¹ - held in Immigration and Customs Enforcement (ICE) detention facilities. Recent reports indicate that ICE facilities relied through 2017 and continue to rely on solitary confinement (segregation) “as a go-to tool to manage and punish even the most vulnerable detainees for weeks and months at a time,” and “to house detainees they simply don’t know what do with,”² both of which appear to be in direct violation of agency directives. These recent allegations follow two investigative reports released by the Department of Homeland Security (DHS) Office of Inspector General (IG) in late 2017 that found that (1) some ICE detention facilities “may have misused segregation”³ and (2) ICE field offices were failing to follow important solitary confinement recordkeeping protocols.⁴ I am concerned that ICE continues to overuse and misuse solitary confinement – where detainees are locked down for at least 22 hours a day⁵ – as a cruel and unnecessary solution for detainees who

¹ According to ICE Directive 11065.1, “detainees with special vulnerabilities include those who are known to be suffering from mental illness or serious medical illness; who have a disability or are elderly, pregnant or nursing; who would be susceptible to harm in general population due in part to their sexual orientation or gender identity; or who have been victims – in our out of ICE custody – of sexual assault, torture, trafficking, or abuse.”

² International Consortium of Investigative Journalists, “Solitary Confinement in US Immigration Facilities, Explained,” Spencer Woodman and Ben Hallman, May 21, 2019, <https://www.icij.org/investigations/solitary-voices/solitary-confinement-in-us-immigration-facilities-explained/>; International Consortium of Investigative Journalists, “Thousands of Immigrants Suffer in US Solitary Confinement,” Spencer Woodman Karrie Kehoe Maryam Saleh Hannah Rappleye, May 21, 2019.

³ Department of Homeland Security Office of Inspector General, “Concerns about ICE Detainee Treatment and Care at Detention Facilities,” December 11, 2017, <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>.

⁴ Department of Homeland Security Office of Inspector General, “ICE Field Offices Need to Improve Compliance with Oversight Requirements for Segregation of Detainees with Mental Health Conditions,” September 29, 2017, <https://www.oig.dhs.gov/sites/default/files/assets/2017-11/OfIG-17-119-Sep17.pdf>; DHS IG reviewed a sample of detainees placed in segregation between October 1, 2015 to June 30, 2016.

⁵ NBC News, “Thousands of immigrants suffer in solitary confinement in U.S. detention centers,” Hannah Rappleye, Andrew W. Lehren, Spencer Woodman, Vanessa Swales, and Maryam Saleh, May 21, 2019, <https://www.nbcnews.com/politics/immigration/thousands-immigrants-suffer-solitary-confinement-u-s-detention-centers-n1007881>.

have mental or physical disabilities, are disabled, have been victims of sexual assault or torture, or otherwise may be especially vulnerable and in need of protection.

The United Nations (UN) has repeatedly stated that solitary confinement can qualify as torture and should only be used in “exceptional cases as a last resort.”⁶ UN experts on torture have condemned prolonged and indefinite confinement as an impermissible act, testifying that segregation that extends beyond 15 days should be eliminated outright due to the potential for lasting mental and emotional damage and severe risk of physical pain and suffering to those held in restrictive, socially isolated conditions.⁷ Research has shown heightened risks for those with mental and physical disabilities and disproportionately high segregation rates for LGBTQ individuals.⁸

ICE detention facility protocols are outlined primarily in the Performance-Based National Detention Standards (as revised), which “establish consistent conditions of confinement, program operations and management expectations within” the ICE detention system.⁹ However, following allegations of detainee mistreatment and misuse of solitary confinement, ICE in 2013 issued a supplementary directive outlining and setting new policies and procedures for placing detainees in segregation.¹⁰ This directive made clear that solitary confinement is “a serious step that requires careful consideration of alternatives ... [and] placement in administrative segregation due to a special vulnerability should be used only as a last resort and when no other viable housing options exist.” It also prohibited the use of “a detainee’s age, physical disability, sexual orientation, gender identity, race, or religion ... as the sole basis for a decision to place the detainee in involuntary segregation.”¹¹

The directive was created to prevent the mistreatment and abuse of immigrant detainees, especially detainees with special vulnerabilities. Yet, according to a trove of recently released documents, a former DHS employee, and two DHS IG reports that investigated solitary confinement at ICE facilities, “solitary confinement was being used as the first resort, not the last

⁶ United Nations Report, “Seeing into Solitary: A Review of the Laws and Policies of Certain Nations Regarding Solitary Confinement of Detainees,”

https://www.weil.com/~media/files/pdfs/2016/un_special_report_solitary_confinement.pdf.

⁷ UN News, “Solitary Confinement Should be Banned in Most Cases, UN Experts Says,”

<https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says>.

⁸ United Nations General Assembly, “Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment,”

<http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

⁹ Immigration and Customs Enforcement, “2011 Operations Manual ICE Performance-Based National Detention Standards,” <https://www.ice.gov/detention-standards/2011>.

¹⁰ Immigration and Customs Enforcement Directive 11065.1 “Review of the Use of Segregation for ICE Detainees,” September 4, 2013, https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

¹¹ Immigration and Customs Enforcement Directive 11065.1

resort... and sometimes [as] the only approach”¹² when ICE facilities “don’t know what to do with [detainees] including the disabled and LGBTQ people.”¹³

There are important requirements and escalation procedures that detention facility administrators, Field Office Directors, and ICE Headquarter staff have to follow when a detainee with special vulnerabilities is in isolation. This process allows and requires qualified ICE staff to evaluate the “appropriateness of the placement and [to] ensure appropriate health care is provided.”¹⁴ However, as recently as 2016, ICE was failing “to properly document and accurately and promptly report on segregation of detainees with mental health conditions,” preventing qualified health staff from reviewing and assessing solitary confinement decisions, and putting detainees and facility staff at potential risk and harm.¹⁵ These mistakes could have led – and most likely did lead – to detainees with special vulnerabilities being subjected to weeks- or months-long stays in isolation without proper assessment.

A separate DHS IG report published in December 2017 was even more damning. It found:

Staff did not always tell detainees why they were being segregated, nor did they always communicate detainees’ rights in writing or provide appeal forms for those put in punitive lock-down or placed in segregation. In multiple instances, detainees were disciplined, including being segregated or locked down in their cells, without adequate documentation in the detainee’s file to justify the disciplinary action. For example, one detainee reported being locked down for multiple days for sharing coffee with another detainee. [DHS IG] also identified detainees who were held in administrative segregation for extended periods of time without documented, periodic reviews that are required to justify continued segregation. Some detainees were locked down in their cells for violations of minor rules without required written notification of reasons for lock-down and appeal options. Documentation of daily medical visits and meal records for detainees being held in segregation was also missing or incomplete.¹⁶

Several news publications recently identified disturbing patterns in how ICE detention facilities employ segregation, confirming the DHS IG’s findings in both reports. And a key

¹² International Consortium of Investigative Journalists, “Whistleblower ‘Helpless’ to Stop US Immigration Solitary Confinement Abuses,” Maryam Saleh and Spencer Woodman, May 21, 2019, <https://www.icij.org/investigations/solitary-voices/whistleblower-helpless-to-stop-us-immigration-solitary-confinement-abuses/>.

¹³ International Consortium of Investigative Journalists, “Solitary Confinement in US Immigration Facilities, Explained,” Spencer Woodman and Ben Hallman, May 21, 2019, <https://www.icij.org/investigations/solitary-voices/solitary-confinement-in-us-immigration-facilities-explained/>.

¹⁴ Immigration and Customs Enforcement Directive 11065.1 “Review of the Use of Segregation for ICE Detainees,” September 4, 2013, https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

¹⁵ Department of Homeland Security Office of Inspector General, “ICE Field Offices Need to Improve Compliance with Oversight Requirements for Segregation of Detainees with Mental Health Conditions,” September 29, 2017, <https://www.oig.dhs.gov/sites/default/files/assets/2017-11/OIG-17-119-Sep17.pdf>.

¹⁶ Department of Homeland Security Office of Inspector General, “Concerns about ICE Detainee Treatment and Care at Detention Facilities,” December 11, 2017, <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>.

whistleblower has come forward because of her concerns that the "this same set of circumstances will not stop. ... And ... will actually get worse."¹⁷

In the more than 8,000 cases of segregation reviewed by a consortium of news organizations, (with most falling in a timeframe from March 2012 through March 2017, during both the previous and current administration), half “were unrelated to disciplinary concerns” and “involve[d] the mentally ill, the disabled, or others who were sent to solitary largely for what ICE described as safety reasons.”¹⁸ Detainees participating in hunger strikes, transgender detainees, and suicidal detainees were “held in solitary confinement for extended periods against their will.”¹⁹ One detainee was reportedly put in solitary confinement for almost two months solely for having a prosthetic leg, while another was placed in segregation for 15 days for “putting half a green pepper in one of his socks.”²⁰ Coupled with reports that ICE uses solitary confinement “to house detainees they simply don’t know what do with” and a DHS IG investigation that found some facilities used segregation “without adequate documentation ... to justify the disciplinary action,” this raises serious concerns about how detention facilities are making determinations for when it is appropriate to use solitary confinement.

The documents also show “more than 60 disabled detainees were placed in isolation solely because they required a wheelchair or some other aid,” which appears to be in direct violation of ICE’s own directive as it prohibits the use of a detainee’s physical disability as “the sole decision to place the detainee in involuntary segregation.”²¹ Moreover, while ICE is required to “arrange for notification of [a] detainee’s attorney,”²² the agency failed to do so in more than 270 instances – including “six times when detainees were in isolation for more than half a year.”²³ Additionally, “at least 13 detainees who died in ICE custody had spent time in

¹⁷ NBC News, “Thousands of immigrants suffer in solitary confinement in U.S. detention centers,” Hannah Rappleye, Andrew W. Lehren, Spencer Woodman, Vanessa Swales and Maryam Saleh, May 21, 2019, <https://www.nbcnews.com/politics/immigration/thousands-immigrants-suffer-solitary-confinement-u-s-detention-centers-n1007881>.

¹⁸ NBC News, “Thousands of immigrants suffer in solitary confinement in U.S. detention centers,” Hannah Rappleye, Andrew W. Lehren, Spencer Woodman, Vanessa Swales, and Maryam Saleh, May 21, 2019, <https://www.nbcnews.com/politics/immigration/thousands-immigrants-suffer-solitary-confinement-u-s-detention-centers-n1007881>; *the Intercept*, “Solitary Voices: Thousands of Immigrants Suffer in Solitary Confinement in ICE Detention,” May 21, 2019, <https://theintercept.com/2019/05/21/ice-solitary-confinement-immigration-detention/>; International Consortium of Investigative Journalists, “Whistleblower ‘Helpless’ to Stop US Immigration Solitary Confinement Abuses,” Maryam Saleh and Spencer Woodman, May 21, 2019, <https://www.icij.org/investigations/solitary-voices/whistleblower-helpless-to-stop-us-immigration-solitary-confinement-abuses/>.

¹⁹ International Consortium of Investigative Journalists, “Solitary Confinement in US Immigration Facilities, Explained,” Spencer Woodman and Ben Hallman, May 21, 2019, <https://www.icij.org/investigations/solitary-voices/solitary-confinement-in-us-immigration-facilities-explained/>.

²⁰ NBC News, “Thousands of immigrants suffer in solitary confinement in U.S. detention centers,” Hannah Rappleye, Andrew W. Lehren, Spencer Woodman, Vanessa Swales, and Maryam Saleh, May 21, 2019, <https://www.nbcnews.com/politics/immigration/thousands-immigrants-suffer-solitary-confinement-u-s-detention-centers-n1007881>.

²¹ Immigration and Customs Enforcement Directive 11065.1 “Review of the Use of Segregation for ICE Detainees,” September 4, 2013, https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

²² *Id.*

²³ NBC News, “Thousands of immigrants suffer in solitary confinement in U.S. detention centers,” Hannah Rappleye, Andrew W. Lehren, Spencer Woodman, Vanessa Swales, and Maryam Saleh, May 21, 2019,

solitary, in some cases up to the time of death.”²⁴ ICE later “acknowledged missteps in at least eight of these cases. Seven of those committed suicide while in solitary. The eighth died after he wasn’t given his anti-seizure medication,” after which ICE “later determine that ‘no justification was documented for charging [him] with disciplinary violations and placing him in’ solitary.”²⁵ The volume and severity with which ICE appears to be violating its own rules is extremely disturbing – especially given how seriously it is compromising the health and safety of the detainees in its care.

In order to help me better understand how ICE detention facilities are currently utilizing solitary confinement, and how ICE has addressed previous concerns about the use of solitary confinement, I ask that you provide answers to the following questions no later than July 5, 2019.

1. How many times have ICE detention facilities placed detainees in segregation in each full calendar year since 2016, and in 2019 to date?
 - a. How many detainees in ICE detention facilities have been placed in segregation during these same years?
2. How many of the instances referred to in question (1) in which detainees were placed in segregation involve detainees with special vulnerabilities?
 - a. How many detainees with special vulnerabilities have been placed in segregation?
3. How many detainees have died after being placed in segregation, at any point prior to their death, in ICE detention facilities in each full calendar year since 2016, and in 2019 to date?
 - a. How many of these detainees died while still in segregation?
 - b. Did ICE conduct investigations into the death of detainees that died after being placed in segregation? Please provide copies of these reports, with any sensitive personally identifiable information removed.
4. How many of the detainees identified in questions (1)(a) and (3) were held in ICE service processing centers? How many were held in Contract detention facilities? How many were held in Intergovernmental Service Agreement facilities?
5. Please provide a copy of ICE guidance “Expanded Guidance for Submitting Segregation Notifications” issued by the ICE Enforcement Removal Operations Division’s Custody Management Division on January 6, 2017.

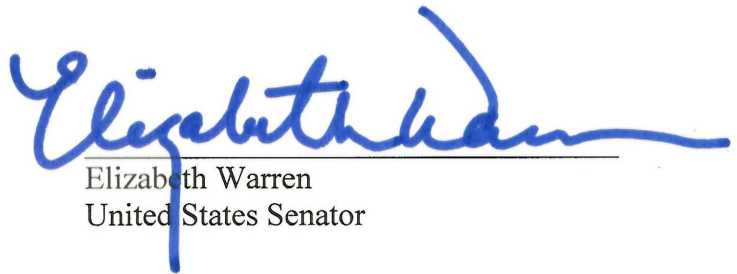
<https://www.nbcnews.com/politics/immigration/thousands-immigrants-suffer-solitary-confinement-u-s-detention-centers-n1007881>.

²⁴ The Intercept, “Solitary Voices: Thousands of Immigrants Suffer in Solitary Confinement in ICE Detention,” May 21, 2019, <https://theintercept.com/2019/05/21/ice-solitary-confinement-immigration-detention/>.

²⁵ NBC News, “Thousands of immigrants suffer in solitary confinement in U.S. detention centers,” Hannah Rappleye, Andrew W. Lehren, Spencer Woodman, Vanessa Swales, and Maryam Saleh, May 21, 2019, <https://www.nbcnews.com/politics/immigration/thousands-immigrants-suffer-solitary-confinement-u-s-detention-centers-n1007881>.

- a. In the wake of the DHS OIG reports and other reports of violations of ICE policies regarding segregation, what steps have ICE officials taken to ensure compliance with this guidance?
6. Have you implemented any or all of the recommendations outlined in the September 2017 DHS IG report? If so, please provide documentation of which recommendations you executed and how you did so. If you have not implemented all recommendations, please list all unimplemented recommendations, and explain why you have not done so.
7. Have you implemented any or all of the recommendations outlined in the December 2017 DHS IG report? If so, please provide documentation of which recommendations you executed and how you did so. If you have not implemented all recommendations, please list all unimplemented recommendations, and explain why you have not done so.

Sincerely,



Elizabeth Warren
United States Senator