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June 29, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Jeh Johnson
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Johnson:

We write today concerning allegations of misconduct at the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and the Office of Civil Rights and Civil Liberties (CRCL). For years, concerns have been raised with how detainees with mental health conditions are treated in ICE detention facilities. Recent information obtained by the Committee suggests that ICE continues to place many detainees with mental health concerns in administrative or disciplinary segregation—also known as solitary confinement—contrary to agency directives that limit the use of segregation for the mentally ill.¹

While it may be necessary at times to segregate a detainee for disciplinary purposes or in order to protect the health and safety of the detainee or others, the use of segregation detention for extended periods of time contravenes current ICE policy.² Allegations that ICE was mishandling the placement of detainees with mental health needs in its facilities prompted the Office of Inspector General (DHS OIG) to investigate ICE Office of Enforcement and Removal Operations (ERO) and ICE's medical authority, the ICE Health Service Corp (IHSC). In March of 2011, DHS OIG reported that, because some facilities lacked appropriate short stay units or medical isolation rooms, segregation was used as a default to house detainees exhibiting signs of mental illness. While IHSC was able to track the conditions and treatment provided to detainees with mental health conditions at IHSC-staffed detention facilities, it was unable to do so in facilities at which IHSC staff were not present—that is, the vast majority of detention centers.³ It

¹ICE Directive 11065.1, Review of the Use of Segregation for ICE Detainees, September 2013.

²*Id.*

³DHS OIG Report; Management of Mental Health Cases in Immigration Detention, March 2011.

is difficult to understand how ICE can find solutions if it is unsure about the extent of its problems or is unable to track information.

By March of 2013, the *New York Times* had published federal data showing a significant proportion—10 percent—of the roughly 300 people held in segregation on any given day had mental health problems. According to the article, “detainees in solitary are routinely kept alone for 22 to 23 hours per day, sometimes in windowless 6-foot-by-13-foot cells.”⁴ The data examined by the *Times* showed that nearly half of the detainees were held in isolation for 15 days or longer, and about 35 detainees were held in solitary confinement for more than 75 days.⁵ These numbers likely represented an underestimate, as many facilities did not have mental health professionals to diagnose or manage mental illness.

In February of 2014, ICE Office of Detention Policy and Planning (ODPP) Assistant Director Kevin Landy announced that ICE issued a new directive entitled, the Review of the Use of Segregation for ICE detainees (the “Directive”), precipitated by consistent reports of the overuse or misuse of segregation.⁶ The Directive requires ICE to compile weekly Segregation Reports to track detainees held in segregation for 14 and 30 days, and to do so within 72 hours for detainees with mental illnesses. Generally, the reports are supposed to notify ERO leadership—specifically Field Office Directors (FODs)—of segregation placements and to conduct reviews regarding whether placement continues to be appropriate in each case. Assistant Director Landy also announced that mentally ill detainees should not be placed in segregation or allowed to remain in segregation “if IHSC determines that the segregation placement has resulted in deterioration of the detainee’s medical or mental health, and an appropriate alternative is available.”⁷ The Directive requires the Custody Management Division (CMD) and ODPP to review the segregation reports that are then sent to Headquarters.

Although the Directive allows CRCL to participate in hearings and review the segregation reports, it specifically prohibits CRCL from using the information ICE shares with it in any CRCL investigation or inquiry. This seems contrary to CRCL’s mission to investigate and resolve civil rights and civil liberties complaints regarding Department policies or activities, or actions taken by Department personnel.⁸ Although ICE and CRCL are alerted to the alarming

⁴ Ian Urbina and Catherine Rentz, *Immigrants Held in Solitary Cells, Often for Weeks*, March 23, 2013, available at: <http://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html>

⁵ *Id.*

⁶ Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences, Hearing of the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights, 113th Congress (2014) (statement of Kevin Landy, Assistant Director, U.S. Immigration and Customs Enforcement Office of Detention Policy and Planning), <http://www.dhs.gov/news/2014/02/25/statement-record-ice-senate-judiciary-subcommittee-constitution-civil-rights-and>; ICE Directive 11065.1, Review of the Use of Segregation for ICE Detainees, September 2013.

⁷ *Id.*

⁸ About the Office for Civil Rights and Civil Liberties, Mission, <http://www.dhs.gov/office-civil-rights-and-civil-liberties>; 6 U.S.C. § 345; Section 705, Homeland Security Act of 2002 (as amended).

number of detainees with mental health conditions placed in segregation, neither component has allegedly taken sufficient steps to investigate the situation.

Documents obtained by the Committee appear to demonstrate that ICE personnel have routinely departed from the Directive's reporting requirements, such as notifying the relevant FOD within 72 hours of a detainee with mental illness being placed into segregated housing. This requirement was established because of its potential to trigger a series of internal notifications allowing for the expedited review of mentally ill detainees placed in segregation. IHSC is to review the treatment plan of detainees with mental illness, monitor their care, and review the placement determination every 14 days. Nonetheless, this information shows that facility staff frequently deviated from these guidelines. These reports also appear to suggest that staff failed to recognize significant mental health problems and proceeded to clear detainees for segregation. According to a whistleblower, detainees with recognized mental health conditions were placed into segregated housing—sometimes for months on end and in questionable conditions—without determination of the placement's impact on their medical or mental health. Detainees with diagnoses of mental illness were placed into segregated housing which at times caused detainees' mental health conditions to regress and violating the directive's requirement that IHSC and facility staff accommodate the needs of detainees with disabilities.

Segregation Reports typically describe up to 200 detainees being placed into disciplinary or administrative segregation for reasons that range from "suicide risk" to "mental illness" to "protective custody: criminal offense," to "pending investigation of disciplinary violation," "disciplinary" or "medical: other." Given reporting restrictions, it is difficult to know exactly how many detainees in immigration custody are placed in segregation on any given day, the purpose for the segregation, and the length of time of confinement.

To enable the Committee to obtain a more thorough understanding of how DHS is responding to the allegations of abuse in placing mentally ill detainees into segregation, please provide numbered written responses corresponding to each question no later than July 13, 2015. In answering inquiries, please provide all relevant documentation.

1. What is DHS's current policy on placing mentally ill detainees into segregation?
2. What is the average amount of time mentally ill detainees are placed in segregation?
3. Are there policies in place to ensure mentally ill detainees are properly evaluated by IHSC staff before placement? Please provide copies of the policies to the Committee.
4. If there are no policies in place, how does DHS determine adherence to the Directive that all detainees should be evaluated and placed in segregation as a last resort?
5. How does DHS ensure mentally ill detainees in non-IHSC facilities receive proper evaluation by mental health staff before placement into segregation?
6. Who is tasked with evaluating detainees for mental illness in non-IHSC facilities?
7. How does DHS determine if appropriate alternatives are exhausted prior to placement of mentally ill detainees in segregation?

8. How does DHS determine that a detainee's mental illness isn't being exacerbated in segregation?

Segregation Reports

9. What, if anything, does ICE do with the information contained in the Segregation Reports? Please provide all policies or procedures used by ICE in reviewing these segregation reports.
10. If the reports contain documented abuses with respect to placing mentally ill detainees in segregation, what steps does ICE take to investigate and address the abuse?
11. Given that CRCL is tasked by law with investigating and resolving civil rights and civil liberties complaints, why is it prohibited from investigating possible abuses documented in the Segregation Reports?
12. What policies does DHS have in place to ensure possible abuses are properly investigated and addressed?
13. Are FODs being frequently notified of detainees placed in segregation? If so, how? And how do they conduct reviews on whether the placement continues to be appropriate? Is this done in all mental health cases? What does ICE HQ do with these FOD evaluations?

DHS OIG March 2011 Report

14. Have you implemented the recommendations you agreed with in the DHS OIG March 2011 report? If so, please provide documentation of any policies and procedures demonstrating implementation and compliance. If not, why not?

Thank you for your prompt attention to this important matter. If you have questions, please do not hesitate to contact Katherine Nikas of Chairman Grassley's staff at (202) 224- 5225 and Nick Wunder of Senator Franken's staff at (202) 224-5641.

Sincerely,



Charles E. Grassley
Chairman

Committee on the Judiciary



Al Franken
Member

Committee on the Judiciary