

October 31, 2019

Cameron Quinn
Officer
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Building 410, Mail Stop #0190
Washington, D.C. 20528

Dear Ms. Quinn:

I am writing to request additional information regarding the Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties' (CRCL) oversight of Immigration and Customs Enforcement (ICE) detention facilities and the pervasive misuse of solitary confinement in those facilities.

Background on ICE's Improper Use of Solitary Confinement

Several investigations conducted by the DHS Office of Inspector General (IG) and confirmed by additional public reports have identified serious and ongoing issues with ICE's use of solitary confinement. Over the last several years, the DHS IG found that ICE "may have misused segregation" in its detention facilities,¹ was employing "practices [that] violated standards and infringed on detainee rights,"² and was failing to follow important recordkeeping protocols.³ Additionally, earlier this year, several publications released a trove of documents showing disturbing patterns in how ICE employed segregation "as the first resort...[a]nd sometimes ... the only approach," to isolate and manage detainees. A former DHS employee raised alarms that "this same set of circumstances will not stop ... and [might] actually get worse."⁴

¹ 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>.

² Department of Homeland Security, "Concerns about ICE Detainee Treatment and Care at Four Detention Facilities," June 3, 2019, <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

³ 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>.

⁴ 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/>.

And now a new set of reports indicate that ICE has continued to overuse and misuse solitary confinement to house detainees who have mental or physical disabilities or otherwise may be especially vulnerable and in need of protection. At least three detainees “with mental illness who ha[ve] been put in solitary”⁵ have died by suicide in the last three years, and another suicide of a detainee held in solitary was reported just this month.⁶ It is crucial that the federal government deploy every available tool to stop the abuse of solitary confinement and prevent another avoidable death.

DHS and ICE Leadership appear to be Hindering CRCL Investigations and Ignoring CRCL Recommendations

CRCL has a mandate to “investigate civil rights and civil liberties complaints ... regarding DHS policies, programs and activities” including “violation[s] of rights while in immigration detention.”⁷ I am concerned by recent reports that indicate “DHS leaders no longer heed recommendations” originating from your office,⁸ especially considering that CRCL “is the only federal office outside of ICE that has regular access to the data on use of solitary.”⁹

Moreover, it is unacceptable that an ICE directive dating from 2013 prohibits CRCL from using important ICE segregation data in its investigations. Following earlier allegations of detainee mistreatment and misuse of solitary confinement, ICE issued the 2013 directive outlining and setting new policies and procedures for placing detainees in segregated housing.¹⁰ The directive also created a Detention Monitoring Council (DMC) that gave various ICE departments, and CRCL access to segregation data as well as the responsibility to submit quarterly reports to the ICE Director on “areas of concern regarding particular cases or facilities that warrant further examination.” However, the directive prohibited CRCL from using any of this information “in any CRCL investigation or inquiry.”¹¹ This is especially concerning considering that CRCL has reportedly identified major problems in how detention facilities use

⁵ Project on Government Oversight, “Isolated: ICE Confines Some Detainees with Mental Illness in Solitary for Months,” Nick Schwellenbach, Katherine Hawkins, Mia Steinle, Andrea Peterson, August 14, 2019, <https://www.pogo.org/investigation/2019/08/isolated-ice-confines-some-detainees-with-mental-illness-in-solitary-for-months/>.

⁶ Washington Post, “A Cuban immigrant asked for asylum. After months of detention, he killed himself, ICE says,” Teo Armus, October 17, 2019, <https://www.washingtonpost.com/nation/2019/10/17/cuban-immigrant-asked-asylum-detention-killed-himself-ice/>.

⁷ Office for Civil Rights and Civil Liberties, “Compliance Branch,” https://www.dhs.gov/sites/default/files/publications/compliance_one-pager_508_final.pdf; 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1.

⁸ NPR, “Homeland Security's Civil Rights Unit Lacks Power To Protect Migrant Kids,” Susan Ferriss, Alison Kodjak, and Joshua Phillips, August 2, 2019, <https://www.npr.org/sections/health-shots/2019/08/02/746982152/homeland-securitys-civil-rights-unit-lacks-power-to-protect-migrant-kids>.

⁹ Project on Government Oversight, “Isolated: ICE Confines Some Detainees with Mental Illness in Solitary for Months,” Nick Schwellenbach, Katherine Hawkins, Mia Steinle, Andrea Peterson, August 14, 2019, <https://www.pogo.org/investigation/2019/08/isolated-ice-confines-some-detainees-with-mental-illness-in-solitary-for-months/>.

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 “Review of the Use of Segregation for ICE Detainees,” September 4, 2013, https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

solitary confinement. In 2015, a bipartisan pair of Senators wrote to DHS expressing this concern.¹²

Newly Released Information on Abuse of Solitary Confinement in ICE Facilities

On September 12, 2019, the Project on Government Oversight released an April 2018 memorandum from CRCL staff to Matthew Albence, the then-Executive Associate Director of the Enforcement and Removal Operation (ERO) Division of ICE, now the Acting Director of ICE, that outlines several shocking findings and recommendations based on a November 13-14, 2017 CRCL onsite investigation of the Adelanto ICE Correctional Facility in California.¹³ During this onsite visit, your office found that over half of the detainees in segregation “had serious mental disorders” and concluded that some of the segregation practices at the facility were “both inhumane and in violation of ICE [regulations.]” Moreover, this review references a 2015 recommendation to the facility calling for the cessation of “long-term segregation housing of detainees with serious mental health conditions.” A subsequent review indicates that the facility ignored the recommendation.¹⁴

New reports also indicate that earlier accounts of ICE’s misuse of solitary confinement identified by the IG continued at least through May 2018. Over 60% of segregation cases between January 2016 and May 2018 lasted over 15 days, and almost a quarter of those cases involved detainees with a mental illness diagnosis.¹⁵ In fact, the 2017 Adelanto on-site review referenced in the CRCL memo to ERO found two detainees were held in solitary for 212 and 904 days, respectively.¹⁶ The United Nations (UN) has repeatedly condemned the use of solitary confinement, and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment wrote that it may “amount to ill-treatment or even torture in certain circumstances.”¹⁷ Moreover, UN experts have called for the prohibition of “indefinite and prolonged solitary confinement in excess of 15 days” due to the potential for lasting mental and emotional damage and severe risk of physical pain and suffering to those held in restrictive,

¹² Letter from Senators Charles Grassley and Al Franken to former DHS Secretary Jeh Johnson, June 25, 2015, <https://www.documentcloud.org/documents/5998116-Grassley-and-Franken-Letter-to-DHS.html>.

¹³ Project on Government Oversight, “Confidential Report Warned ICE of ‘inhumane’ use of solitary confinement,” Nick Schwellenbach, September 12, 2019, <https://www.pogo.org/investigation/2019/09/confidential-report-warned-ice-of-inhumane-use-of-solitary-confinement/>.

¹⁴ Memorandum from Veronica Venture and Dana Salvano-Dun, Office for Civil Rights and Civil Liberties to Matthew Albence, Enforcement and Removal Operation Executive Associate Director, April 25, 2018, <https://assets.documentcloud.org/documents/6331345/CRCL-Adelanto-Docs-Part-1.pdf>.

¹⁵ Project on Government Oversight, “Isolated: ICE Confines Some Detainees with Mental Illness in Solitary for Months,” Nick Schwellenbach, Katherine Hawkins, Mia Steinle, Andrea Peterson, August 14, 2019, <https://www.pogo.org/investigation/2019/08/isolated-ice-confines-some-detainees-with-mental-illness-in-solitary-for-months/>.

¹⁶ Memorandum from Veronica Venture and Dana Salvano-Dun, Office for Civil Rights and Civil Liberties to Matthew Albence, Enforcement and Removal Operation Executive Associate Director, April 25, 2018, <https://assets.documentcloud.org/documents/6331345/CRCL-Adelanto-Docs-Part-1.pdf>.

¹⁷ United Nations Report, “Seeing into Solitary: A Review of the Laws and Policies of Certain Nations Regarding Solitary Confinement of Detainees,” p. 3, https://www.weil.com/~media/files/pdfs/2016/un_special_report_solitary_confinement.pdf.

socially isolated conditions.¹⁸ Research has also identified higher risks for those with mental and physical disabilities and disproportionately high segregation rates of LGBTQ individuals.¹⁹

Recent reports now indicate that over 100 immigrants in detention “facilities in Louisiana have been ‘subjected to excessive use of force and retaliation’” including being “‘placed in solitary confinement and blocked from contacting their families or attorneys’” based on their participation in a hunger strike. At least one of those detainees has since died.²⁰

Questions about ICE Use of Solitary Confinement

In June 2019, I wrote to former ICE Acting Director Mark Morgan requesting up-to-date information on ICE’s use of solitary confinement over the last several years.²¹ ICE has yet to respond. CRCL “is the only federal office outside of ICE that has regular access to the data on use of solitary” and plays an important oversight role through the DMC.²² In order to improve transparency regarding ICE’s continued use of solitary confinement and CRCL’s oversight of ICE detention facilities, I ask that you provide answers to the following questions no later than November 14, 2019.

1. How many times has ICE placed detainees in segregation in each full calendar year since 2013, and in 2019 to date?
2. How many detainees in ICE or ICE-contracted detention facilities have been placed in segregation in each full calendar year since 2013, and in 2019 to date?
 - a. How many were held in ICE service processing centers?
 - b. How many were held in Contract detention facilities?
 - c. How many were held in Intergovernmental Service Agreement facilities?

¹⁸ 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>.

¹⁹ 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>.

²⁰ Newsweek, “More than 100 immigrants on hunger strike at ICE facility allegedly pepper-sprayed, shot at with rubber bullets and blocked from contacting families,” Chantal da Silva, August 7, 2019, <https://www.newsweek.com/ice-detainees-hunger-strike-pepper-sprayed-excessive-force-1452953>; Washington Post, “A Cuban immigrant asked for asylum. After months of detention, he killed himself, ICE says,” Teo Armus, October 17, 2019, <https://www.washingtonpost.com/nation/2019/10/17/cuban-immigrant-asked-asylum-detention-killed-himself-ice/>.

²¹ Letter from Senator Elizabeth Warren to ICE Acting Director Mark Morgan regarding solitary confinement, June 21, 2019, <https://www.warren.senate.gov/imo/media/doc/2019.06.20%20Letter%20to%20ICE%20regarding%20the%20use%20of%20solitary%20confinement%20at%20immigration%20detention%20facilities.pdf>.

²² Project on Government Oversight, “Isolated: ICE Confines Some Detainees with Mental Illness in Solitary for Months,” Nick Schwellenbach, Katherine Hawkins, Mia Steinle, Andrea Peterson, August 14, 2019, <https://www.pogo.org/investigation/2019/08/isolated-ice-confines-some-detainees-with-mental-illness-in-solitary-for-months/>.

3. How many of the segregation cases in each full calendar year since 2013, and in 2019 to date involved detainees with special vulnerabilities?²³
4. How many detainees with special vulnerabilities have been placed in segregation in each full calendar year since 2013, and in 2019 to date?
5. How many detainees have died while being held in ICE or ICE-contracted detention facilities in each full calendar year since 2013, and in 2019 to date?
 - a. How many of these detainees died while in segregation?
 - b. How many of these detainees died after being placed in segregation?
 - c. Did ICE or CRCL conduct investigations into these deaths? Please provide copies of these reports, with any sensitive personally identifiable information removed.
6. CRCL’s “Compliance Branch investigates complaints from the public alleging violations of civil rights or civil liberties,” including allegations of “inadequate conditions of detention,” and “other civil rights or civil liberties violations related to a Department program or activity, including human rights complaints.”²⁴
 - a. How many complaints has CRCL received related to solitary confinement in ICE or ICE-contracted detention facilities? Please provide a list and a brief description of all allegations for each full calendar year since 2013 and in 2019 to date.
7. CRCL’s Compliance Branch conducts onsite investigations of ICE and ICE-contracted detention facilities “enlist[ing] the assistance of subject matter experts in the areas of medical care, mental health care, correctional security and operations, use of force, suicide prevention, and environmental health and safety.”²⁵
 - a. How many onsite investigations has CRCL conducted related to solitary confinement for each full calendar year since 2013 and in 2019 to date?
 - b. How many subject matter experts does CRCL enlist for each onsite investigation of ICE or ICE-contracted facilities?
 - c. How does CRCL select subject matter experts for ICE or ICE-contracted detention facility investigations?
8. CRCL – after each onsite investigation – “provides the expert reports and a summary report of the significant recommendations to ICE. ICE is asked to review the recommendations and provide a written response, concurring or non-concurring, and to

²³ 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.”

²⁴ U.S, Department of Homeland Security Office for Civil Rights and Civil Liberties, “Fiscal Year 2017 Annual Report to Congress,” November 27, 2018, https://www.dhs.gov/sites/default/files/publications/crcl-fy-2017-annual-report_0.pdf.

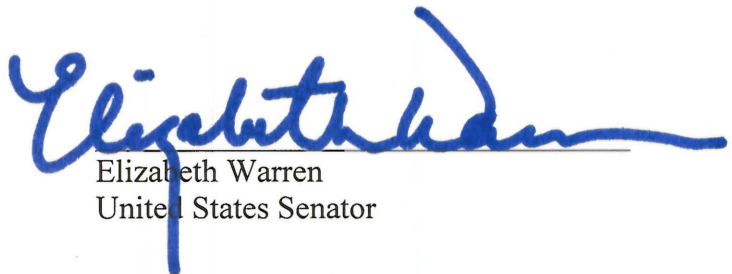
²⁵ U.S, Department of Homeland Security Office for Civil Rights and Civil Liberties, “Fiscal Year 2017 Annual Report to Congress,” November 27, 2018, https://www.dhs.gov/sites/default/files/publications/crcl-fy-2017-annual-report_0.pdf.

provide evidence of implementation of the concurred-with recommendations within a defined timeframe.”²⁶

- a. How many recommendations has CRCL provided to ICE related to the misuse or abuse of solitary confinement in ICE or ICE-contracted detention facilities for each full calendar year since 2013 and in 2019 to date? Please provide copies of reports containing these recommendations.
 - i. How many of these recommendations has ICE provided a written response concurring, concurring and providing evidence of implementation, or non-concurring? Please provide copies of these responses.
 - ii. How many of these recommendations remain open?
 - iii. Does CRCL conduct follow-up investigations once ICE provides a response concurring with a recommendation? How does CRCL guarantee that ICE has taken “appropriate corrective action to address the concerns identified”?²⁷
9. Please provide copies of all recommendations memoranda from CRCL to ICE involving complaints or site visits of ICE detention facilities related to the use of solitary confinement.
10. Please provide copies of every report prepared by the DMC subcommittee or the full DMC, as required under Section 7.5 of ICE Directive 11065.1²⁸, from September 2013 to date.
11. Has ICE’s Segregation Directive (ICE Directive 11065.1: Review of the Use of Segregation for ICE Detainees)²⁹ hindered CRCL oversight efforts by preventing your office from using information obtained from the DMC in CRCL investigations or inquiries?

Thank you for your attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator

²⁶ *Id.*

²⁷ *Id.*

²⁸ 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.

²⁹ *Id.*