



Lutheran Immigration and Refugee Service

LIRS Statement for Hearing: “Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences”

Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights

February 25, 2014, Washington D.C.—Lutheran Immigration and Refugee Service (LIRS), the national organization established by Lutheran churches in the United States to serve uprooted people, welcomes the Senate Judiciary Committee’s continued attention to reducing the use of solitary confinement and exploring what more should be done to curb its overuse.

LIRS advocates for the humane and just enforcement of our immigration laws and has urged Congress to achieve this goal by reducing America’s over-reliance all forms of immigration detention, especially solitary confinement, which often involves arbitrary, prolonged loss of liberty and is a barrier to full, fair, and just court proceedings. Given the swift and heavy toll that solitary confinement carries, it should only be used under the most exceptional circumstances. Wherever possible, we also advocate expanding community-based alternatives to detention programs that provide access to legal education and representation, housing, proper medical and mental health services, and other assistance to non-citizens facing deportation.

A March 2013 report published in the *New York Times* found that on any given day, about 300 immigrants are held in solitary confinement at the 50 largest detention facilities overseen by the Department of Homeland Security (DHS)’s Immigration and Customs Enforcement (ICE) officials. Nearly half of those held in solitary confinement are isolated for 15 days or more, the point at which psychiatric experts say they are at risk for severe mental harm, with about 35 detainees kept for more than 75 days.¹ ICE currently detains approximately 34,000 migrants each day, despite the fact that many are refugees, asylum seekers or survivors of torture or human trafficking.

Recent reform attempts, including a recent ICE directive and legislative language in the Senate-passed comprehensive immigration reform bill, have attempted significant improvements to the use of solitary confinement. While these attempts at reform are welcome, vigilance and more oversight is critical to ensure that solitary confinement is only used in the most exceptional circumstances and subject to strong accountability measurements.

Recent Changes to Reduce the Use of Solitary Confinement

On September 4, 2013 Immigration and Customs Enforcement (ICE) issued a new directive to improve federal oversight of the use of solitary confinement in immigration detention facilities. The new policy substantially increased ICE’s monitoring of the use of solitary confinement and set important limits on the way it is used, especially for vulnerable populations such as individuals with mental disabilities and victims of sexual assault.

¹ Ian Urbina and Catherine Rentz, “Immigrants Held in Solitary Cells, Often for Weeks,” *New York Times*, March 23, 2013. <http://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html?hp& r=1&>



Lutheran Immigration and Refugee Service

The ICE directive contained promising provisions that required appropriate review and oversight of decisions to retain detainees in solitary confinement for over 14 days. It also required facilities to report on the use of solitary confinement for members of vulnerable populations, such as those with medical or mental issues and disabilities, those who may be at risk of harm due to sexual orientation or gender identity, or victims of sexual assault.

While this directive represents a large step forward in establishing more humane detention practices, it has yet to be fully implemented and enforced. Each ICE facility has different standards for who should be held in solitary confinement which can lead to little accountability. Precise guidelines and extensive oversight are crucial in immigration cases, where detention is not used as a punitive measure.

The Senate-passed comprehensive immigration reform bill, the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), included many positive changes for migrants held in immigration detention including the operations of detention facilities and the use of alternatives to detention. Under the act, solitary confinement would be defined and limited to brief periods under the least restrictive means possible, excluding children and mentally ill individuals from the practice.

S.744 is a positive step towards reforming the use of solitary confinement. However, a broader look at the overall practice of detention in immigration cases is needed. In *Unlocking Liberty: A Way forward for U.S. Immigration Detention Policy*, a report examining the practice of detention and alternatives, LIRS highlights how the U.S. government can comply with its responsibility to enforce immigration laws while upholding our values of humane treatment of newcomers.

Placing refugees and migrants—some of them initially encountered by the immigration system for as little as a traffic violation—in solitary confinement for alleged violations of immigration law violates American values of fairness and respect for human dignity. In addition to potentially re-traumatizing vulnerable persons, it also treats with contempt the biblical exhortation to welcome the stranger that guides LIRS' work.

The story of Isatu Jalloh's experience in immigration detention illustrates how even extremely vulnerable individuals have been placed in solitary confinement.

Isatu² grew up in Sierra Leone during the country's civil war. When she was 12 years old, she was raped by rebel soldiers and separated from her mother. Isatu later suffered female genital mutilation and was severely punished when she refused to perform the practice on other young women. Isatu fled to the United States, where upon expressing her intention to apply for asylum at the airport, she was detained by immigration authorities and sent to York County Prison in Pennsylvania. While in immigration detention, her post-traumatic stress disorder caused her attacks of anxiety and she was isolated in solitary confinement.

² *Broken Promises: Seeking Political Asylum in America*, Ladies Home Journal, <http://www.lhj.com/health/news/seeking-political-asylum-in-america/?page=1> (Feb. 2010).



Lutheran Immigration and Refugee Service

The use of solitary confinement has been determined by mental health experts to be harmful, especially for those with pre-existing psychiatric disorders or survivors of torture, trafficking and abuse.³ The U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has called for an absolute prohibition on prolonged solitary confinement as harmful psychological consequences may be irreversible. Given the grave effects of solitary confinement, any use of this practice requires strong accountability measurements and should be exercised only in the most extreme circumstances.

Alternatives to Detention

Alternatives to Detention (ATDs) not only provide a more humane and just alternative to the use of “protective” solitary confinement, they are also a proven and highly cost-effective approach for ensuring that individuals appear at immigration proceedings. There are a variety of options that ICE can utilize to encourage compliance with immigration court proceedings. Varying forms of supervision and monitoring range in cost from as low as 0.17 cents up to \$17 dollars a day per individual⁴. Research has shown that ATDs are highly effective and yield an average 91% appearance rate for hearings and court proceedings⁵. Compared to the billions spent each year on detention operations, ATDs represent a smarter, cheaper, and more humane way to ensure compliance with U.S. immigration laws. ATDs are a compassionate alternative for vulnerable migrants such as asylum seekers, torture survivors, the elderly, individuals with medical and mental health needs, and other vulnerable groups.

LIRS nurtures and sustains a network of community support programs that provide case management services to individuals who have been released from immigration detention. This support assists individuals in understanding their obligations and matching them with the services they require.

LIRS Recommendations

³ National Immigrant Justice Center and Physicians for Human Rights. *Invisible in Isolation*. September 2012, pg 13. <http://www.immigrantjustice.org/publications/report-invisible-isolation-use-segregation-and-solitary-confinement-immigration-detenti#.UweycGJdXOg>

⁴National Immigration Forum. *The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies*. August 2013. <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf>; DHS FY 2014 Budget Justification, pg. 6. <http://www.dhs.gov/sites/default/files/publications/MGMT/DHS-%20Annual%20Performance%20Report%20and%20Congressional-Budget-Justification-FY2014.pdf>

⁵Detention Watch Network. *Alternative to Detention Factsheet*. <http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/background%20fact%20sheets.pdf>



Lutheran Immigration and Refugee Service

LIRS's expertise, experience, and compassion drawn from decades of welcoming vulnerable newcomers inform our advocacy for just, humane treatment of people who seek protection in the United States. To ensure the protection of vulnerable migrants, prevent the overuse of solitary confinement, reduce costs and improve public safety, LIRS recommends that Congress enact reforms that:

- Maximize the use of community-based alternatives to detention, like those outlined in the LIRS report *Unlocking Liberty*
- Prohibit solitary confinement for survivors of torture and people with mental illness
- End prolonged solitary confinement
- Ensure basic rights such as access to counsel, food, and exercise for anyone consigned to solitary confinement
- Hold facilities that detain immigrants legally accountable for improper use of segregation and solitary confinement

For more information on U.S. immigration detention policy and alternatives to detention, please see the 2011 LIRS report *Unlocking Liberty*, available at www.lirs.org/dignity. If you have any questions about this statement, please contact Brittney Nystrom, LIRS Director for Advocacy at bnystrom@lirs.org or (202) 626-7943.