

Solitary Confinement in Immigration Detention



Client Advocacy & Litigation Strategies

**ROBERT F.
KENNEDY
HUMAN
RIGHTS**

Solitary Confinement is Torture

- Isolating an individual in a cell for 22 hours or more per day without meaningful human contact
- Prolonged solitary (> 15 days) inflicts profound and often permanent psychological, neurological, and physical damage:
 - Symptoms including hyperresponsivity to external stimuli; perceptual distortions, illusions, and hallucinations; panic attacks; difficulties in concentration and memory; intrusive obsessional thoughts; overt paranoia; and violence and self-harm
 - People subjected to solitary confinement are 78% more likely to commit suicide within a year of their release from detention

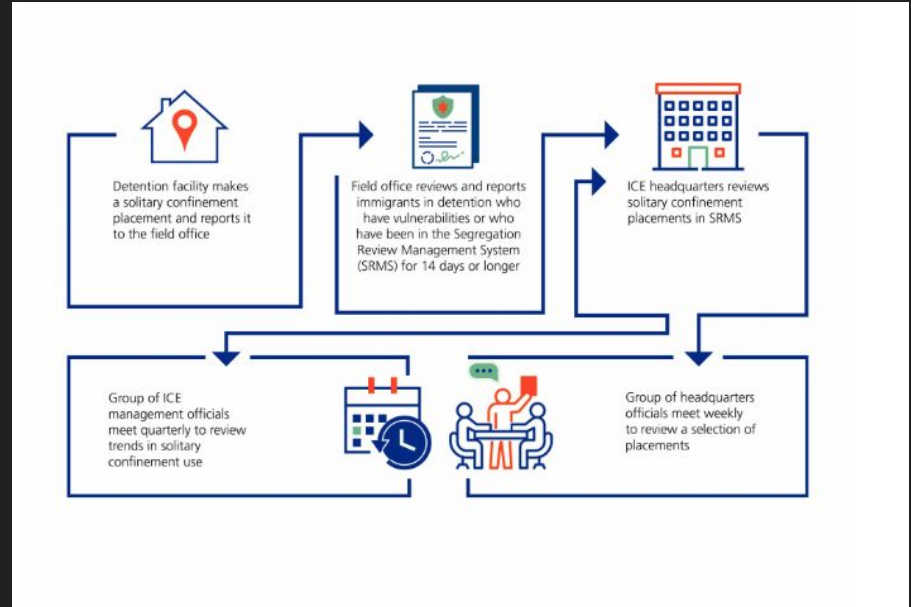
In 2011, the UN Special Rapporteur on Torture called for an "absolute prohibition" on solitary confinement for over 15 days recognized that even shorter periods of solitary confinement for "legitimate disciplinary reasons" can constitute "cruel, inhuman or degrading treatment or punishment where the physical conditions of prison regime (sanitation, access to food and water) fail to respect the inherent dignity of the human person and cause severe mental and physical pain or suffering." → UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)



Solitary Confinement in ICE Custody: ICE's Rules on Paper

- "Special Management Units" ("SMU") or "Segregated Housing Units" ("SHU")
- September 2013 → ICE Directive 11065.1
 - Increased oversight and reporting mechanisms (reporting 14+ days, 30 days, and at every 30 day interval)
 - Incorporated into PBNDS
- PBNDS 2011 Standard 2.12 ("Special Management Units")
 - Requirements for disciplinary and administrative segregation, including due process and conditions policies

"In the last five years alone, ICE has placed people in solitary confinement over 14,000 times, with an average duration of 27 days, well exceeding the 15-day threshold that United Nations (UN) human rights experts have found constitutes torture" → PHR Report Findings



Solitary Confinement in ICE Custody: "Disciplinary Segregation"

- *"Punitive form of separation from the general population for disciplinary reasons" and "is authorized only pursuant to the order of a facility disciplinary panel, following a hearing in which the detainee is determined to have committed serious misconduct in violation of a facility rule"*
- *Entitled to notice of disciplinary charges and a disciplinary panel hearing - "Pre disciplinary hearing detention shall be ordered only as necessary to protect the security and orderly operation of the facility."*
- *Punitive features including shackles outside the cell, loss of access to recreation, recreational phone calls/tablet - although people detained "in the SMU for disciplinary reasons shall be offered at least one hour of exercise per day, seven days a week, unless documented security, safety or medical considerations dictate otherwise."*

A woman at the South Louisiana ICE Processing Center in Basile, Louisiana described how officers tell us that if we file any grievances, they will write us up for misbehavior in our ICE files and it will hurt our immigration cases. They threaten to put us through "the smooth"—the solitary confinement cells, where women are stripped naked and left on a cold cell floor

Solitary Confinement in ICE Custody: "Administrative Segregation"

- "Non-punitive form of separation from the general population for administrative reasons" and is authorized "only as necessary to ensure the safety of the detainee, facility staff, and other detainees" and "therefore should be for the briefest term and under the least restrictive conditions practicable, consistent with the rationale for placement"
- Only if person has a "special vulnerability"
 - "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."
 - "Detainees in administrative segregation shall receive the same privileges as detainees housed in the general population, consistent with safety and security concerns"
- If individual's medical or mental health worsens or if there is a suicide risk = ICE standards require alternative to segregation
- "Protective Custody" vs. "Medical Segregation"

"Since I have been detained at CLIPC, whenever I submit complaints and grievances, instead of providing the things I am required to have under the law, like a shower and access to the law library, I am either ignored or harassed, screamed at, and punished with solitary confinement. People treat their dogs better than how this jail treats us. There is no respect for human life. No humanity. It is impossible for me to get the right treatment for my diabetes here. Every day I fear for my life. At CLIPC, 'PC' stands for 'punishment custody,' not 'protective custody'."

- Aamir, 201 days in solitary confinement

Client Advocacy Strategies: Gathering Evidence

Key Questions to Ask Your Client:

- *Is ICE classifying placement as disciplinary or administrative segregation?*
 - What was the reason ICE told your client they were being placed in solitary?
 - Where are they in the jail? (medical unit, SHU, lock-in unit?)
 - What paperwork (if any) did they receive?
 - Did they have any kind of disciplinary panel hearing?
 - Are they shackled when outside the cell? (i.e. in the shower)

Client Advocacy Strategies: Gathering Evidence

Key Questions to Ask Your Client:

- *What are the conditions of your client's confinement? → Are they punitive?*
 - How many hours per day are they confined to their cell?
 - Do they have access to recreational phone calls/ tablets?
 - Do they have access to TV, books, magazines, etc.?
 - How many hours of outdoor recreation do they have?
 - How many showers per week do they have access to?
 - How often are they visited by a medical/mental health provider?
 - How is the amount/quality of food provided?
 - How is the treatment by guards?

Client Advocacy Strategies: Gathering Evidence

Key Questions to Ask Your Client:

- *Does your client have any vulnerabilities that are exacerbated by solitary confinement?*
 - Medical conditions?
 - Mental health conditions?
 - Disabilities?
 - Details on the precise impact of solitary on their mental/physical health deterioration - track symptoms
 - Ex. client with diabetes cannot get sufficient exercise because confined to cell for 23 hours a day

Client Advocacy Strategies: Gathering Evidence

Key Documents to Request:

- Client medical records
 - Any indication of physical/mental health deterioration?
 - Provide to medical expert for potential advocacy letter
- Client detention file
 - Disciplinary records and "Disciplinary Segregation Order" (Form I-883)
 - Evidence of disciplinary panel hearing + language access?
 - Evidence of placement in administrative segregation (client consent?) and "Administrative Segregation Order" (Form I-885)

REVIEW OF SEGREGATION

A review of custody status was conducted for:

[REDACTED] [REDACTED] [REDACTED]

This is a: ☒ seven (7) day review ☐ thirty (30) day review

Background Information:

Placed in (select status type) status on: 7/30/24
☐ Administrative Segregation (Date)
☒ Protective Custody
☐ Disciplinary Segregation

Staff will conduct the above reviews using available detention files, segregation files, and any other information available or discovered which would have a bearing on the detainee's custody status. Detainees will be interviewed for this review.

Conditional Treatment and Conditions:

- Has the detainee:
a. had daily medical visits? ☒ / N
b. been offered a minimum of three (3) shower periods weekly? ☒ / N
c. been offered five recreation periods per week? ☒ / N
- Is the detainee displaying any adverse effects of segregation? Y / ☒
- Staff Comments: No issues at this time.

Recommendation:

- ☒ The detainee will remain in the current status.
☐ The detainee is recommended for release to general population.
☐ Other:

Signature: Lt. [Signature]
(Reviewing Supervisor)

Concurrence: [Signature] (AOC / AOC or Designee)

Original - To SHU File Yellow - To Detention File Pink - To Detainee

BFD - 008
Revised 04/19

VOLUNTARY PROTECTIVE CUSTODY STATUS CONSIDERATION FORM FORMULARIO DE CONSIDERACIÓN DEL ESTADO DE CUSTODIA DE PROTECCIÓN VOLUNTARIA

DETAINEE NAME (Nombre) [REDACTED] ID#: [REDACTED] REQUEST DATE (Fecha): 05/08/24

EMPLOYEE RECEIVING REQUEST: Ireland Name Title

SECTION A: SUMMARY OF REASONS FOR VOLUNTARY PROTECTIVE CUSTODY REQUEST RESUMEN DE MOTIVOS DE SOLICITUD DE CUSTODIA DE PROTECCIÓN VOLUNTARIA (TO BE COMPLETED BY EMPLOYEE RECEIVING REQUEST)

Detainee [REDACTED] stated he does not want to be placed in a lock down unit and wants a cell to himself.

DETAINEE'S SIGNATURE (Firma) [Signature] DATE (Fecha) 05/08/24

(AFTER COMPLETION OF SECTION A, FORWARD FORM AND RELATED DOCUMENTS TO SUPERVISORY STAFF FOR FURTHER ACTION)

SECTION B: Upon receipt of a protective custody request, the detainee shall be interviewed by a Supervisor. Available records should also be reviewed. INTERVIEW

INTERVIEWER'S COMMENTS AND RECOMMENDATION REGARDING PROTECTIVE CUSTODY REQUEST
COMENTARIOS Y RECOMENDACIONES DEL ENTREVISTADOR SOBRE LA SOLICITUD DE CUSTODIA DE PROTECCIÓN

See above:

INTERVIEWED BY: Ireland TITLE: Lt. DATE: 05/08/24

(AFTER COMPLETION OF SECTION B, FORWARD FORM AND RELATED DOCUMENTS TO ASSISTANT FIELD OFFICE DIRECTOR'S OFFICE FOR FINAL DETERMINATION)

SECTION C: ASSISTANT FIELD OFFICE DIRECTOR (AFOD) DETERMINATION (DETERMINACIÓN)

ASSIGN TO PROTECTIVE CUSTODY STATUS
ASIGNAR AL ESTADO DE CUSTODIA PROTECTORA
DO NOT ASSIGN TO PROTECTIVE CUSTODY STATUS
NO ASIGNAR AL ESTADO DE CUSTODIA PROTECTORA

AFOD or Designee's signature

Date

NOTICE TO DETAINEE:

If assigned to Protective Custody status, you may, at any time, make a written request to the Assistant Field Office Director for a reassignment to general population. Such request shall be evaluated and you shall either be reassigned or be subject to a hearing by the Facility Disciplinary Panel to determine the need for assignment to Involuntary Protective Custody status.

AVISO AL DETENIDO:

Si se le asigna el estado de Custodia protectora, puede, en cualquier momento, presentar una solicitud por escrito al Subdirector de la Oficina de Campo para una reasignación a la población general. Dicha solicitud será evaluada y usted será reasignado o estará sujeto a una audiencia por parte del Panel Disciplinario del Centro para determinar la necesidad de asignación al estado de Custodia de Protección Involuntaria.

CC: SHU File
AFOD
Detention File
Detainee

Detainee Copy

Immigration and Customs Enforcement
Buffalo Federal Detention Facility
Batavia, NY

DISCIPLINARY SEGREGATION
SEGREGACIÓN DISCIPLINARIA
RESTRAINT ORDER AUTHORIZATION
AUTORIZACIÓN DE ORDEN DE RESTRICCIÓN

This notice is to inform you (Este aviso es para informarle)

ID# [REDACTED] cell # 5-113 that you have been placed under a restraint order for the following reasons (que ha sido puesto bajo una orden de restricción por las siguientes razones):

Detainee has a history of Assault on staff

You shall be placed under the following restraint requirements whenever you are outside of your cell (Se le impondrán los siguientes requisitos de restricción siempre que se encuentre fuera de su celda):

Hard Hand Restraints

Notice to Detainee (Aviso al detenido):

You may write to the Officer in Charge or his/her designee to make a statement as to the need for continuing the restraint order. (Puede escribir al oficial a cargo o a su designado para hacer una declaración sobre la necesidad de continuar con la orden de restricción).

Initial Authorization

LS VISH CK
Assistant Field Office Director or Designee

Date 7/18/24

Original - SHU/FBI
Copy - Classified
CDS
Detention File
IR Packet

LEP Restraint order.doc
06/18/2022

U.S. Department of Homeland Security
Immigration & Customs Enforcement

Buffalo Federal Detention Facility
Batavia, New York

DETAINEE RIGHTS AT FACILITY DISCIPLINARY PANEL HEARING

As a detainee charged with a violation of facility rules and regulation referred to the Facility Disciplinary Panel (FDP) for disposition, you have the following rights:

1. The right to have a written copy of the charge(s) against you at least 24 hours prior to appearing before the FDP.
2. The right to have a full-time member of the staff who is reasonably available to represent you before the FDP.
3. The right to call witnesses and present documentary evidence on your behalf, provided safety would not be jeopardized.
4. The right to remain silent. Your silence may be used to draw an adverse inference against you. However your silence alone may not be used to support a finding that you committed a prohibited act.
5. The right to be present throughout the Facility Disciplinary Panel hearing except during panel deliberations and except where facility safety would be jeopardized.
6. The right to be advised of the Facility Disciplinary Panel's decision, the facts supporting the Panel's decision, except where facility safety would be jeopardized, and the Panel's disposition in writing.
7. The right to appeal the decision of the Facility Disciplinary Panel by means of the Administrative Remedy Procedure to the Facility Director within five (5) days of notice of the Panel's decision and disposition.

I hereby acknowledge that I have been advised of the rights afforded me at the Facility Disciplinary Panel hearing.

Signed: Declined ID#: 241699427 Date: 07/18/24

Notice of Rights given to detainee on: 07/18/24 by: 1/ella
(Date) (Employee signature)

DERECHOS DEL DETENIDO EN EL PANEL DE LA FACILIDAD DE DISCIPLINA

Como detenido acusado de violar las reglas y regulaciones de esta facilidad referidas al Panel de la Facilidad de Disciplina para disposición, usted tiene los siguientes derechos:

1. El derecho a tener una copia por escrito de el/los cargo(s) contra usted por lo menos 24 horas antes de presentarse ante el Panel de la Facilidad de Disciplina.
2. El derecho a tener a un miembro del personal de tiempo completo que este disponible para representarlo ante el panel de la Facilidad de Disciplina.
3. El derecho de llamar a testigo y presentar documentación que pruebe a su favor, con tal de que la seguridad de la facilidad no sea arriesgada.
4. El derecho a permanecer en silencio. Su silencio puede ser usado como interferencia contra usted. Sin embargo, su silencio no puede ser usado para apoyar algún descubrimiento de que usted haya cometido algún acto prohibido.
5. El derecho a estar presente durante la audiencia del Panel de la Facilidad de Disciplina excepto durante las deliberaciones del Panel y excepto donde la seguridad de la facilidad sea arriesgada.
6. El derecho a ser informado sobre la decisión del Panel de la Facilidad de Disciplina, las pruebas apoyando la decisión, excepto donde la seguridad de la facilidad sea arriesgada, y la disposición del Panel por escrito.
7. El derecho de apelar la decisión del Panel de la Facilidad de Disciplina por medio del Proceso De Administración de Remedios dirigido al Oficial encargado dentro de 5 días de ser notificado sobre la decisión y disposición del Panel.

Por este medio reconozco que he sido avisado sobre los derechos mencionados arriba y en la audiencia del Panel de la Facilidad de Disciplina.

Firma: _____ ID#: _____ Fecha: _____

Notificación de los derechos fue dado al detenido el día _____ por _____
Firma del empleado

Original - To Incident Report Packet

Pink - To Detainee

BFDF - 011

Revised 9/03

5-123

1. NAME OF FACILITY Buffalo Federal Detention Facility, Batavia, NY		Incident Report # 24-164	
PART I - INCIDENT REPORT			
2. NAME OF DETAINEE	3. ID NUMBER	4. DATE OF INCIDENT	5. TIME
		01/14/2004	0915
6. PLACE OF INCIDENT	7. BED/CELL NUMBER	8. UNIT	
Processing	P116	Processing	
9. CODE VIOLATION AND NUMBER	10. CODE VIOLATION AND NUMBER	11. CODE VIOLATION AND NUMBER	12. CODE VIOLATION AND NUMBER
298 Refusing work duty			
13. DESCRIPTION OF INCIDENT (DATE: 01/14/04 TIME: 0915 STAFF BECAME AWARE OF INCIDENT)			
On the above date and time detainee, [redacted] was being released from SHU-123 and being placed in A2-299A [redacted] finding out that he was being placed into unit A2 became verbally aggressive (298) over his unit assignment refusing an order to move to unit A2 (307). Detainee [redacted] was escorted back to SHU-123.			
14. SIGNATURE OF REPORTING EMPLOYEE		15. NAME AND TITLE (PRINTED)	
[redacted]		T. Lindsey	
16. INCIDENT REPORT DELIVERED TO ABOVE DETAINEE BY		17. DATE AND TIME INCIDENT REPORT DELIVERED	
[redacted]		01/14/04 101225	
18. DETAINEE SIGNATURE			
[redacted]		[redacted]	
19. Formal <input checked="" type="checkbox"/> REFER TO THE INSTITUTION DISCIPLINARY PANEL Informal <input type="checkbox"/> SANCTIONS IMPOSED ARE:			
PART II - INSTITUTION DISCIPLINARY PANEL (IDP)			
"NOTICE OF DISCIPLINARY PANEL HEARING" FORM SERVED <input checked="" type="checkbox"/>			
20. COMMENTS OF DETAINEE TO PANEL REGARDING ABOVE INCIDENT			
Detainee [redacted] refused to participate in his disciplinary panel			
21. A. IT IS THE FINDING OF THE PANEL THAT YOU COMMITTED THE FOLLOWING PROHIBITED ACT: 298 307 B. <input checked="" type="checkbox"/> THE PANEL ADVISED THE DETAINEE OF ITS FINDINGS AND OF THE RIGHT TO FILE AN APPEAL WITHIN 5 CALENDAR DAYS. C. <input type="checkbox"/> DID NOT COMMIT A PROHIBITED ACT.			
22. PANEL DECISION IS BASED ON THE FOLLOWING INFORMATION: The Panel based its decision on Sections #13 #27 and #29 of this Incident Report			
23. PANEL ACTION AND/OR RECOMMENDATION: The Panel recommends (13) days Disciplinary Segregation, (13) days loss of commissary, (13) days loss of toilet use, (13) days loss of telephone privileges (except legal calls)			
24. DATE AND TIME OF ACTION: 01/15/04 1405 (THE IDP CHAIRMAN'S SIGNATURE NEXT TO HIS NAME CERTIFIES WHO SAT ON THE IDP AND THAT THE COMPLETED REPORT ACCURATELY REFLECTS THE IDP PROCEEDINGS.)			
CHAIRMAN (TYPED NAME/SIGNATURE)		MEMBER (TYPED NAME)	
[redacted]		[redacted]	
Original - To DHO		Blue - To Detainee after I.D.P. Action or after Informal Sanctions	
Yellow - To Detainee Detention File		Pink - To Detainee after Part I Preparation	

IR # 24-317

NOTICE OF INSTITUTION DISCIPLINARY PANEL HEARING

To: [redacted] ID#: [redacted] Date: 01/18/24

Alleged code violations: 298; 307; Date / time of alleged offense(s):

☐ Check this box if you need an interpreter: Language / Dialect English

This notice serves as 24-hour notification of your institution disciplinary panel hearing. Your hearing will be held no sooner than 24 hours from the time of service of this notification, unless you waive the 24-hour hearing notice.

I wish to waive my rights to a 24-hour institution disciplinary panel hearing notice.

I request a postponement for cause. (# Hours approved:)

I do not wish to be present at my institution disciplinary panel hearing.

Do you request staff representation? Yes / No

Detainee Signature: [redacted] text

You will also have the right to call witnesses and present documentary evidence on your behalf. Names of those witnesses you wish to call should be listed below:

Name: ID#: Name: ID#: Name: ID#:

The chairman of the institution disciplinary panel will ensure those witnesses (staff or detainee) who are reasonably available, and who are determined by him to be necessary for the charges alleged against you are interviewed. Unavailable witnesses may be asked to submit written statements.

This Notice was conducted in the language.

Interpreter Information:

Officer serving notice on detainee: [redacted] Date/Time: 01/18/24 1440

Original - To Incident Report Packet Pink - To Detainee

Client Advocacy Strategies: ICE Advocacy

EMAILS, EMAILS, EMAILS!

- Create a contemporaneous email record of the conditions of your client's confinement - including medical updates, access to recreation, access to legal calls, etc. + day count
- Cite to PBNDS and highlight violations of their own standards
- Pair with request for release from solitary confinement and detention generally
- In addition to DO/ICE contact, consider cc'ing FOD, and applicable oversight agencies (CRCL, OIDO, OIG) to daily/weekly emails - particularly if planning to file an oversight complaint or federal case
- Can include medical expert letter/report, if applicable

Client Advocacy Strategies: DHS Oversight Advocacy

Administrative Conditions Complaints

- Letter format including factual summary/timeline of events, highlighting client vulnerabilities, and violations of PBNDS, constitutional case law, and international law (Mandela Rules via CAT)
- Send to CRCL, OIG, and OIDO - all at once!
- Once they open an “investigation,” continuously follow up with updates and cc the oversight bodies on daily emails to ICE
- CRCL complaints can be used to anchor a media/organizing strategy and can provide good contemporaneous exhibits for later federal court advocacy

Client Advocacy Strategies:

Federal Court Advocacy

Habeas Petitions

- Solitary confinement issues as evidence of punitive conditions of confinement per § 1226(c) prolonged detention tests
- Consider additional Rehabilitation Act arguments
- Consider APA/*Accardi* if ICE violating PBNDS/SMU policy

Federal Tort Claims Act

- Pathway to potential monetary damages for torts including intentional infliction of emotional distress, negligent infliction of emotional distress, negligence, medical neglect, abuse of process (retaliation)
- Watch out for independent contractor exception and short state law statute of limitations