Dear Committee Members:

Thank you for the opportunity to submit written comments in support of your hearing, “Oversight of the Department of Homeland Security.”

I serve as Senior Counsel for Government Accountability Project, a national non-profit whistleblower protection and advocacy organization. My organization currently represents several Department of Homeland Security (DHS) whistleblowers who have raised serious concerns about a range of issues plaguing the Immigration and Customs Enforcement (ICE) detention system, including the harmful impact of detention on children, the spread of COVID-19 in immigration detention facilities, the medical mistreatment of immigrant women in detention, and the widespread use of solitary confinement on immigrants in civil detention.

We write today to share our concerns about the abusive and deleterious impact of ICE’s longstanding use of solitary confinement on detained immigrants generally, and on those detained immigrants who are medically vulnerable and/or mentally ill in particular. In short, in light of the overwhelming evidence demonstrating the Department’s ongoing failures in terms of record-keeping, tracking, and the tragic and high human cost of a practice defined as torture by the United Nations and other reputable human rights bodies, DHS’s continued use of solitary confinement within ICE detention is unconscionable and should be disallowed from use except in extremely rare and highly regulated circumstances, and only after full consideration of all available alternatives.

On October 13, 2021, the DHS Office of the Inspector General (OIG) issued a report, *ICE Needs to Improve Its Oversight of Segregation Use in Detention Facilities*, culminating a multi-year audit of ICE’s use of solitary confinement at 156 ICE detention facilities across the country and, importantly, ICE’s reporting deficiencies and
failures to comply with applicable detention standards. The report summarizes findings from OIG inspectors who identified numerous violations of ICE detention standards for segregation, including detained individuals held in solitary confinement for prolonged periods without appropriate documentation, improper and premature use of solitary confinement, and instances in which detained individuals were permitted little or no time outside their cells.

The report comes more than seven years after Government Accountability Project whistleblower client Ellen Gallagher first identified ICE’s concerning use of solitary confinement in 2014, just months after she started as a Senior Advisor within the Department’s Office for Civil Rights and Civil Liberties (CRCL), a DHS oversight entity tasked with monitoring and overseeing abuses within the ICE detention system. Ms. Gallagher raised her concerns about solitary confinement numerous times internally after reviewing hundreds of ICE reports on solitary confinement, prolonged in many instances over multiple days, months, and in some cases years across dozens of facilities, in direct violation of federal regulations and statutory mandates.

Ms. Gallagher disclosed her concerns about ICE’s ongoing and systemic violations of segregation policies and procedures to CRCL leadership, the Office of Special Counsel, and—notably—to then-DHS Deputy Secretary Alejandro Mayorkas, now the Secretary of the Department and the sole witness currently scheduled to testify at the November 16th oversight hearing. Ms. Gallagher’s pleas for oversight were met with silence at best, and resistance at worst, until she made her whistleblowing public in 2019. Her disclosures not only helped prompt the OIG’s October report, but also contributed to legislation introduced in 2019 by Chairman Durbin, Senator Booker, and former Senator Kamala Harris to curtail ICE’s widespread misuse of solitary confinement on immigrant detainees.

We are relieved that the OIG finally conducted a systemic review of ICE’s use of solitary confinement. We appreciate as well its call for enhanced oversight of segregation use in ICE detention facilities and recommendations that ICE take steps to improve reporting and tracking requirements. However, that this is the OIG’s first systemic review on the oversight of detained people placed in solitary confinement, and that it took


Written Testimony from Dana L. Gold, Esq., Government Accountability Project
Senate Committee on the Judiciary Hearing on Oversight of the Department of Homeland Security (Hearing Date: November 16, 2021)
at least seven years after the Department — and Secretary Mayorkas himself — were aware of ICE’s ongoing and systematic violation of segregation policies to issue a report ultimately validating Ms. Gallagher’s disclosures, is appalling. Indeed, the years-long delay in meaningful oversight resulted in knowingly allowing the practice of torturing immigrants in detention to continue. We will likely never know the emotional and physical human toll, or indeed the number of people who have ultimately perished, as a result of lack of oversight and delay in action.

Further, we draw the Committee’s attention to the limited scope of the OIG report, which emphasizes ICE’s failures in data keeping related to solitary confinement, its failure to comply with reporting or records retention requirements, and its lack of effective oversight of detention facilities’ tracking and reporting. The findings are devastating. Of the statistical sample of detention files the OIG reviewed, in 72% of the segregation cases there was no evidence in the file that ICE considered alternatives to solitary confinement as required by ICE policy.\(^5\) ICE’s Segregation Directive also requires facilities to notify the Field Office Director within three days for detainees with a special vulnerability\(^6\) or after a continuous 14-day placement in solitary confinement; in these cases, the OIG found that there was no record at all for 13% of these segregation placements in violation of policy, and of those that were recorded, 42% were done so past the required time frame.\(^7\) The findings also included evidence that ICE had unlawfully destroyed records in violation of both records schedule and court order.\(^8\)

The OIG’s review, which covered all ICE detention facilities holding immigrant detainees in solitary confinement from FY2015 through FY2019, drew from prior OIG reports, policies, handbooks, and segregation placement records, and interviews with a number of ICE and other personnel from various departments across the agency (though, notably, the OIG failed to interview immigrant detainees, who would have almost certainly provided a critical and valuable perspective on the harmful impact of the practice). The report reveals serious shortcomings in the data systems, and in the data themself, that led to an unreliable and incomplete picture of the extent of segregation’s use.\(^9\) By the Inspector General’s own admission — because only a portion of segregation placements are actually recorded — we may never know the full extent of the use of segregation, or the number of individuals who have been subjected to the practice over the years.

The report contains a handful of graphic examples of human victims of ICE’s “data violations,” including many with medical and mental health vulnerabilities, who had been held in solitary confinement for well over 15 days and the egregious case of two detained people in particular who were subject to solitary confinement for more than 300 days.\(^10\) These examples, however, do little to truly illustrate the grave human cost of solitary confinement or the systemic failures of ICE and the OIG to provide meaningful oversight over the practice.

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\(^5\) OIG Report, page 5.
\(^6\) Special vulnerabilities are defined in the OIG Report as including “a medical condition, physical and mental illness; a suicide risk; pregnant or postpartum; on a hunger strike; and detainees identifying as lesbian, gay, bisexual, trans or intersex (LGBTI).” See OIG Report, page 3.
\(^7\) See OIG Report, page 6.
\(^8\) See OIG report, page 7.
\(^9\) See OIG Report, page 14. Pursuant to their review, the OIG requested segregation trackers from all ICE facilities holding immigrant detainees for longer than 72 hours, excluding family and juvenile detention facilities. The OIG received trackers for 87 of 156 facilities, but auditors were unable to review 5 trackers because the data was of too poor quality or because the data was outside the scope of the review; further, the OIG reported that their auditors reviewed the remaining 82 trackers to determine the total number of segregation placements and the extent to which placements failed to meet ICE’s reporting requirements. The OIG reported that “[f]or reasons discussed in this report, we determined this data to be unreliable and, therefore, did not use it to support our audit findings.”
The human cost of solitary confinement is equal parts tragic and multifarious: the long-term psychological and medical damage inflicted, the literal and mental health barriers to a fair day in court created by the practice, the tragic consequences for the loved ones and communities longing for the release of family members from solitary confinement, and even the moral and mental health implications of the practice on detention facility staff and other detainees.11

The OIG, despite its failure to investigate the human toll of ICE’s failure to collect and report data, acknowledged in the report’s conclusion that “[n]umerous studies have found that any time spent in segregation can be detrimental to a person’s health and that individuals in solitary confinement may experience negative psychological and physical effects even after being released.”12 But the report’s focus on data collection rather than meaningful investigation and information on the psychological effects of solitary confinement effectively sanitizes, indeed obfuscates, the extent of harm, suffering, and anguish exacted on countless detained immigrants – many with special vulnerabilities – subject to solitary confinement unnecessarily or prematurely.

The Department has known since at least 2014, when Ms. Gallagher first blew the whistle to every possible entity within DHS with oversight responsibility, that detained immigrants -- including those who were mentally ill or medically vulnerable -- were being subject to solitary confinement across the entire ICE civil detention, as well as the fact that solitary confinement is considered torture and when exacted over 15 days can cause irreparable damage.13 That they didn’t launch a systemic review back in 2014 when Ms. Gallagher first raised the alarm speaks volumes about DHS’s willingness and ability to truly conduct oversight and protect the lives of those subjected to this abuse in ICE detention.

We applaud the DHS Inspector General’s report which provides a necessary, though delayed, data-informed survey of the use of solitary confinement within the ICE detention system. Secretary Mayorkas – then, as now – is on notice of the improper and excessive use of solitary confinement. What is needed at this moment is accountability for seven years of failed oversight that allowed torture to occur across the ICE detention system in literally unverifiable numbers. That accountability must start with immediately ending the practice of segregation in ICE detention until compliance with standards to protect immigrant detainees can be guaranteed.

Thank you for the opportunity to contribute written testimony in support of this hearing.

Dana L. Gold, Esq.

12 See OIG Report, page 11.