

Written Testimony of the New York City Jails Action Coalition  
Before the Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights,  
U.S. Senate  
Hearing on “Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety  
Consequences”

Dear Chairman Durbin and Ranking Member Graham:

The New York City Jails Action Coalition (“JAC”) is a grassroots collection of activists, including the formerly incarcerated, currently incarcerated, their family members, and other community members, working to promote human rights, dignity, and safety for people in New York City jails. Its members united, in part, to give New York City a local voice in the growing national consensus opposing solitary confinement in jails and prisons. JAC opposes the practice of solitary confinement under all circumstances. Its current advocacy campaign aims to curtail the rapid expansion of solitary confinement beds in New York City jails.

New York represents a case study for the importance of a federal policy on solitary confinement in jails and prisons. Although New York State recently passed legislation to exclude persons with serious mental illness from solitary confinement units in New York State prisons,<sup>1</sup> the law did not apply to local jails, which primarily house pretrial detainees.<sup>2</sup> Thus, although New York State spares many individuals convicted of felonies from the devastating effects of solitary confinement, cities and counties continue to endanger the health and well-being of individuals with mental illness who may never have been convicted of any crime. Such an absurdity is the inevitable result of the patchwork statutory framework governing solitary confinement.

While the New York State legislature moves to curtail solitary confinement in its prisons, New York City plans to expand it in its jails. In fact, by the end of fiscal year 2013, New York City’s Department of Correction (“NYC DOC”) intends to increase its solitary confinement capacity by 69%, bringing the total number of solitary beds to 1,215.<sup>3</sup> These beds amount to approximately ten percent of the NYC DOC’s average daily incarcerated population.<sup>4</sup> Such a rate of solitary confinement far exceeds the national average of between two and four percent. NYC DOC has

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<sup>1</sup> SHU Exclusion Law of 2008, 2008 N.Y. Laws 1 (codified as amended at N.Y. Correct. Law §§ 137 & 401-a (McKinney 2012) and N.Y. Mental Hyg. Law § 45 (McKinney 2012).

<sup>2</sup> See N.Y. Correct. Law § 500-K (McKinney 2012).

<sup>3</sup> New York City Department of Correction, *Punitive Segregation: Frequently Asked Questions 2* (2012), available at

[http://www.nyc.gov/html/doc/html/news/041312\\_PUNITIVE\\_SEGREGATION.pdf](http://www.nyc.gov/html/doc/html/news/041312_PUNITIVE_SEGREGATION.pdf).

<sup>4</sup> See New York City Department of Correction, *DOC Statistics*, [http://www.nyc.gov/html/doc/html/stats/doc\\_stats.shtml](http://www.nyc.gov/html/doc/html/stats/doc_stats.shtml).

expanded solitary confinement despite any increase in jail infractions. In the words of DOC Commissioner Dora Schriro, “Jail incidents remain at historic lows.”<sup>5</sup>

Solitary confinement places individuals in small cells for 22 to 24 hours a day with little human contact. It comes at a great physical and mental cost to the human beings who must endure it. It deprives individuals of the basic needs of psychological life—productive human interaction and environmental stimulation.<sup>6</sup> As courts have recognized, “isolating a human being from other human beings year after year or even month after month can cause substantial psychological damage, even if the isolation is not total.”<sup>7</sup> The psychological harm of solitary confinement is not lost on NYC DOC officers who call solitary confinement “the Bing” because it makes people’s “minds go ‘bing.’”<sup>8</sup>

Due to solitary confinement’s devastating psychological effects, Juan Mendez, Special Rapporteur of the United Nations Human Rights Council, has called for a complete ban on the practice for juveniles and persons with mental disabilities because it constitutes cruel, inhuman, or degrading treatment.<sup>9</sup> States across the nation have recently joined the international consensus opposing solitary confinement. Colorado, Illinois, Maine, Mississippi, Ohio, and Washington have taken steps to reduce their solitary confinement populations. Mississippi reduced both costs and prison violence when it limited the use of solitary confinement.<sup>10</sup>

In the places where it persists, solitary confinement represents a danger to the community. More than one hundred years ago, the Supreme Court recognized that solitary confinement prevented rehabilitation.<sup>11</sup> Today, agencies like the NYC DOC dump thousands of psychologically traumatized individuals directly from solitary confinement cells into the community. These

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<sup>5</sup> Statement to the New York City Council Committee on Fire and Criminal Justice Services and Committee on Finance by Dora Schriro, Commissioner, New York City Department of Correction, March 8, 2012, p. 3.

<sup>6</sup> See *Wilkerson v. Stalder*, 639 F. Supp. 2d 654, 678 (M.D. La. 2007).

<sup>7</sup> *Davenport v. DeRobertis*, 855 F.2d 1310, 1313 (7th Cir. 1988).

<sup>8</sup> See Sister Marion Defeis, Op-Ed, *The Crime of Solitary Confinement*, DAILY NEWS (N.Y.), June 4, 2012.

<sup>9</sup> *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, A/6/268, available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/66/268](http://www.un.org/ga/search/view_doc.asp?symbol=A/66/268).

<sup>10</sup> See Erica Goode, *Prisons Rethink Isolation, Saving Money, Lives and Sanity*, N.Y. Times, Mar. 10, 2012, at A1.

<sup>11</sup> “A considerable number of prisoners fell, after even a short [solitary] confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.” In re *Medley*, 134 U.S. 160, 168 (1890).

people can suffer from a range of psychological harms that make it difficult to rejoin productive society and represent a tragic and unnecessary recidivism risk.<sup>12</sup>

Solitary confinement does not decrease violence in New York City jails. Instead, solitary confinement undergirds the culture of official violence perpetuated by the NYC DOC. In addition to the psychological and social harms inherent in solitary confinement, prisoners in New York City's jails face a particular risk of physical abuse. The cellblocks in Rikers Island's Central Punitive Segregation Unit ("CPSU") are places where correction officers can beat incarcerated individuals with impunity. In the 1990s, a successful class action lawsuit brought the brutality of CPSU officers to public light.<sup>13</sup> Today, brutality continues in solitary confinement because the NYC DOC has promoted many of its most notorious officers to positions of authority, where they reinforce a culture of abuse against incarcerated people.<sup>14</sup> Worse, isolation makes it more difficult for those in solitary to access administrative grievance systems, which means that much of this brutality goes unreported. Individuals return to their communities from solitary confinement with broken bodies as well as broken psyches.

Finally, solitary confinement is an extravagant way to deprive prisoners of their rights. Segregation housing can cost as much as two to three times more to build than general population housing and requires substantially greater staffing resources.<sup>15</sup> The NYC DOC plans to accommodate its solitary confinement expansion by adding a new 1,500 bed facility on Rikers Island—even as its number of detainees has steadily declined for the past decade.<sup>16</sup> Solitary confinement simply costs the taxpayers too much money.

JAC's members have suffered and witnessed the ravages of solitary confinement. Some of its members have been forced to live inside "the Bing," and many others have seen its effects on the faces and bodies of family members, friends, and clients.

### **Conclusion**

JAC asks the Subcommittee to adopt federal legislation prohibiting or dramatically limiting solitary confinement. The United States must protect the rights of the people it incarcerates.

Sincerely,

New York City Jails Action Coalition

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<sup>12</sup> See generally, Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 Am. J. of Psychiatry 1450 (1983).

<sup>13</sup> See *Sheppard v. Phoenix*, 91 Civ. 4148 (S.D.N.Y. 1998) (order approving stipulation for entry of judgment).

<sup>14</sup> See Amended Complaint at 8, 33-35, *Nunez v. City of New York*, No. 11-cv-5845 (S.D.N.Y. May 24, 2012).

<sup>15</sup> Goode, *supra* note 10.

<sup>16</sup> See Schriro, *supra* note 5, at 10.