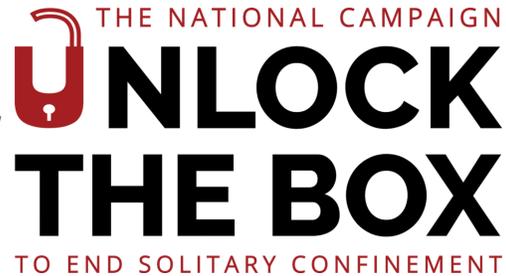


**HALTsolitary**  
NEW YORK CAMPAIGN FOR ALTERNATIVES TO ISOLATED CONFINEMENT



Written Submission of Robert F. Kennedy Human Rights to the International Independent Expert Mechanism to Advance Racial Justice and Equality in the context of Law Enforcement

February 24, 2023

Collective submission written on behalf of the California Mandela Campaign (“CMC”), Atlas of Blackness, Unlock the Box, and the NY #HALTsolitary campaign.

Robert F. Kennedy Human Rights (“RFK Human Rights”) is a nonpartisan, not-for-profit organization that has worked to realize Robert F. Kennedy’s dream of a more just and peaceful world since 1968. In partnership with local activists, RFK Human Rights advocates for key human rights issues, championing change makers and pursuing strategic litigation at home and around the world. And to ensure change that lasts, we foster a social-good approach to business and investment and educate millions of students about human rights and social justice. The U.S. Advocacy and Litigation Program at RFK Human Rights partners with grassroots community organizations to seek accountability for human rights abuses in the U.S. criminal legal and immigration systems and to promote fairness, equity, and dignity for all people whose lives are touched by those systems.

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## INTRODUCTION

The United States wields solitary confinement against Afro-descendent people in municipal jails, state and federal prisons, immigration detention centers, and care settings for foster youth. The below report details abusive solitary confinement practices against Black people in each of these settings in four jurisdictions in the United States: 1) abusive solitary confinement practices against Black people

Afro-descendant people, who are disproportionately harmed by U.S. carceral systems, face devastating mental, physical, and emotional harm from solitary confinement. More than a third (33%) of people held in solitary confinement become psychotic and/or suicidal [within the first 15 days](#),<sup>1</sup> and people who have been subjected to solitary confinement are [78% more likely to commit suicide](#) within a year of being released from prison.<sup>2</sup> The severe suffering caused by solitary confinement can amount to torture as defined under international law.<sup>3</sup> According to the United Nations Special Rapporteur on Torture, “Solitary confinement, when used for the purpose of punishment, cannot be justified for any reason, precisely because it imposes severe mental pain and suffering beyond any reasonable retribution for criminal behaviour.”<sup>4</sup> The United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the Mandela Rules, explicitly prohibit indefinite and prolonged solitary confinement, or solitary confinement lasting longer than 15 days.<sup>5</sup> International human rights law thus recognizes prolonged solitary confinement as torture and violative of the tenets of basic human dignity.

Disturbingly, the use of solitary confinement in the United States is on the rise. On May 25, 2022, President Biden [issued an executive order](#) directing federal prisons to reduce solitary confinement in their facilities.<sup>6</sup> However, solitary confinement [has increased 7%](#) since Biden’s order went into effect.<sup>7</sup> The United States has the [highest incarceration](#) rate in the world,<sup>8</sup> imprisoning [close to 2 million people](#) in jails, prisons, and detention centers.<sup>9</sup> Nearly [80,000](#) people are currently held in solitary confinement.<sup>10</sup> Within that number at least 6,000 have been

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<sup>1</sup> Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 *Crime and Delinquency* 124 (2003).

<sup>2</sup> Lauren Brinkley-Rubinsten, Josie Sivaraman & David L. Rosen, *Association of Restrictive Housing During Incarceration with Mortality After Release*, *JAMA Network Open* (2019).

<sup>3</sup> CAT art. 1; Manfred Nowak (Special Rapporteur on the Question of Torture), *Civil and Political Rights Including the Questions of Torture and Detention*, ¶ 35, U.N. Doc. E/CN.4/2006/6 (Dec. 23, 2005).

<sup>4</sup> U.N.G.A., 66th Sess., Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Punishment, ¶ 81, U.N. Doc. A/66/268 (Aug. 5, 2011), <https://undocs.org/A/66/268>.

<sup>5</sup> G.A. Res. 70/175: United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rules 43–44, U.N. Doc. A/RES/70/175, (Jan. 8, 2016), <https://undocs.org/A/RES/70/175>.

<sup>6</sup> Shannon Pettypiece, *Biden Signs Police Reform Executive Order on Anniversary of George Floyd’s Death*, NBC News (May 25, 2022),

<https://www.nbcnews.com/politics/white-house/biden-signs-police-reform-executive-order-anniversary-george-floyds-de-rca30548>.

<sup>7</sup> Erik Ortiz, *Biden Pledged to End Solitary Confinement. Federal Prisons Are Increasing Its Use*, NBC News (Sept. 30, 2022), <https://www.nbcnews.com/politics/justice-department/biden-pledged-end-solitary-confinement-federal-prisons-are-increasing-rcna49980>.

<sup>8</sup> *Incarceration Rates by Country 2023*, World Population Review, <https://worldpopulationreview.com/country-rankings/incarceration-rates-by-country> (last visited Feb. 22, 2023).

<sup>9</sup> *Growth in Mass Incarceration*, The Sentencing Project, <https://www.sentencingproject.org/research/> (last visited Feb. 22, 2023).

<sup>10</sup> The Liman Center at Yale Law School, *Time-in-Cell 2019: A Snapshot of Restrictive Housing* (2020), <https://cl.memberclicks.net/cla-liman-rh-report> (hereinafter “The Liman Study”). The Liman Study reports up to 62,000 people in solitary confinement. However, these figures do not include people held for less than 15 days in isolation.

subjected to this form of torture for a year a longer—in some cases, [even for decades](#).<sup>11</sup> Some states have either opted to enact state laws that ban or limit solitary confinement for groups like pregnant people and minors or to limit solitary confinement to 15 days, in accordance with the United Nation’s Mandela Rules.<sup>12</sup> Yet despite new laws, limits on solitary confinement remain unenforced in most jurisdictions, leaving people to anguish under tortuous conditions.

## I. Uneven Progress in State Legislative Bans on Solitary Confinement

Between 2009 and 2022, [at least 45 states introduced bills to restrict or end some aspects of solitary confinement](#).<sup>13</sup> Since 2018, only 3 states enacted laws consistent with the Mandela Rules’ 15-day limit. Despite incremental progress on the state level to ban or restrict solitary confinement, no U.S. state has fully ended solitary confinement for all people. Below, the examples of California and New York illustrate challenges facing efforts to end solitary confinement.

### a. California’s Campaign for a Legislative Ban on Solitary Confinement

Human rights defenders in California are currently engaged in a legislative advocacy campaign to prohibit solitary confinement. Of all states, California holds the third-highest number of people in solitary confinement.<sup>14</sup> Of 1,182 people in solitary confinement in 2021, California held nearly 78% for 30 days or longer and over 100 people for a year or longer.<sup>15</sup> Shockingly, these figures represent an improvement since 2015, when [California settled a landmark lawsuit](#) accusing it of cruel and unusual punishment over its overbroad use of prolonged solitary confinement.<sup>16</sup> Andrew Johnson, a Black Army veteran, spent 16 months in solitary confinement only to later be acquitted of his charges at trial in 2018.<sup>17</sup> Upon his arrest, he was immediately placed into solitary confinement at the Santa Clara County Jail.<sup>18</sup> Prison staff never gave Mr. Johnson nor his attorney a justification for his solitary confinement.<sup>19</sup> After his release, Mr. Johnson recalled, “When they put you in solitary confinement, you’re no longer thinking clearly... You’re thinking, ‘Oh, my God. Oh, my God. Oh, my God. I’m trapped.’”<sup>20</sup>

The California Mandela Campaign seeks to end abusive practices like those inflicted on Mr. Johnson through passage of [Assembly Bill 280](#). The bill would limit the use of solitary confinement to 15 days and prohibit solitary confinement of anyone who is pregnant, under the

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<sup>11</sup> Ed Pilkington, *Nearly 50,000 People Held in Solitary Confinement in US, Report Says*, The Guardian (Aug. 24, 2022), <https://www.theguardian.com/us-news/2022/aug/24/us-solitary-confinement-prisons#:~:text=In%20a%20new%20report%20spea,rheaded,for%20at%20least%2015%20days>.

<sup>12</sup> Unlock the Box, *Banning Torture: Legislative Trends and Policy Solutions for Restricting and Ending Solitary Confinement throughout the United States* (January 2023), <https://unlocktheboxcampaign.org/wp-content/uploads/2023/01/UTB-BanningTorture-TrendReport-January2023.pdf>.

<sup>13</sup> *Id.* at 4.

<sup>14</sup> Liman Study, *supra* n.10 at 8.

<sup>15</sup> *Id.* at 11.

<sup>16</sup> Ian Lovett, *California Agrees to Overhaul Use of Solitary Confinement*, N.Y. Times (Sept. 1, 2015), <https://www.nytimes.com/2015/09/02/us/solitary-confinement-california-prisons.html>.

<sup>17</sup> Sydney Trent, *A Black Army Vet spent 16 months in Solitary. Then a Jury Heard the Evidence Against Him*, The Washington Post (June 13, 2022), <https://www.washingtonpost.com/dc-md-va/2022/06/13/solitary-confinement-andrew-johnson-san-jose-jail/>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

age of 26 or over the age of 59, or who has a mental or physical disability.<sup>21</sup> In addition to banning prolonged solitary confinement in county jails, Assembly Bill 280 would also prohibit its use in California immigration detention centers, where it [is abusively employed to punish people advocating for better conditions](#).<sup>22</sup> In September 2021, advocates filed a [complaint](#) with the federal Department of Homeland Security's Office of Civil Rights and Civil Liberties detailing retaliatory solitary confinement against individuals at Mesa Verde Detention Facility in Bakersfield and Golden State Annex in McFarland.<sup>23</sup>

In 2022, California governor Gavin Newsome [vetoed a bill](#) similar to Assembly Bill 280, citing the common but erroneous belief that protections from solitary confinement “could risk the safety of both the staff and incarcerated population within these facilities.”<sup>24</sup> Numerous studies show that solitary confinement does not decrease prison misconduct or violence against prison staff or other incarcerated individuals.<sup>25</sup> The California Mandela Campaign is now appealing to international legal authorities to build support for the passage of Assembly Bill 280. It encourages the International Independent Expert Mechanism to Advance Racial Justice and Equality in the context of Law Enforcement to visit California facilities where prolonged solitary confinement continues with impunity. The California Mandela Campaign can also facilitate introductions with lawmakers who have worked on the issue of solitary confinement, including members of the California Legislative Black Caucus.

#### b. New York's Campaign to Implement Legislation Banning Solitary Confinement

Even where states prohibit solitary confinement by law, significant implementation challenges exist. In March 2021, New York passed legislation to limit the use of solitary confinement in prisons and jails in accordance with the Mandela Rules.<sup>26</sup> After a ten-year campaign led by survivors of solitary confinement and families of people in solitary, the HALT Solitary Confinement Law (“HALT”) now requires the New York Department of Corrections and Community Supervision (“DOCCS”) to stop the torture of long-term solitary beyond 15 days, ban solitary for groups of people most vulnerable to its negative impacts, and ensure that people who most need effective treatment and support receive it.

Yet, DOCCS continues to perpetuate abusive solitary confinement through overbroad exceptions to the protections put in place by HALT. Currently, DOCCS [violates](#) core components

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<sup>21</sup> Press Release, Disability Rights California, *The California Mandela Campaign Launches to Support AB 280* (Jan 24, 2023), <https://www.disabilityrightsca.org/press-release/the-california-mandela-campaign-launches-to-support-ab-280..>

<sup>22</sup> See, e.g. Daniel Tse, *Gov. Newsom, Understand the Horrors of Solitary Confinement as You Consider the Mandela Act*, Orange County Register (Sept. 29, 2022), <https://www.ocregister.com/2022/09/29/gov-newsom-understand-the-horrors-of-solitary-as-you-consider-the-mandela-act/> (recounting the story of Cameroonian asylee Daniel Tse, an immigrant rights' activist and rising attorney, in immigration detention in California).

<sup>23</sup> American Civil Liberties Union Northern California, *Retaliation Against Individuals in Immigration Detention at Mesa Verde Detention Facility and Golden State Annex* (Sept. 13, 2022), <https://www.aclunc.org/campaign/ending-immigration-detention-california>.

<sup>24</sup> Letter from the Office of the Governor, Sept. 29, 2022, <https://www.gov.ca.gov/wp-content/uploads/2022/09/AB-2632-VETO.pdf?emrc=ccbc61>

<sup>25</sup> See Kayla James & Elena Vanko, *The Impacts of Solitary Confinement*, Vera Institute of Justice Evidence Brief at n.35 (Apr. 2021) (citing academic studies examining the relationship between restrictive segregation and prison violence).

<sup>26</sup> See Press Release, New York State Senate, *Senate Passes the 'HALT' Solitary Confinement Act* (Mar. 18, 2021), <https://www.nysenate.gov/newsroom/press-releases/senate-passes-halt-solitary-confinement-act> (“The [Nelson Mandela Rules](#), adopted by the United Nations, define segregated confinement for more than 15 days as torture. HALT will bring New York in compliance with this international standard and save the State tens of millions of dollars over the next several years.”).

of HALT,<sup>27</sup> including the [15-day limit on solitary](#),<sup>28</sup> the [ban on special populations](#) from solitary,<sup>29</sup> the [requirements for alternatives](#),<sup>30</sup> the [restrictions on what conduct](#) can result in any separation,<sup>31</sup> and the [restrictions on restraints](#) during programming.<sup>32</sup> These violations fall especially hard on Black New Yorkers, who represent approximately 18% of people in New York State, but make up nearly 49% of all people in New York State prisons<sup>33</sup>, 59% of people in Special Housing Units (SHU),<sup>34</sup> and 65% of people in longer term disciplinary confinement.<sup>35</sup> New York’s ongoing struggle to prohibit abusive solitary confinement shows that legislation without oversight for enforcement is insufficient to eradicate state-sponsored torture.

## II. Louisiana’s Widespread Abuse of Solitary Confinement in Immigrant Detention

Louisiana has been called the “[solitary confinement capital of the world](#)” for leading the world in both rates of incarceration and solitary confinement.<sup>36</sup> For decades, Albert Woodfox, Herman Wallace, and Robert King, known as the “Angola 3,” were held in solitary confinement in the notorious Angola Prison, a former slave plantation, [as punishment](#) for their membership in the Black Panther Party.<sup>37</sup> Woodfox survived 44 years in solitary confinement, [the longest a person has been held in isolation](#) in the United States.<sup>38</sup>

Today Louisiana continues to torture Black people with solitary confinement in a sprawling network of privately run immigrant detention centers. During Donald Trump’s presidency, [the federal government massively expanded its capacity for immigration detention](#),<sup>39</sup> contracting with private prison companies to transform Louisiana [into the second largest state for immigration detention after Texas](#).<sup>40</sup>

<sup>27</sup> Victoria Law, *New York Prisons Are Blatantly Violating State Law Limiting Solitary Confinement*, Truthout (Sept. 21, 2022), <https://truthout.org/articles/new-york-prisons-are-blatantly-violating-state-law-limiting-solitary-confinement/>.

<sup>28</sup> Chris Gelardi & Emily Brown, *State Prisons Are Routinely Violating New York’s Landmark Solitary Confinement Law*, New York Focus (Sept. 12, 2022), <https://www.nysfocus.com/2022/09/12/halt-solitary-implementation-doccs/>.

<sup>29</sup> Chris Gelardi, *Prisons Are Illegally Throwing People with Disabilities into Solitary Confinement*, New York Focus (Sept. 26, 2022), <https://www.nysfocus.com/2022/09/26/prisons-are-illegally-throwing-people-with-disabilities-into-solitary-confinement/>.

<sup>30</sup> Chris Gelardi, *Solitary By Another Name: How State Prisons Are Using ‘Therapeutic’ Units to Evade Reforms*, New York Focus (Oct. 5, 2022), <https://www.nysfocus.com/2022/10/05/solitary-by-another-name-halt-residential-rehabilitation-units-therapeutic-rrus/>.

<sup>31</sup> Chris Gelardi, *Lesser Infractions Aren’t Supposed to Land You in Solitary Confinement. They Do Anyway*, New York Focus (Oct. 24, 2022), <https://www.nysfocus.com/2022/10/24/lesser-infractions-halt-solitary-confinement/>.

<sup>32</sup> Chris Gelardi, *New York’s Prison Chief Ordered Guards to Illegally Shackle People to Desks*, New York Focus (Nov. 7, 2022), <https://www.nysfocus.com/2022/11/07/anthony-annucci-new-york-prison-shackling/>.

<sup>33</sup> NYS Dep’t of Corr. and Cmty. Supervision, *Table 2. Security Level and Housing Facility By Ethnic Status* (Sept. 1, 2022), [https://doccs.ny.gov/system/files/documents/2022/09/2022\\_09\\_01-uc-profile.pdf](https://doccs.ny.gov/system/files/documents/2022/09/2022_09_01-uc-profile.pdf).

<sup>34</sup> NYS Dep’t of Corr. and Cmty. Supervision, *Table 1. Demographics Of Individuals Housed in Segregated Confinement or RRU* (Feb. 1, 2023), <https://doccs.ny.gov/system/files/documents/2023/02/halt-monthly-report-february-1-2023.pdf>.

<sup>35</sup> *Id.*

<sup>36</sup> Solitary Watch, et al., *Louisiana on Lockdown: A Report on the Use of Solitary Confinement in Louisiana State Prisons, With Testimony from the People Who Live It* (June 2019), <https://solitarywatch.org/wp-content/uploads/2019/06/Louisiana-on-Lockdown-Report-June-2019.pdf>.

<sup>37</sup> American Civil Liberties Union, *Solitary Confinement: “The Soul Cries and the Brain Shrinks”*, <https://www.aclu.org/other/solitary-confinement-soul-cries-and-brain-shrinks> (last visited Feb. 22, 2023).

<sup>38</sup> Shauneen Miranda, *The Angola 3’s Albert Woodfox, Who Survived Decades of Solitary Confinement, Dies*, NPR (Aug. 5, 2022), <https://www.npr.org/2022/08/05/1115885434/angola-three-albert-woodfox-dies>.

<sup>39</sup> Davide Mamone, *As Louisiana Prison Population Drops, Private Firms Turn to Immigration Contracts for Revenue*, The Acadiana Advocate (Nov. 29, 2021), [https://www.theadvocate.com/acadiana/news/as-louisiana-prison-population-drops-private-firms-turn-to-immigration-contracts-for-revenue/article\\_1b71c034-4979-11ec-951b-1f4b7822c933.html](https://www.theadvocate.com/acadiana/news/as-louisiana-prison-population-drops-private-firms-turn-to-immigration-contracts-for-revenue/article_1b71c034-4979-11ec-951b-1f4b7822c933.html).

<sup>40</sup> American Civil Liberties Union Louisiana, *ACLU of Louisiana and Immigrants’ Rights Organizations Visit More Than 3000 People Detained in Ice Custody in Effort to End Prolonged Detention* (Jan. 11, 2023), <https://www.laaclu.org/en/press-releases/aclu-louisiana-and-immigrants-rights-organizations-visit-more-3000-people-detained>;

In Louisiana’s Pine Prairie ICE Processing Center (“Pine Prairie”), [a group of 45 Black asylum seekers engaged in a peaceful hunger strike to protest insect infestation of their cells, expired and poor-quality food, starvation, and lack of medical care](#).<sup>41</sup> Pine Prairie officials responded to this peaceful action by shooting rubber bullets, throwing tear gas canisters, pepper spraying, and handcuffing protestors.<sup>42</sup> One person vividly remembered hearing a fellow protestor’s bone snap as guards wrestled him to the ground. Guards then threw protestors in solitary as punishment for the peaceful protest.<sup>43</sup> A man from Uganda suffered so much mental trauma from his prolonged solitary confinement that medical personnel determined he showed physiological signs of having suffered a stroke.<sup>44</sup>

Egregious patterns of solitary confinement are found throughout the ICE detention system. From 2017 to 2021, the United States imprisoned immigrants in solitary confinement over [14,500 times](#).<sup>45</sup> In 2017, the average duration of placement was 33 days; in 2022, the average was 22 days, with a high duration of 242 days.<sup>46</sup> But abusive solitary confinement is particularly common at ICE’s New Orleans Field Office (“NOLA ICE”), which oversees detention centers in Louisiana and Mississippi, among other states. In February 2021, a group of United States senators [wrote a letter](#) to the Secretary of Homeland Security decrying “the abusive culture within the New Orleans ICE Field Office and all the detention centers it oversees.”<sup>47</sup> In June 2021, a group of human rights organizations filed [a complaint with the federal Office of Civil Rights and Civil Liberties](#) (“CRCL”) detailing how officials working under NOLA ICE used punitive solitary confinement to segregate individuals who contracted COVID-19.<sup>48</sup> One individual dealing with a mental health crisis was placed in solitary confinement and became so desperate that he attempted to castrate himself but “no one found him until he was bleeding out for two hours.”<sup>49</sup> Following the complaint, in December 2021, CRCL [committed to initiating an investigation](#) into abusive detention practices across the entire ICE New Orleans Field Office.<sup>50</sup> As of February 2023, however, no investigation results have been released and patterns of abusive solitary confinement continue unabated.

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On an average day, Immigration and Customs Enforcement (ICE), an agency of the United States Department of Homeland Security, holds anywhere from twenty to thirty thousand immigrants in civil detention. *See Detention Management*, U.S. Immigr. and Customs Enforcement, <https://www.ice.gov/detain/detention-management> (last visited Feb. 22, 2023).

<sup>41</sup> *See generally* Robert F. Kennedy Human Rights, *We’re Living Injustices I Cannot Even Name* (2021), <https://rfkhumanrights.org/assets/documents/Pine-Prairie-Whitepaper.pdf> (describing abuses suffered by Cameroonian and other immigrants in immigration detention).

<sup>42</sup> *Id.* at 9.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> U.S. Gov’t Accountability Off., *Immigration Detention: Actions Needed to Collect Consistent Information for Segregated Housing Oversight* (October 2022), <https://www.gao.gov/assets/gao-23-105366.pdf>.

<sup>46</sup> *Id.* at 62, 65.

<sup>47</sup> Letter from Elizabeth Warren, U.S. Senator, et al., to Alejandro Mayorkas, Sec’y of Homeland Sec. (Feb. 25, 2021) (on file with author),

<https://www.warren.senate.gov/imo/media/doc/2021.02.25%20Letter%20to%20ICE%20and%20DHS%20re%20forced%20deportations%20of%20asylum-seekers.pdf>.

<sup>48</sup> Letter from Robert F. Kennedy Human Rights, et al., to Joseph V. Cuffari, Dep’t Homeland Sec. Inspector Gen. (June 21, 2021), <https://rfkhumanrights.org/assets/documents/RFK-Human-Rights-Pine-Prairie-DHS-Complaint.pdf>.

<sup>49</sup> *Id.* at 17, n. 111.

<sup>50</sup> Follow-Up Letter from Robert F. Kennedy Human Rights, et al., to Alejandro Mayorkas, Sec’y of Homeland Sec. (Dec. 20, 2021),

<https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/61c0b47c15319f67d4045ca3/1640019069450/12%3A20%3A21+DHS+NOLA+ICE+Investigation+Follow-Up+Letter+%282%29.pdf>.

The United States resists [calls to collect or record racial data of detained immigrants](#), but researchers discern a disturbing pattern of anti-Black abuse through country of origin data.<sup>51</sup> [A national study of detention abuse whistleblowing found that 28% of abuse-related reports came from Black migrants](#).<sup>52</sup> Under NOLA ICE, Black migrants are almost twice as likely to experience abuse as migrants of other races.<sup>53</sup> Immigrants from majority-Black countries are more than [six times](#) more likely than others in ICE detention to be held in solitary confinement.<sup>54</sup> Majority-Black countries make up less than 6% of the detention population, but are 4 of the top 10 highest countries of origin for individuals held in solitary confinement.<sup>55</sup>

### III. Minnesota's Infliction of Solitary Confinement of Youth

Solitary confinement causes serious psychological damage and irreparable harm to adults. But its effects are even worse for minors because their brains are still developing. Spending time in solitary confinement as a young person can lead to [increased risk of suicide and overdose](#).<sup>56</sup> Kalief Browder, arrested at age sixteen for a crime he did not commit, tragically took his own life after being held in solitary confinement for two years on Rikers Island.<sup>57</sup> The effects of solitary confinement are so damaging to youth that the Federal Bureau of Prisons [outright banned](#) the practice for this population in 2016.<sup>58</sup>

Yet throughout the United States youth continue to be held in isolation, without access to natural light, reading materials, or any meaningful human contact.<sup>59</sup> At least 30% of youth held in juvenile facilities report being held in solitary confinement for some period of time.<sup>60</sup> Of the few facilities tracking this data, [46%](#) reported locking youth in their rooms.<sup>61</sup> However, most facilities that detain youth, whether for criminal or foster care purposes, do not collect data on

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<sup>51</sup> See, e.g. Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth to twelfth reports of the United States of America* (Sept. 21, 2022) at 13, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FUSA%2FCO%2F10-12&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FUSA%2FCO%2F10-12&Lang=en) (urging the United States to “[s]et up a comprehensive data-collection system on immigration, disaggregated by ethnicity, nationality, gender and other relevant indicators, including information on detained non-citizens, asylum procedures followed and their outcomes, and incidents of excessive use of force”). The United States has yet to announce any initiatives to implement this recommendation.

<sup>52</sup> Freedom for Immigrants, et al., *Uncovering the Truth: Violence and Abuse Against Black Migrants in Immigration Detention* (October 2022), <https://www.freedomforimmigrants.org/report-uncovering-the-truth>.

<sup>53</sup> *Id.* at 19.

<sup>54</sup> Konrad Franco, et al., *Punishing Status and the Punishment Status Quo: Solitary Confinement in U.S. Immigration Prisons, 2013-2017* (April 2020), <https://osf.io/preprints/socarxiv/zdy7f/>; see also Black Alliance for Just Immigration et al., *Uncovering the Truth: Violence and Abuse Against Black Migrants in Immigration Detention* (2023) at 15 (discussing evidence from a Freedom of Information Act request confirming a study that immigrants from majority-Black countries are less than 6% of the ICE detention population but more than 24% of the solitary confinement population).

<sup>55</sup> *Supra* n. 47 at 33.

<sup>56</sup> Andrea Fenster, *New Data: Solitary Confinement Increases Risk of Premature Death After Release*, Prison Policy Initiative (Oct. 13, 2020), [https://www.prisonpolicy.org/blog/2020/10/13/solitary\\_mortality\\_risk/](https://www.prisonpolicy.org/blog/2020/10/13/solitary_mortality_risk/).

<sup>57</sup> Nicole Triplett, *New York May Finally Do Something to Help Prevent What Happened to Kalief Browder*, New York Civil Liberties Union (Mar. 4, 2019), <https://www.nyclu.org/en/news/new-york-may-finally-do-something-help-prevent-what-happened-kalief-browder>.

<sup>58</sup> Press Release, the White House, *Fact Sheet: Department of Justice Review of Solitary Confinement* (Jan. 25, 2016), [https://obamawhitehouse.archives.gov/the-press-office/2016/01/25/fact-sheet-department-justice-review-solitary-confinement?utm\\_source=youth.gov&utm\\_medium=federal-links&utm\\_campaign=reports-and-resources](https://obamawhitehouse.archives.gov/the-press-office/2016/01/25/fact-sheet-department-justice-review-solitary-confinement?utm_source=youth.gov&utm_medium=federal-links&utm_campaign=reports-and-resources).

<sup>59</sup> Ian Kysel, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States* (2012), <https://www.aclu.org/files/assets/us1012webwcover.pdf>.

<sup>60</sup> *Id.*

<sup>61</sup> *Data on Solitary*, Stop Solitary for Kids, <https://stopsolitaryforkids.org/data-on-solitary/#:~:text=The%20SYRP%20found%20that%2035.no%20contact%20with%20other%20residents> (last visited Feb. 22, 2023).

confinement, hiding their practices behind more neutral terms. Despite “kid-friendly” terms, the practice is identical to solitary confinement.

Minnesota shrouds the practice of solitary confinement in foster care by calling it placement in “back-to-basics” rooms. In Minnesota, Black parents are [three times](#) more likely to be investigated by child protective services and Black children are overrepresented as foster youth.<sup>62</sup> Once separated from their families, foster youth are institutionalized in “treatment facilities,” where they are vulnerable to solitary confinement via “back-to-basics” rooms. After one Black former foster youth was outed to foster parents as queer, she was transferred to a “treatment facility” where most of her time was spent in solitary confinement.<sup>63</sup> In 2016, foster youth who had survived solitary confinement banded with community organizers to [successfully stop](#) the construction of new youth treatment facilities in Ramsey and Hennepin County.<sup>64</sup> Broader recognition of the systemic problem of solitary confinement of foster youth remains elusive, however.

## RECOMMENDATIONS

Recommendation: Support enactment of federal and state bans on all uses of solitary confinement, except for periods measured in minutes or hours for emergency de-escalation, and including use of solitary confinement 1) as a punishment, 2) indefinitely or for a prolonged period, and 3) for pregnant people, people with mental disabilities, or juveniles.

Recommendation: Support passage of AB 280, the California Mandela Act on Solitary Confinement. Participate in a stakeholder’s meeting, including tours of facilities and convening with government officials and members of civil society. Communicate with the Governor via Urgent Appeal or Letter of Allegation regarding harms of solitary confinement.

Recommendation: Call for legislation mandating public data reporting for all local, state, and federal prisons, jails, youth treatment centers, and immigration detention centers. At a minimum, data should be disaggregated by race, gender, age, reason for placement in solitary, and length of time in solitary. Legislation should include a right of action to sue for enforcement of public data requirements.

Recommended Reading: [\*Banning Torture: Legislative Trends and Policy Solutions for Restricting and Ending Solitary Confinement throughout the United States\*](#)

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<sup>62</sup> Daniel Heimpel, *Minnesota Wrestles with Foster Care’s Role in Breaking Up Black Families*, the Imprint (Feb. 4, 2019), <https://imprintnews.org/race/minnesota-wrestles-with-foster-cares-role-in-breaking-up-black-families/33681>.

<sup>63</sup> Paula C. Neeley, *Lucina Kayee: The Stories of Foster Youth*, Minnesota Women’s Press (Nov. 30, 2021), <https://www.womenspress.com/lucina-kayee-the-stories-of-foster-youth/>

<sup>64</sup> *Id.*