

United States Senate

WASHINGTON, DC 20510

May 3, 2024

Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Garland,

Recent studies have shown that solitary confinement is an inhumane practice that leads to irreparable mental and physical harm. The Federal Bureau of Prisons (BOP), however, appears to be continuing its widespread use and doing so in a racially discriminatory manner. This violates President Biden's 2022 executive order directing BOP to fully implement the recommendations of the 2016 Department of Justice (DOJ) report on solitary confinement, which emphasized that correctional facilities should use the practice rarely, apply it fairly, and subject it to reasonable constraints. At a minimum, DOJ should take immediate action to implement all the recommendations of the 2016 report, and should take further steps towards ending solitary confinement entirely in BOP facilities.

The harmful and even deadly consequences of solitary confinement's use are well-established. Solitary can lead to self-mutilation and suicide, heart disease, anxiety, depression, and psychosis, with even only one or two days of isolation causing an increased risk of death.¹ Evidence has long shown that people in solitary confinement are generally up to six times more likely to die by suicide and up to twelve times more likely to engage in self-harm than individuals housed in non-solitary confinement units.² Indeed, BOP Director Colette Peters recently testified candidly before Congress that "everyone who is in restrictive housing [DOJ's term for solitary confinement] . . . will suffer from some form of mental or physical damage."³

¹ Brie Williams et al., *The Cardiovascular Health Burdens of Solitary Confinement*, 34 J. Gen. Internal Med. 1977, 1977-80 (2019), <https://link.springer.com/content/pdf/10.1007/s11606-019-05103-6.pdf>; Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. Univ. J. Law & Policy 359, 325-83, 354 (2006), https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1362&context=law_journal_law_policy; Christopher Wildeman & Lars Andersen, *Solitary Confinement Placement and Post-Release Mortality Risk Among Formerly Incarcerated Individuals: A Population-Based Study*, 5 The Lancet Pub. Health 107, 107-13 (2020), [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(19\)30271-3/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(19)30271-3/fulltext).

² *The Walls are Closing in on me: Suicide and Self-Harm in New York State's Solitary Confinement Units 2015-2019*, HALTsolitary (May 2020), <https://nycaic.org/wp-content/uploads/2020/05/The-Walls-Are-Closing-In-On-Me-For-Distribution.pdf>; Fatos Kaba et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 Am. J. Pub. Health 445, 442-47 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/>.

In 2016, in recognition of these dangers, DOJ issued a report and recommendations for reforming the use of solitary confinement in BOP facilities.⁴ Among the recommendations, DOJ urged BOP to incorporate the following principles in its program statements:

- Inmates should be housed in the least restrictive setting necessary to ensure their own safety, as well as the safety of staff, other inmates, and the public.
- Correctional staff should be able to clearly articulate the specific reason(s) for an inmate’s placement and retention in restrictive housing. The reason(s) should be supported by objective evidence. Inmates should remain in restrictive housing for no longer than necessary to address the specific reason(s) for placement.
- Restrictive housing should always serve a specific penological purpose.
- An inmate’s initial and ongoing placement in restrictive housing should be regularly reviewed by a multi-disciplinary staff committee, which should include not only the leadership of the institution where the inmate is housed, but also medical and mental health professionals.
- For every inmate in restrictive housing, correctional staff should develop a clear plan for returning that inmate to less restrictive conditions as promptly as possible.⁵

President Biden’s May 2022 “Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety” in turn instructed the Attorney General “to ensure the DOJ’s full implementation, at a minimum, of . . . the recommendations of the DOJ’s January 2016 Report and Recommendations Concerning the Use of Restrictive Housing.”⁶

To date, however, the executive order’s mandate appears to remain unfulfilled. Although in February 2023, in response to the executive order, the Attorney General issued a report stating that “BOP has adopted essentially all of the 2016 DOJ Report’s recommendations,”⁷ the Government Accountability Office (GAO) concluded otherwise. In a February 2024 report on additional actions BOP needed to take to improve restrictive housing practices, GAO found that

³ *Peters May Be The One*, LISA Foundation (Mar. 5, 2024), <https://lisa-legalinfo.com/2024/03/05/peters-may-be-the-one-update-for-march-5-2024/>.

⁴ U.S. Dep’t of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing* 1 (Jan. 2016), <https://www.justice.gov/dag/file/815551/dl>.

⁵ *Id.* at 105-06.

⁶ Exec. Order No. 14074, 87 Fed. Reg. 32945, 32959 (May 25, 2022), <https://www.federalregister.gov/documents/2022/05/31/2022-11810/advancing-effective-accountable-policing-and-criminal-justice-practices-to-enhance-public-trust-and>.

⁷ U.S. Dep’t of Justice, *The Report of the Attorney General Pursuant to Section 16(b)(i) of Executive Order 14074: Department of Justice Efforts to Ensure that Restrictive Housing in Federal Detention Facilities is Used Rarely, Applied Fairly, and Subject to Reasonable Constraints, and to Implement Other Legal Requirements and Policy Recommendations* at 8 (Feb. 1, 2023), <https://www.justice.gov/d9/2023-02/Section%2016%28b%29%28j%29%20Report%20-%20Final%20-%20Initial%20508.pdf>.

the 2016 DOJ solitary report “had 53 recommendations,” of which only 17 “are fully implemented.”⁸

This apparent failure is even more problematic in light of new evidence of solitary’s continued widespread, deadly, and racially disparate use in BOP facilities. According to GAO, as of October 2023, BOP placed in solitary confinement — for up to 23 hours a day — roughly 8 percent of its prison population (about 12,000 individuals).⁹ In Fiscal Year 2022, the practice resulted in BOP sending people to solitary more than 70,000 times.¹⁰ According to a February 2024 report from the DOJ’s Office of the Inspector General (OIG) on inmate deaths in federal prisons, nearly half of all deaths by suicide in BOP custody occur in restrictive housing. And because inmates in restrictive housing represent only approximately eight percent of inmates in BOP custody,¹¹ this means that someone in restrictive housing is nearly six times more likely to die by suicide than someone in the general federal prison population.

The GAO report also shined a light on the racially discriminatory manner in which federal prisons impose solitary confinement on inmates. According to the report, “Black individuals constituted 38 percent of the total BOP population” but represented “59 percent of the SMU [special management unit] placements” — one of the BOP’s forms of solitary confinement.¹² Conversely, “White individuals constituted 58 percent of the total BOP population” but only “35 percent of the SMU placements.”¹³ In interviews that GAO conducted with seven individuals BOP sent to solitary confinement, six of them “discussed incidents of discrimination or poor treatment that they perceived were based on race.”¹⁴ One of them “specifically expressed the view that the SMU placement process was discriminatory,” explaining that “placement in the SMU was due to a single violation and noted that White individuals with seemingly repeated instances of the same violation had never been referred to the SMU.”¹⁵ Earlier scholarship has shown that the cumulative risk for solitary confinement is more than eight times higher for Black men than white men.¹⁶

GAO found other problems with BOP’s ongoing use of solitary confinement. BOP continues to place in solitary individuals with “serious mental illness,” despite solitary’s well-established psychological harms, which pose even greater threats to those with mental health

⁸ U.S. Government Accountability Office, *Additional Actions Needed to Improve Restrictive Housing Practices* at 1 (Feb. 2024), <https://www.gao.gov/assets/d24105737.pdf>.

⁹ *Id.*

¹⁰ *Id.* at 21.

¹¹ U.S. Dep’t of Justice, Office of the Inspector General, *Evaluation of Issues Surrounding Inmate Deaths in Federal Bureau of Prisons* i-ii (Feb. 2024), <https://oig.justice.gov/sites/default/files/reports/24-041.pdf>.

¹² *Id.* at 28.

¹³ *Id.*

¹⁴ *Id.* at 30.

¹⁵ *Id.*

¹⁶ Hannah Pullen-Blasnik et. al, *The Population Prevalence of Solitary Confinement*, *Sci. Adv.* 8 (2021) <https://justicelab.columbia.edu/sites/default/files/content/The%20Population%20Prevalence%20of%20Solitary%20Confinement.pdf>.

needs.¹⁷ GAO also reported that individuals in solitary in BOP custody raised complaints of “staff misconduct, denial of rights, and excessive use of force.”¹⁸

DOJ must do better. Initially, it must fully comply with the president’s May 2022 executive order and implement the 2016 DOJ report’s recommendations. But DOJ should go further. We encourage DOJ to review the *End Solitary Confinement Act* (S. 3409/H.R. 4972), which sets forth a detailed plan for ending solitary confinement in federal facilities. We urge DOJ to implement the provisions of this pending legislation, which prohibits all forms of solitary (except in exigent circumstances) and emphasizes alternative forms of separation scientifically proven to reduce violence and better support inmate health and well-being.

To help us and the public better understand BOP’s solitary confinement practices, we ask that you provide written response to the following questions by May 15, 2024:

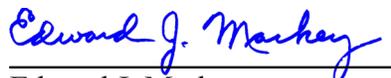
1. Consistent with President Biden’s May 2022 executive order, will DOJ ensure the full implementation of the 2016 DOJ solitary confinement report’s recommendations? If so, when does DOJ anticipate the recommendations will be fully implemented? If not, why not?
2. Why does the February 2023 “Report of the Attorney General Pursuant to Section 16(b)(i) of Executive Order 14074” state that “BOP has adopted essentially all of the 2016 DOJ Report’s recommendations” while the February 2024 GAO report “Additional Actions Needed to Improve Restrictive Housing Practices” found that only 17 of 53 recommendations “are fully implemented.”
3. Will DOJ commit to go beyond the recommendations of the 2016 DOJ solitary confinement report and begin to take steps to end the practice of solitary confinement in its prisons entirely, including implementing the provisions of the *End Solitary Confinement Act*? If not, why not?

We look forward to DOJ’s taking immediate action to reform its use of solitary confinement and taking steps towards ending its use altogether in BOP facilities.

Sincerely,

¹⁷ U.S. Government Accountability Office, *Additional Actions Needed to Improve Restrictive Housing Practices* at 16-17 (Feb. 2024), <https://www.gao.gov/assets/d24105737.pdf>.

¹⁸ *Id.* at 34.



Edward J. Markey
United States Senator



Elizabeth Warren
United States Senator



Mazie K. Hirono
United States Senator



Peter Welch
United States Senator