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Board of Correction
City of New York
Re: Ending Solitary Confinement in New York City Jails
April 16, 2021
Written Comment of Robert F. Kennedy Human Rights

**All persons deprived of their liberty shall be treated with humanity and with respect
for the inherent dignity of the human person.**

— *International Covenant on Civil and Political Rights*¹

Dear Chair Austin and Members of the Board of Correction,

Robert F. Kennedy Human Rights submits this testimony to the Board of Correction of the City of New York to demand a complete end to solitary confinement in New York City jails. Robert F. Kennedy Human Rights is an international human rights organization dedicated to realizing Robert Kennedy's vision of a more just and peaceful world, inclusive of advocating for an end to the United States' over reliance on incarceration and the elimination of unjust pretrial detention policies that disproportionately affect the poor and communities of color. Our domestic Criminal Justice Reform team seeks to ensure that the United States respects, protects, and fulfills its international human rights obligations with respect to its criminal justice system. As the Board considers these proposed rule changes regarding solitary confinement, we submit this testimony in solidarity with survivors of solitary and their families, community activists, faith leaders, and elected officials. We urge you to completely abolish punitive segregation (PSEG) and prolonged solitary confinement in New York City jails.

The United States, including the city of New York, stands out among its Western and industrialized peers for its use of extended solitary confinement in prisons and jails.² The Board must take immediate steps to address the human rights violations inherent in holding tens of thousands of people in extremely harsh, isolating conditions that have consistently proven to cause egregious, long-lasting harm to our communities. Punitive

¹ International Covenant on Civil and Political Rights art. 10(1), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

² Juan E. Méndez (U.N. Special Rapporteur on Torture), *Seeing into Solitary: A Review of the Laws and Policies of Certain Nations Regarding Solitary Confinement of Detainees* (September 2016), https://www.weil.com/~media/files/pdfs/2016/un_special_report_solitary_confinement.pdf

and prolonged solitary confinement are cruel, ineffective practices that harm the immediate and long-term wellbeing of incarcerated individuals, corrections staff, and communities, at great cost to New York City.³

In most circumstances, solitary confinement constitutes cruel, inhuman, or degrading treatment, and rises to the level of torture, in violation of international human rights law and the tenets of basic human dignity. The immense suffering and devastating mental, physical, and emotional harm caused by solitary confinement disproportionately impacts Black and Latinx people and those who are transgender and gender non-conforming. The lives lost to solitary confinement in New York City are staggering and most recently include Layleen Polanco, Bradley Ballard, Jason Echeverria, and Carina Montes. The absolute prohibition on torture and “cruel, inhuman, or degrading treatment or punishment” (CIDT) is enshrined in a number of regional and international human rights treaties.⁴ Under international law, torture is defined as the intentional infliction of severe physical or mental pain or suffering upon a person by a public official for the purpose of, among other things, punishment or intimidation.⁵ Importantly, an act that falls short of torture may be still amount to CIDT and therefore also result in a violation of human rights law.⁶

The devastating, often long-lasting harm caused by physical and social isolation is well-documented and goes beyond any pain or suffering “inherent in or incidental to” incarceration.⁷ Specifically, the severe mental pain or suffering caused by solitary confinement amounts to torture or cruel, inhuman or degrading treatment when used:

- as a punishment;
- indefinitely or for a prolonged period; or
- for persons with mental disabilities or juveniles.⁸

³ Housing an individual in solitary confinement costs an estimated two to three times more than housing them in the general population. See American Civil Liberties Union [ACLU], *Paying the Price for Solitary Confinement* (2015), <https://www.prisonlegalnews.org/media/publications/Paying%20the%20Price%20for%20Solitary%20Confinement.%20ACLU%20Factsheet.%202015.pdf>.

⁴ ICCPR art. 7; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment arts. 1, 16, Dec. 16, 1984, 1465 U.N.T.S. 85 [hereinafter CAT]. The prohibition is non-derogable “even in situations of public emergency” and “no justification or extenuating circumstances may be invoked to excuse [its] violation.” ICCPR art. 4(2); Human Rights Comm., 44th Sess., General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), ¶ 3, <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/6924291970754969c12563ed004c8ae5?Opendocument>.

⁵ 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).

⁶ 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).

⁷ CAT art. 1.

⁸ 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, ¶¶ 72, 76–78, 81, 84, 86, 88, U.N. Doc. A/66/268 (Aug. 5,

While an improvement over current practice, the proposed rule changes fail to eliminate solitary confinement in all of these circumstances and would result in ongoing human rights violations if implemented in its current form. The proposed changes claim to be replacing solitary confinement with an alternative where incarcerated individuals spend 10 hours a day outside of their cell. In practice, this would just be another version of solitary confinement; during these 10 hours, individuals would be moved to a caged-in space, where they would remain alone, with minimal opportunity to interact with the individuals near them. To make matters worse, there would be no limit to the amount of time an individual could be held in this new version of solitary confinement.

According to the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, “[s]olitary 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.”⁹ Other international human rights bodies such as the U.N. Human Rights Committee have expressed concern with disciplinary or administrative housing conditions that rely on isolation and “strict regimentation in a depersonalized environment” and have warned that such treatment is incompatible with the “reformation and social rehabilitation” that should be the goals of any correctional facility.¹⁰ In line with this principle, the Blueprint for Ending Solitary Confinement in NYC Jails proposed by NYC Jails Action Coalition and the #HALTsolitary Campaign (Blueprint), calls for the elimination of all forms of punitive segregation in New York City jails and strictly limits the use of any other form of segregation, such as Enhanced Supervision Housing (ESH).¹¹

Additionally, the U.N. Standard Minimum Rules for the Treatment of Prisoners, also known as the Mandela Rules, explicitly prohibit indefinite and prolonged solitary confinement -

2011), <https://undocs.org/A/66/268>; G.A. Res. 70/175: United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rules 43, 45(2), U.N. Doc. A/RES/70/175, (Jan. 8, 2016), <https://undocs.org/A/RES/70/175>. See also, Human Rights Comm., 44th Sess., General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), ¶ 6, <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/6924291970754969c12563ed004c8ae5?Opendocument>.

⁹ 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>.

¹⁰ Human Rights Comm., 87th Sess., Concluding Observations of the Human Rights Committee: United States of America, ¶ 32, U.N. Doc. CCPR/C/USA/CO/3/Rev. 1 (Dec. 18, 2006), <http://www1.umn.edu/humanrts/usdocs/hruscomments2.html>.

¹¹ NYC Jails Action Coalition & #HALTsolitary Campaign, *A Blueprint for Ending Solitary Confinement in NYC Jails* (October 2019), <http://nycaic.org/wp-content/uploads/2019/10/Blueprint-for-Ending-Solitary-Confinement-in-NYC-Oct-2019.pdf>.

defining prolonged solitary confinement as anything longer than 15 days.¹² While the U.N. Special Rapporteur noted that there is an “arbitrary nature” in “establish[ing] a moment in time which an already harmful regime becomes prolonged and therefore unacceptably painful,” he too concluded that 15 days should mark the threshold when solitary confinement rises to the level of CIDT or torture “because at that point, according to the literature surveyed, some of the harmful psychological effects of isolation can become irreversible.”¹³ The Blueprint fully adheres to this universally accepted standard but carve-outs and exceptions in the proposed bill, including a provision that creates a category of people in restrictive housing who are only permitted 10 hours of out of cell time per day, remain out of step with international law and in violation of basic human rights. This 10 hour standard would render the four hour limit on solitary meaningless because people in these units could be locked in their cells 14 hours straight each day for four months, in violation of the Mandela Rules. The minimum standard of 14 hours out of cell per day should apply to everyone and out of cell time must include meaningful human engagement and congregate programming without the use of restraints.

When considering the elimination of punitive segregation and prolonged solitary confinement, the Board should give particular attention to the fact that 75% of people detained in New York City’s jails are awaiting trial.¹⁴ There are additional harms and dangers associated with solitary confinement in the pretrial context. According to the U.N. Special Rapporteur, “[t]he practice of solitary confinement during pretrial detention creates a de facto situation of psychological pressure.”¹⁵ This can influence individuals to plead guilty to an offense that they did not commit simply to end the suffering of solitary confinement.¹⁶ It is not in the interest of justice in New York City to subject people held in pretrial detention to the harsh conditions of solitary confinement.

Further, the COVID-19 pandemic has substantially intensified the dangers of solitary confinement. Under no circumstances should solitary confinement be used as a

¹² 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>.

¹³ 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, ¶ 26, U.N. Doc. A/66/268 (Aug. 5, 2011), <https://undocs.org/A/66/268>.

¹⁴ Mayor’s Office of Criminal Justice (MOCJ), *Breaking the Frame? Rethinking the Criminal Justice System in New York City* (July 2019), http://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/11/Breaking-the-Frame_.pdf.

¹⁵ 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, ¶ 73, U.N. Doc. A/66/268 (Aug. 5, 2011), <https://undocs.org/A/66/268>.

¹⁶ Lindsey Devers, CSR Incorporated, *Plea and Charge Bargaining: Research Summary*, U.S. Dep’t of Justice Bureau of Justice Assistance (Jan. 24, 2011), <https://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf>.

substitute for proper medical care. According to advocates, detained individuals who have been exposed to COVID-19 and/or demonstrate symptoms have been reportedly put into solitary confinement. In June 2020, the coalition Unlock the Box published a report detailing an alarming trend by which prisons and jails have institutionalized the practice of solitary confinement as a way to stop the spread of coronavirus.¹⁷ According to the report, before the pandemic, there were 60,000 people in solitary confinement in state and federal prisons. Now, there are 300,000 state and federal prisoners confined to their cells in response to COVID-19 - representing a 500% increase in solitary confinement.¹⁸

The disastrous consequences of this practice are two-fold: detained individuals are discouraged from reporting symptoms, leading to risk of further outbreaks; and sick individuals who are placed in solitary are isolated from access to medical care and supervision, leading to increased risk of death. Time and time again, we have seen individuals die in solitary due to preventable medical consequences, including Layleen Polanco, an Afro-Latinx trans woman who died after an epileptic seizure while in solitary on Rikers Island. This trend reflects the demonstrated history of prisons using solitary confinement to deal with the public health concerns of prison populations, including individuals who are suicidal or have serious mental illnesses. The alarming practice of responding to COVID-19 through an institutionalization of solitary confinement reflects a disturbing reality where states, including New York, have systematically failed to provide protection to incarcerated individuals.¹⁹ For those caged in New York City jails, it has never been more dangerous to be in solitary confinement.

Robert F. Kennedy Human Rights commends the Board of Corrections intention to end solitary confinement, however, the proposed rule changes fall short of that goal. We urge the Committee to fully end solitary in all its forms in a real and meaningful way. In order to eradicate our criminal justice system's reliance on this form of torture, we must be careful not to validate other forms of solitary that are simply known by another name, including the current proposal.

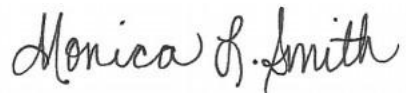
¹⁷ Unlock the Box, *Solitary Confinement Is Never the Answer* (June 2020), <https://static1.squarespace.com/static/5a9446a89d5abbfa67013da7/t/5ee7c4f1860e0d57d0ce8195/1592247570889/June2020Report.pdf>

¹⁸ *Id.*

¹⁹ In this report, the ACLU and Prison Policy Initiative evaluated the actions each state has taken to save incarcerated people and facility staff from COVID-19. New York received a grade of F+. See Emily Widra and Dylan Hayre, ACLU Smart Justice and Prison Policy Initiative, *Failing Grades: States Responses to COVID-19 in Jails & Prisons* (June 25, 2020), https://www.aclu.org/sites/default/files/field_document/failing_grades_states_responses_to_covid-19_in_jails_prisons_063020.pdf.

To ensure the basic dignity and human rights of individuals in DOC custody and decrease trauma and violence in New York City jails, all punitive segregation and prolonged solitary confinement must be eliminated. Therefore, instead of the proposed rule changes, we urge this Committee to enact a *complete* end to solitary confinement in *all* its forms. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink that reads "Monica R. Smith". The signature is written in a cursive, flowing style.

Monica Smith
Policy Attorney