

Torture in the name of health: ICE is using solitary confinement to curb the spread of COVID

Samara Fox, MD¹; Ellen Gallagher, JD²; J. Wesley Boyd, MD, PhD³

¹Department of Psychiatry, Beth Israel Deaconess Medical Center, 330 Brookline Ave, Boston, MA, USA, 02215

²Department of Homeland Security, Office of the Inspector General, 10 Causeway Street, Boston, MA, USA, 02222

³Center for Bioethics, Harvard Medical School, 641 Huntington Avenue, Boston, MA, USA, 02215

From the first moments of his campaign, Donald Trump set his sights on immigrants and asylum seekers. As everyone knows, Trump campaigned on the promise to drastically reduce the flow of immigrants entering the United States. Once he took office, Trump, the Department of Homeland Security, and his immigration policy architect Stephen Miller, unleashed a torrent of anti-immigrant policies. These included repeated bans on immigrants entering the US from certain predominantly Moslem countries, separating children from their families, forcing asylum seekers to enter the US at only specific points of entry while forcing them to remain in Mexico during the process, and most recently, halting all immigration at the southern border, purportedly due to public health concerns regarding COVID-19.

Although these and many other practices by the Trump administration have received a lot of press and vociferous backlash, there are many other injustices perpetrated by the executive branch that have received relatively little attention. Among them is the fact that individuals in U.S. Immigration and Customs Enforcement (ICE) custody are regularly placed in solitary confinement (often termed “administrative or disciplinary segregation”) for extended periods of time. One of the authors (E.G.) has reviewed hundreds of ICE “segregation reports” as well as medical and disciplinary case records while working for the Department of Homeland Security and sought to expose this practice.¹ Segregation reports showed that ICE has been inappropriately using solitary confinement for the “medical isolation” of individuals who are sick with various ailments, including cancer, tuberculosis, mumps, HIV, and mental illness.^{2,3} In addition, two of the authors (S.F. and W. B.) have performed scores of forensic psychological evaluations of asylum seekers, some of whom were in ICE detention and some of whom who had been held in solitary confinement for extended periods of time, and have seen and documented the harmful psychological effects of being held in solitary.

Once the pandemic hit, it was only a matter of time before COVID-19 spread through prisons and, indeed, COVID-19 has spread through detention centers across the country.⁴ As of mid-November, eight people had died from COVID-19 while in ICE custody and 7,202 had tested positive for the virus.⁵ ICE has released hundreds of individuals who have been identified by

courts or the agency itself as high risk for severe illness or death due to COVID-19. However, there are still over 20,000 individuals in detention, any of whom could die or become severely ill if they contracted COVID-19. The majority of those in detention have not committed any crimes and pose little or no risk to the general public. Instead of releasing them, ICE has made it clear that it views solitary confinement as an appropriate public health response to the pandemic.⁶ ICE also claims that all those in medical isolation have access to amenities such as recreation and telephones, and that because of this access medical isolation is distinct from solitary confinement.⁷ However, individuals placed in segregation units for medical isolation report having as little as one hour per day allowed outside of their single cell. Former UN Special Rapporteur on Torture Juan Méndez defined solitary confinement as isolation from others (not including guards) for 22 hours a day or more.⁸ Oscar Perez Aguirre recounted in a sworn court document that he contracted COVID-19 while in ICE custody and required hospitalization.⁹ When he was discharged from the hospital, he was placed into “the Hole,” another term for segregation or solitary confinement. His cell was “filthy and freezing” and he was so sick he couldn’t stand. Another ICE detainee, Ruben Mencias Soto, reported being forced to remain in a bare cinderblock room alone, for 23 hours every day, after his hospitalization for COVID-19.¹⁰

Before we begin to discuss the ethical issues around ICE’s use of solitary confinement for those who have or are suspected of having COVID-19, we want to examine the dire health consequences of solitary confinement for the individual. Almost thirty five years ago, psychiatrist Stuart Grassian evaluated individuals held in solitary confinement and found the same symptoms in many of them, including: hypersensitivity to external stimuli; affective disturbances, such as anxiety and panic attacks; difficulties with thinking, memory and concentration; obsessive compulsive behaviors, perceptual disturbances such as hallucinations and derealization experiences; paranoia; and problems with impulse control.¹¹ These symptoms are consistent with neurological and psychiatric illness and can emerge de novo in individuals without a pre-existing mental illness as well as worsen symptoms in those with pre-existing psychiatric conditions. These symptoms often – but not always – decrease in severity after release from solitary.

Other researchers have reached similar conclusions about the harmful effects of solitary confinement and medical literature has corroborated these findings. Social psychologist Craig Haney interviewed individuals incarcerated in Pelican Bay State prison and found that 63% of men kept in solitary confinement said

Corresponding Author:
Samara Fox
sfox1@bidmc.harvard.edu

they consistently felt on the verge of an “impending breakdown,” compared to 4% of the other individuals in maximum-security prisons.¹² He reported that 73% of people in solitary confinement felt chronically depressed, compared to 48% for other inmates. Additionally, Haney found that the harmful effects of isolation could last years after release, given that many individuals felt emotionally numb and continued to experience anxiety and depression long after their release from solitary. Not surprisingly, many who had spent time in solitary confinement in Pelican Bay had difficulty integrating into society and preferred to remain in confined spaces even after incarceration.

And it does not take long for these symptoms to emerge. Forced isolation for as little as five days is correlated with increased risk of PTSD and suicide.¹³⁻¹⁵ In Texas, for example, suicides rates for those in solitary confinement are five times higher than those of the general prison community. Consider the case of Choung Woong Ahn, who was detained at the Mesa Verde ICE facility in California and was placed in COVID-19 medical isolation on May 15. Two days later, Woong Ahn died by suicide.¹⁶ Carlos Hernandez Corbacho, who spent a little over one week in an ICE segregation unit for COVID-19 isolation, put it succinctly: “In the end, what they did was psychologically torture me.”¹⁷

Not only is placing individuals in solitary confinement for extended periods tantamount to torture, solitary confinement and unit lockdowns are insufficient for preventing disease transmission. Using segregation units to isolate those who are ill also discourages those with symptoms from coming forward. Epidemiologists have predicted that without sufficient public health measures, at least 72% of those held in immigration detention could become infected.¹⁸ And to compound the harms, many of those who are sick and placed in solitary confinement are going to receive inadequate medical care.

Given these conditions, numerous professionals including the Department of Homeland Security’s own medical experts and one former head of ICE, have called for the large-scale release of those in detention.^{19,20} To date, only a small fraction of those being held in detention have been released. Part of the resistance to releasing individuals is that many ICE detention facilities are for-profit and as such are loathe to shed beds and lose revenue.

Using solitary confinement for civil detention – especially for those seeking asylum, which is fully legal according to US and international law – is inhumane and unethical. In 2011, the U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment condemned the use of solitary confinement except in exceptional circumstances and argued to ban the practice completely for people with mental illnesses and for juveniles.²¹ Multiple organizations agree with this position, including the American Academy of Child and Adolescent Psychiatry and the American Medical Association, which both oppose the use of solitary confinement in juveniles.^{22,23}

Current ICE policies and practices pertaining to the use of solitary confinement raise ethical concerns. First, as many people know, the four foundational principles of bioethics are autonomy, justice, beneficence, and nonmaleficence. Although there are a number of critiques of these principles – many of which we believe have merit – these principles nonetheless offer a reasonable framework for an initial analysis of the ethical issues at play here.

We will begin with the principle of autonomy, or respect for

persons. Autonomy is described in the Belmont Report and other subsequent treatises on bioethics as the freedom to act on one’s own judgment without obstruction, unless one’s actions are clearly detrimental to others.²⁴ One might argue that due to their incarceration, those detained in ICE custody have forfeited any right to exercise their own autonomy. But the broader question in the case of detained immigrants is whether their detention is justifiable in the first place. After all, immigration violations are civil and not criminal offenses, so a priori incarceration is a harsh punishment except, perhaps, for those immigrants who have committed serious crimes.²⁵ Furthermore, many immigrants are not afforded basic due process rights, including having a bond hearing within a reasonable length of time after being detained, often waiting years without an actual court hearing.^{26,27} Compounding matters ethically is the fact that so many ICE detention facilities are for-profit, such that these facilities have financial incentives to keep as many individuals in detention as possible.²⁸ Given this significant conflict of interest it is indeed difficult to justify the deprivation of the basic right to autonomy for those immigrants who have committed civil offenses and pose no risk of harm to others.

Yet another basic ethical principle that ICE violates in its standard operating procedure is that of beneficence, a bioethical principle which entails making an active effort to secure the well-being of others.²⁹ ICE and other supporters of the use of segregation units for medical isolation may argue that they are doing good by promoting health – after all who could argue against attempting to prevent the spread of a potentially deadly infection? This argument, however, can be more closely examined using two popular moral philosophical frameworks. Deontological ethicists such as Kant are commonly understood to believe that some actions (such as murder) are always morally indefensible, regardless of the circumstances or the ultimate outcomes of those actions. Torture, like murder, is an act which most deontological ethicists would find either morally or legally unacceptable in any situation.³⁰ In the case of Kantians in particular, solitary confinement violates the categorical imperative, both because we can safely assume that we would not accept it if everyone suspected of a COVID-19 infection were placed in solitary confinement to prevent the spread of the disease, and because placing people in solitary confinement treats those individuals as means rather than ends.³¹ By contrast, solitary confinement might well be justified in certain utilitarian frameworks given that that whatever the harms to the individual, the benefits to society at large might far outweigh them.³² That being said, considering the fact that those kept in segregation units can still transmit COVID-19 via the detainment facility ventilation system or guards, that at-home quarantining would be more effective and would drastically reduce psychological harms to inmates, and that allowing thousands of non-violent civil offenders to quarantine at home would be much less costly to society, it is unlikely in the present scenario that we are “maximizing utility.”³³

Given the above, the arguments to promote nonmaleficence are readily apparent. Solitary confinement is widely considered torture internationally, so preventing its practice will obviously prevent harm. And this fact leads directly to an argument on behalf of justice. Justice is a broadly conceived and agreed upon ethical standard about what is fair and just. If international standards and accords agree that solitary confinement is tantamount to torture, then placing individuals in solitary is unjust and obviously

harmful. As such, the use of solitary confinement flies in the face of any bioethical principle.

The upshot is that placing detained immigrants in segregation units, regardless of the motivation, is incredibly cruel, is tantamount to torture, and contrary to international medical ethical principles. The use of solitary confinement in ICE facilities was on the rise before the pandemic, and since COVID-19 its use has only continued to grow.^{34,35} Such practice is unconscionable and antithetical to the values the U.S. has previously purported to represent.

Historically, the U.S. was seen as a beacon of light for immigrants seeking a better life. Given the Trump administration's abdication of its ethical responsibilities, that light appears to have gone off. Let's hope we can get the power back on soon.

Samara Fox is a psychiatrist at the Beth Israel Deaconess Medical Center Harvard Psychiatry Residency Training Program in Boston. She previously worked as an immigration attorney at Greater Boston Legal Services. Ellen Gallagher is an attorney and former policy adviser at the Department of Homeland Security's Office of Civil Rights and Civil Liberties, writing in her capacity as a government whistleblower. J. Wesley Boyd is a psychiatrist on faculty in the Baylor College of Medicine and also in the Harvard Medical School Center for Bioethics.

References

- Saleh M, Woodman S. A Homeland Security whistleblower goes public about ICE about of solitary confinement. *The Intercept* [newspaper on the Internet]. 2019 May 21 [cited 2020 Nov 15]. Available from: <https://theintercept.com/2019/05/21/ice-solitary-confinement-whistleblower/>
- Urbina I. The capricious use of solitary confinement against detained immigrants. *The Atlantic* [newspaper on the Internet]. 2019 September 6 [cited 2020 Nov 15]. Available from: <https://www.theatlantic.com/politics/archive/2019/09/ice-uses-solitary-confinement-among-detained-immigrants/597433/>
- Project on Government Oversight. Isolated: ICE confines some detainees with mental illness in solitary for months. [Internet]. 2019 [cited 2020 Nov 15]. Available from: <https://www.pogo.org/investigation/2019/08/isolated-ice-confines-some-detainees-with-mental-illness-in-solitary-for-months/>
- Reznick A. 'You can either be a survivor or die': COVID-19 cases surge in ICE detention. *National Public Radio* [newspaper on the Internet]. 2020 July 1 [cited 2020 Nov 15]. Available from: <https://www.npr.org/2020/07/01/871625210/you-can-either-be-a-survivor-or-die-covid-19-cases-surge-in-ice-detention>
- U.S. Immigration and Customs Enforcement. ICE Guidance on COVID-19 – ICE Detainee Statistics. [Internet]. 2020 November 13 [cited 2020 Nov 15]. Available from: <https://www.ice.gov/coronavirus>
- Peng J. ICE officials need to give more detainees their release. *The Buffalo News* [newspaper on the Internet]. 2020 April 22 [cited 2020 Nov 15]. Available from: https://buffalonews.com/opinion/ice-officials-need-to-give-more-detainees-their-release/article_eba54455-5b10-5d9b-8850-c98e4092bee.html
- Acosta C. Psychological torture: ICE responds to COVID-19 with solitary confinement. *The Intercept* [newspaper on the Internet]. 2020 August 24 [cited 2020 Nov 15]. Available from: <https://theintercept.com/2020/08/24/ice-detention-coronavirus-solitary-confinement/>
- United Nations News. Solitary confinement should be banned in most cases, UN expert says. [Internet]. 2011 October 18 [cited 2020 Nov 15]. Available from: <https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says>
- Civil Rights Education and Enforcement Center. *Fraihat v. U.S. Immigration and Customs Enforcement*. [Internet]. 2020 [cited 2020 Nov 15]. Available from: <https://creeclaw.org/fraihat-v-immigration-and-customs-enforcement/>
- Civil Rights Education and Enforcement Center. Declaration of Ruben Dario Mencias Soto. [Internet]. 2020 June 24 [cited 2020 Nov 15]. Available from: <https://creeclaw.org/wp-content/uploads/2020/08/2020-06-24-187-Decl.-of-Ruben-Mencias-Soto.pdf>
- Grassian S. Psychopathological effects of solitary confinement. *Am J Psychiatry* [Internet]. 1983 [cited 2020 Nov 15]; 140(11):1450-4. Available from: <https://pubmed.ncbi.nlm.nih.gov/6624990/>
- Haney S. Infamous punishment: The psychological consequences of isolation. *National Prison Project Journal* [Internet]. 1993 [cited 2020 Nov 15]; 8(2):3-7. Available from: <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=142494>
- Wildeman C, Andersen L H. Solitary confinement placement and post-release mortality risk among formerly incarcerated individuals: a population-based study. *The Lancet Public Health* [Internet]. 2020 [cited 2020 Nov 15]; 5(2):e106-e113. Available from: <https://www.sciencedirect.com/science/article/pii/S2468266719302713>
- Hagan, B O, Wang, E A, Aminawung, J A et al. History of solitary confinement is associated with post-traumatic stress disorder symptoms among individuals recently released from prison. *J Urban Health* [Internet]. 2018 [cited 2020 Nov 15]; 95:141-148. Available from: <https://link.springer.com/article/10.1007/s11524-017-0138-1>
- Brinkley-Rubinstein L, Sivaraman J, Rosen DL, et al. Association of Restrictive Housing During Incarceration With Mortality After Release. *JAMA Netw Open* [Internet]. 2019 [cited 2020 Nov 15]; 2(10):e1912516. Available from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6784785/>
- Ahn Y. My brother died in ICE custody. California's governor and attorney general must act. *The Sacramento Bee* [newspaper on the Internet]. 2020 June 26 [cited 2020 Nov 15]. Available from: <https://www.sacbee.com/opinion/california-forum/article243804587.html>
- Acosta C. Psychological torture: ICE responds to COVID-19 with solitary confinement. *The Intercept* [newspaper on the Internet]. 2020 August 24 [cited 2020 Nov 15]. Available from: <https://theintercept.com/2020/08/24/ice-detention-coronavirus-solitary-confinement/>
- Irvine M, Coombs D, Skarha J, et al. Modeling COVID-19 and its impacts on U.S. Immigration and Customs Enforcement (ICE) detention facilities. *J Urban Health* [Internet]. 2020 [cited 2020 Nov 15]; 97(4):439-447. Available from: <https://pubmed.ncbi.nlm.nih.gov/32415422/>
- Schoicet C. Doctors warn of 'tinderbox scenario' if coronavirus spreads in ICE detention. *Cable News Network* [newspaper on the Internet]. 2020 March 20 [cited 2020 Nov 15]. Available from: <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html>
- Sandweg J. I used to run ICE. We need to release the nonviolent detainees. *The Atlantic* [newspaper on the Internet]. 2020 March 22. [cited 2020 Nov 15]. Available from: <https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/>
- American Academy of Child and Adolescent Psychiatry. Solitary Confinement of Juvenile Offenders. [Internet]. 2012 [cited 2020 Nov 15]. Available from: https://www.aacap.org/AACAP/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx
- American Academy of Child and Adolescent Psychiatry. Solitary Confinement of Juvenile Offenders. [Internet]. 2012 [cited 2020 Nov 15]. Available from: https://www.aacap.org/AACAP/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx
- Moran, M. AMA votes to oppose solitary confinement of juveniles. *Psychiatric News – The American Psychiatric Association* [newspaper on the Internet]. 2014 December 17 [cited 2020 Nov 15]. Available from: <https://psychnews.psychiatryonline.org/doi/full/10.1176/appi.pn.2014.12b13>
- The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. The Belmont Report. [Internet]. 1979 [cited 2020 Nov 15]. Available from: <https://www.hhs.gov/ohrp/regulations-and-policy/belmont-report/read-the-belmont-report/index.html#xrespect>
- Supreme Court of the United States. *Padilla v Kentucky*. [Internet]. 2009 [cited 2020 Nov 15]. Available from: <https://www.supremecourt.gov/opinions/09pdf/08-651.pdf>
- Ninth Circuit Court of Appeals. Due process in immigration proceedings. [Internet]. 2020 [cited 2020 Nov 15]. Available from: https://cdn.ca9.uscourts.gov/datastore/uploads/immigration/immig_west/E.pdf
- Harvard Civil Rights – Civil Liberties Law Review. Detained without due process: Is indefinite immigration detention unconstitutional? [Internet]. 2015 [cited 2020 Nov 15]. Available from: <https://harvardcrl.org/detained-without-due-process-is-indefinite-immigration-detention-unconstitutional/>
- Nickel D. Who profits from migrant detention in the US? *The Globe Post* [newspaper on the internet] 2019 August 22 [cited 2020 Nov 15]. Available from: <https://theglobe-post.com/2019/08/19/profit-migrant-detention/>
- The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. The Belmont Report. [Internet]. 1979 [cited 2020 Nov 15]. Available from: <https://www.hhs.gov/ohrp/regulations-and-policy/belmont-report/read-the-belmont-report/index.html#benefit>
- Barry P B. The Kantian Case Against Torture. *The Royal Institute of Philosophy* [Internet]. 2015 [cited 2020 Nov 15]; 90(4):593-621. Available from: <https://doi.org/10.1017/S0031819115000145>
- Zalta E, Nodelman U, Allen C, editors. Treating persons as means. *Stanford Encyclopedia of Philosophy* [Internet] Stanford: Metaphysics Research Lab; 2019 [cited 2020 Nov 15]. Available from: <https://plato.stanford.edu/entries/persons-means/#KantRoot>
- Zalta E, Nodelman U, Allen C, editors. The history of utilitarianism. *Stanford Encyclopedia of Philosophy* [Internet] Stanford: Metaphysics Research Lab; 2019 [cited 2020 Nov 15]. Available from: <https://plato.stanford.edu/entries/utilitarianism-history/>
- Physicians for Human Rights. Declaration of Dr. Ranit Mishori. [Internet] 2020 [cited 2020 Nov 15]. Available from: <https://phr.org/wp-content/uploads/2020/03/Dr-Ranit-Mishori-PHR-Immigration-and-COVID-19-declaration.pdf>
- Woodman, S. Use of solitary confinement 'on the rise' in US immigration facilities. *International Consortium of Investigative Journalist* [Newspaper on the Internet]. 2019 August 12 [cited 2020 Nov 15]. Available from: <https://www.icij.org/investigations/solitary-voices/use-of-solitary-confinement-on-the-rise-in-us-immigration-facilities/>
- Unlock the Box. Solitary confinement is never the answer. [Internet] 2020 [cited 2020 Nov 15]. Available from: <https://static1.squarespace.com/static/5a9446a89d5abbfa67013da7/t/5ee7c4f1860e0d57d0ce8195/1592247570889/June2020Report.pdf>