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Re: Ongoing misuse of administrative segregation at Imperial Regional Detention Facility in violation of PBNDS

The undersigned organizations submit this letter urging ICE to immediately end its contract with MTC to operate the Imperial Regional Detention Facility (Imperial). Through litigation on behalf of Carlos Murillo Vega, who was subjected to over a year of solitary confinement in administrative segregation at Imperial,¹ we have learned that ICE Contractor Management and Training Corporation (MTC) has not only spent years violating ICE detention standards intended to protect people from harmful isolation in custody at Imperial, but also staunchly refuses to take available steps to bring itself into compliance. As a result, people like our client continue to suffer punitive and harmful conditions of confinement in civil ICE custody.

ICE has contracted to pay MTC up to \$679,203,266.73 over a fifteen-year period to operate Imperial.² MTC has a contractual obligation to comply with the 2011 Performance-Based National Detention Standards (PBNDS) as revised in 2016.³ However, MTC's administrative segregation policies and practices at Imperial have for years disregarded the PBNDS requirements, particularly for people purportedly in protective custody. Department of Homeland Security (DHS) inspectors previously found MTC out of compliance with the PBNDS. Newly revealed evidence in our litigation demonstrates that MTC has not made a single change to its policies or practices in response to these findings. To the contrary, MTC simply disagrees with inspectors' conclusions that its practices violate the PBNDS. MTC continues to

¹ On April 20, 2023, District Court Judge Gonzalo P. Curiel denied MTC's partial motion for summary judgment. *Vega v. Mgmt. & Training Corp.*, No. 21-CV-1770-GPC-LR, 2023 WL 3012568, at *14 (S.D. Cal. Apr. 19, 2023).

² Solicitation/Contract/Order for Commercial Items between DHS/ICE and Management & Training Corporation, re: Imperial Regional Detention Facility (effective 12/19/2019), available at <https://embed.documentcloud.org/documents/21177736-imperial-solicitation-task-order-10162019>, at p. 1 (obtained through FOIA by ACLU).

³ *Id.* at p. 2.

subject *everyone* in protective custody at Imperial to prolonged, harmful administrative segregation that is tantamount to solitary confinement, without justification or consideration of reasonable alternatives, and with no way out. MTC has thus been out of compliance with the PBNDS for *years*, in violation of its contractual obligations, which calls into question its eligibility for ongoing Congressional funding.⁴

I. Administrative Segregation is a Harmful Form of Solitary Confinement

Confinement in a cell or similarly confined holding or living space with severely restricted activity, movement, and/or minimal or no contact with persons—often termed “administrative segregation” or “disciplinary segregation” by detention and penal institutions—is solitary confinement, and has profoundly negative health consequences, especially once it becomes prolonged. Over the past four decades, researchers and experts have extensively and empirically documented the psychological pain and emotional damage caused by solitary confinement, and particularly by bouts of prolonged isolation.⁵ Nearly every scientific study of solitary confinement over the past 150 years has concluded that subjecting an individual to more than ten days of involuntary solitary confinement results in negative psychological effects.⁶ Common symptoms observed in detainees in solitary confinement include appetite and sleep disturbances, anxiety, panic, rage, loss of control, paranoia, hallucinations, and even self-mutilation.⁷ Documented harmful psychological reactions to prolonged isolation include negative attitudes and affect, anxiety, withdrawal, hypersensitivity, ruminations, cognitive dysfunction, hallucinations, irritability, rage, loss of control, hopelessness, lethargy, depression, suicidal ideation and behavior, self-mutilation, and a sense of impending emotional breakdown.⁸

II. Recognizing the Harm Isolation Causes, the PBNDS Includes Safeguards Against Prolonged or Unjustified Administrative Segregation

The PBNDS makes clear that detention contractors may isolate detainees subject to protective custody in administrative segregation only after significant efforts to find an

⁴ ICE has a statutory obligation to cease detaining people at facilities that are in violation of its detention standards for two consecutive years. *See* Consolidated Appropriations Act of 2023, Pub. L. No. 117-328, 136 Stat. 4459, Tit. II, § 214(a) (“None of the funds provided under the heading “U.S. Immigration and Customs Enforcement—Operations and Support” may be used to continue any contract for the provision of detention services if the two most recent overall performance evaluations received by the contracted facility are less than ‘adequate’ or the equivalent median score in any subsequent performance evaluation system.”).

⁵ *See, e.g.*, Craig Haney, *The Science of Solitary: Expanding the Harmfulness Narrative*, 115 *Nw. U. L. Rev.* 211, 220 (2020); Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 *Wash. U. J.L. & Pol’y* 325, 327 (2006).

⁶ David H. Cloud, et al., *Public Health and Solitary Confinement in the United States*, 105 *Am. J. Pub. Health* 18, 21 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4265928/>.

⁷ Craig Haney, *The Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 *Crime & Just.* 365, 371-72 (2018).

⁸ *Id.*

alternative. The PBNDS also imposes strict procedural protections for people subjected to administrative segregation and requires substantive justification for the placement.

First, the PBNDS creates a high bar for the use of administrative segregation as a form of protective custody. Section 2.12(II)(4) states that “[a] detainee shall be placed in ‘protective custody’ status in administrative segregation *only* when there is *documentation* and supervisory approval *that it is necessary* to protect a detainee from harm and that no reasonable alternatives are available.”⁹ The PBNDS also requires that “[a]n individualized assessment must be made in each case” when a facility is considering placement in administrative segregation.¹⁰

Even after an initial placement in administrative segregation, the PBNDS requires ongoing substantive re-evaluation and justification for continued placement. The PBNDS requires that all housing assignments, including administrative segregation, “shall be reviewed at regular intervals, as well as when required by changes in the detainee’s behavior or circumstances, and upon discovery of additional, relevant information.”¹¹ The review for administrative segregation placements is more stringent. Section 2.12(V)(A)(3)(g) requires that:

“A multi-disciplinary committee of facility staff, including facility leadership, medical and mental health professionals, and security staff, shall meet weekly to review all detainees currently housed in the facility’s SMU [Special Management Unit]. During the meeting, the committee shall *review each detainee individually* to ensure all staff are aware of the detainee’s status, current behavior, and physical and mental health, and to *consider* whether any change in status is appropriate.”¹²

An administrative segregation placement that exceeds 30 days triggers further protections. “[I]f a detainee has been in administrative segregation for more than 30 days and objects to that status, the facility administrator shall review the case to determine whether that status should continue.”¹³ Even when a detainee is deemed to be “at risk” for sexual violence, the PBNDS allows facilities to use administrative segregation to protect them “only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.”¹⁴ Finally, facilities are required to “develop ... provisions for release from Protective Custody when appropriate.”¹⁵

In the limited circumstances in which the PBNDS permits administrative segregation, multiple provisions prohibit it from being punitive in purpose or effect. To the contrary, “Administrative Segregation status is a nonpunitive status in which restricted conditions of

⁹ PBNDS § 2.12(II)(4), at p. 171 (emphasis added).

¹⁰ PBNDS § 2.12(V)(A)(1)(c)(9), at p. 175.

¹¹ PBNDS § 2.2(II)(4), at p. 61.

¹² PBNDS § 2.12(V)(A)(3)(g), at p. 177.

¹³ *Id.*

¹⁴ PBNDS 2.11(I)(1)(i), at p. 136.

¹⁵ PBNDS § 2.12(V)(A)(1)(c), at p. 174.

confinement are required only to ensure the safety of detainees or others, the protections of property, or the security and good order of the facility.”¹⁶ The PBNDS prohibits people in administrative segregation from being “commingled with detainees in disciplinary segregation.”¹⁷ The PBNDS also strictly requires that people in administrative segregation receive at least three hours of out-of-cell time, including “at least two hours of exercise per day, seven days a week,” and “at least one hour of recreation per day, outside their cells and scheduled at a reasonable time, at least 7 days per week.”¹⁸ The PBNDS affords even greater consideration to people subjected to administrative segregation as a form of protective custody: “Detainees who have been placed in administrative segregation for protective custody shall have access to programs, services, visitation, counsel and other services available to the general population to the maximum extent possible.”¹⁹

The PBNDS also requires that facilities meaningfully safeguard against the mental health risks of isolation by monitoring and documenting the well-being of people subjected to administrative segregation, specifically requiring:

- “[D]etailed records [must be] maintained on the circumstances related to a detainee’s confinement to the SMU, through required permanent SMU logs and individual detainee records.”²⁰
- A “permanent SMU log” shall be maintained to record all activities concerning SMU detainees (e.g., meals served, recreational time, visitors, etc.);²¹ and
- A weekly “Special Management Housing Unit Record” shall be prepared to document “whether the detainee ate, showered, recreated, and took any medication.”²²

III. MTC Has a Documented History of Administrative Segregation Practices at Imperial that Violate the PBNDS

In December 2020, just over a year after MTC commenced performance at Imperial under its contract with ICE, the DHS Office of Inspector General (OIG) conducted an inspection at Imperial and published a report finding Imperial to be in serious violation of the PBNDS, specifically with regard to its administrative segregation practices.²³ The OIG report identified

¹⁶ PBNDS § 2.12(V)(A), at p. 173.

¹⁷ *Id.*

¹⁸ PBNDS § 2.12(V)(Z)(2), at p. 186.

¹⁹ PBNDS § 2.12(V)(A)(1)(c)(9), at p. 335.

²⁰ PBNDS § 2.12(II)(20), at p. 172.

²¹ PBNDS § 2.12(V)(D)(1), at p. 179.

²² PBNDS § 2.12(V)(D)(3), at p. 180.

²³ Off. of Insp. Gen., OIG-21-12, ICE Needs to Address Prolonged Administrative Segregation and Other Violations at the Imperial Regional Detention Facility (Dec. 18, 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-12/OIG-21-12-Dec20.pdf>, at p. 4 (hereinafter, “OIG Report”).

multiple “serious [PBNDS] violations regarding the administrative segregation of detainees at Imperial.”²⁴ The OIG specifically faulted Imperial for:

- “[U]sing administrative segregation as a long-term solution for detainees in protective custody”;²⁵
- “[O]verly restrict[ing] detainees by not offering privileges similar to those offered to detainees in general housing units”;²⁶
- “Restrict[ing] [detainees in administrative segregation] to their individual cells for approximately 22 to 23 hours a day without access to the same group activities or opportunities as those in general population”;²⁷
- “[C]onducting inadequate medical checks — conducting visits when administratively segregated detainees were sleeping — and not physically observing and speaking with each detainee”;²⁸
- Failing to “re-establish the need for prolonged segregation placement,” including for people who had been segregated for over 300 days;²⁹ and
- Failing to “document substantive reviews of the validity of continued segregation placement.”³⁰

ICE concurred with all of the OIG’s findings.³¹

In January 2021, the California Department of Justice (Cal. DOJ) issued its own report regarding conditions at Imperial. The Cal. DOJ report criticized Imperial for imposing “extremely restrictive” conditions on people in administrative segregation and lacking adequate mental health services.³² The Cal. DOJ report noted that “Imperial treats detainees in administrative segregation as restrictively as those in disciplinary segregation, submitting detainees in protective custody to harsh and isolating conditions.”³³ The report specifically critiqued Imperial for keeping detainees in protective custody in Restrictive Housing Units (RHU) “indefinitely,” including by refusing “to return a detainee who chose protective custody to general population upon the detainee’s request.”³⁴ The Cal. DOJ report also noted that

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 5.

³⁰ *Id.*

³¹ *Id.* at 13.

³² Cal. Dep’t of Just., *The California Department of Justice’s Review of Immigration Detention in California* (Jan. 2021), <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2021.pdf>, at p. 64 (hereinafter, “Cal. DOJ Report”).

³³ *Id.* at 70.

³⁴ *Id.*

detainees in administrative segregation at Imperial were denied access to programming, in direct contravention of the applicable PBNDS sections.³⁵

IV. MTC Subjected our Client, Carlos Murillo Vega, to Administrative Segregation that Amounted to Solitary Confinement for Nearly 14 Months

Our client, Carlos Murillo Vega, fell victim to these practices during his custody at Imperial from November 2019 to February 2021. MTC staff confined Mr. Murillo in administrative segregation for a total of 14 months. Mr. Murillo filed multiple grievances, raising issues with the punitive lack of out-of-cell time and services available to him and requesting relief from his prolonged segregation—but all fell on deaf ears. On April 19, 2023, a federal district court found that Mr. Murillo had put forward “substantial” evidence that MTC’s practices violated the PBNDS.³⁶ Among other conduct in violation of the PBNDS, in Mr. Murillo’s case:

- MTC did not investigate whether protective custody was necessary for Mr. Murillo;³⁷
- MTC did not consider any alternatives to administrative segregation for Mr. Murillo, even after he had been isolated in administrative segregation for months;³⁸
- MTC did not re-evaluate Mr. Murillo’s protective custody or administrative segregation placement after he reported having nothing to fear in general population;
- MTC did not re-evaluate Mr. Murillo’s administrative segregation placement after he complained that administrative segregation was indistinguishable from disciplinary segregation;³⁹
- MTC commingled people subject to administrative segregation and disciplinary segregation;⁴⁰
- MTC failed to offer Mr. Murillo *any* out-of-cell time on multiple days;⁴¹
- On other occasions, MTC offered Mr. Murillo less than one hour of out-of-cell time;⁴²

³⁵ *Id.* at 71.

³⁶ *Vega*, 2023 WL 3012568, at *9.

³⁷ *Vega v. Mgmt. & Training Corp.*, No. 21-CV-1770-GPC-LR, Mr. Murillo Vega’s Opposition to Defendant’s Motion for Summary Judgment (hereinafter, “Opp.”), Kim Decl., Exh. 4 (ECF 79-12) at 206:13-206:25, 262:25-263:6, 281:12-22 (S.D. Cal. Mar. 17, 2023) (Imperial Classification Supervisor testifying that he did not know of any factual basis requiring Mr. Murillo to be placed in protective custody).

³⁸ Opp., Kim Decl., Exh. 20 (ECF 79-28) at 139:10-19, 134:10-23 (Imperial Deputy Warden testifying that it was “MTC’s policy” to “always” “house protective housing detainees at SMU”).

³⁹ Opp., Kim Decl., Exh. 6 (ECF 79-14).

⁴⁰ Opp., Hansen Decl., Exh. 1 (ECF 79-3) ¶¶ 85-90.

⁴¹ *Id.* at ¶ 82.

⁴² *Id.*

- MTC subjected Mr. Murillo and others in protective custody to much more restrictive conditions of confinement than people in the general population. Whereas people in the general population had all-day access to a large outdoor recreation space and indoor dayroom, people in protective custody could access only a small “exercise cage” for limited periods of the day.⁴³

Discovery in Mr. Murillo’s lawsuit has made clear that his case is not an isolated incident. MTC’s policies and procedures at Imperial continue to violate the PBNDS today.

V. MTC Refuses to Acknowledge or Correct its Use of Restrictive Administrative Segregation Practices, which Continues to Violate the PBNDS

New evidence revealed during Mr. Murillo’s litigation against MTC demonstrates not only that MTC continues to violate several of the PBNDS provisions that OIG and Cal. DOJ identified, but that the company openly refuses to acknowledge or address the violations. Through the course of our litigation, multiple employees speaking on behalf of MTC have testified under oath that in the three years since OIG’s and Cal. DOJ’s reports, MTC has taken no steps to remedy the PBNDS violations the reports identified. Instead, MTC simply disagreed with the reports’ findings and did nothing.⁴⁴ Unsurprisingly, three years later, MTC’s administrative segregation system remains wholly inconsistent with the PBNDS, especially for people placed in protective custody.

- A. MTC always uses administrative segregation to detain people who may need protective custody, regardless of individual circumstances or available alternatives.

The PBNDS prohibits facilities from using administrative segregation as a form of protective custody unless there is no other option.⁴⁵ PBNDS provisions require that facilities first investigate and document the need for protective custody and consider all reasonable alternatives to using administrative segregation.⁴⁶ Once a person is placed in administrative segregation as a form of protective custody, the PBNDS requires frequent re-evaluation, particularly after administrative segregation becomes prolonged.⁴⁷ In 2020, OIG found MTC wholly out of compliance with these provisions, “using administrative segregation as a long-term solution for

⁴³ Opp., Kim Decl., Exh. 1 (ECF 79-9) at 149:21-149:25.

⁴⁴ Opp., Kim Decl., Exh. 46 (ECF 79-56) at 140:1-22 (Imperial Compliance Manager testifying that Imperial disagreed with OIG’s recommendation to review Imperial’s “use of prolonged administrative segregation and seek alternative housing when appropriate” and did not make any changes in response to that recommendation); Opp., Kim Decl., Exh. 20 (ECF 79-28) at 174:22-177:5 (Imperial Deputy Warden testifying that he received the OIG and the Cal. DOJ reports, but that Imperial did not take “any corrective action” or “make any changes to their policies” in response.

⁴⁵ *Supra* at Sec. II; PBNDS § 2.12(II)(4), at p. 171.

⁴⁶ *Supra* at Sec. II; PBNDS § 2.12(II)(4), at p. 171; PBNDS § 2.12(V)(A)(1)(c)(9), at p. 175.

⁴⁷ *Supra* at Sec. II, PBNDS § 2.2(II)(4), at p. 61; PBNDS § 2.12(V)(A)(3)(g), at p. 177.

detainees in protective custody” without re-establishing the need for segregation or documenting any re-evaluation or review of segregation.⁴⁸

These violations continue today. MTC, as a blanket rule, subjects people in custody at Imperial who believe they may need protection to prolonged solitary confinement. MTC has structured its detention system at Imperial to subject everyone in protective custody to indefinite administrative segregation. Employees testifying for the company have confirmed that:

- MTC places all protective custody detainees at Imperial into administrative segregation, regardless of their individual circumstances;⁴⁹
- MTC does not independently investigate whether protective custody is necessary for a particular detainee or make an individualized assessment before sending a detainee to administrative segregation;⁵⁰ and
- MTC does not consider alternatives to segregation for detainees in protective custody.⁵¹

MTC has alternatives available at Imperial. From 2015 to early 2020, Imperial provided individuals like Mr. Murillo with the option of being housed in a dormitory with other similarly situated individuals rather than automatically placing them in indefinite administrative segregation. During this time, no one in this dormitory was harmed. Not only has MTC refused to return to this prior practice, which would end its misuse of isolation as protective custody, MTC has not even considered whether to do so,⁵² despite PBNDS requirements that segregation be a last resort after contractors have considered all possible alternatives.

B. MTC does not substantively re-evaluate the need for protective custody, even for people who have been isolated in administrative segregation for months, leaving them in segregation indefinitely.

Evidence gathered in the lawsuit also makes clear that once Imperial staff place someone in administrative segregation, MTC does not meaningfully re-evaluate their placement. The PBNDS requires that “[a] multi-disciplinary committee of facility staff, including facility leadership, medical and mental health professionals, and security staff, shall meet weekly to review all detainees currently housed in the facility’s SMU ... [and] shall *review* each detainee individually to ensure all staff are aware of the detainee’s status, current behavior, and physical

⁴⁸ OIG Report at p. 4-5.

⁴⁹ Opp., Kim Decl., Exh. 20 (ECF 79-28) at 139:10-19, 134:10-23 (Imperial Deputy Warden testifying that “MTC’s policy” was to “always” house protective housing detainees in the SMU).

⁵⁰ Opp., Kim Decl., Exh. 4 (ECF 79-12) at 206:13-25; 261:25-263:6; 269:14-270:12; 280:14-281:22 (describing lack of investigation in Mr. Murillo’s case); *see also* Exh. 1 (ECF 79-9) at 74:19-76:8 (testimony in individual capacity describing blanket recommendation from MTC staff that everyone from a special needs yard, regardless of individual circumstances, enter protective custody in the SMU).

⁵¹ *See supra* at n.50.

⁵² Opp., Kim Decl., Exh. 20 (ECF 79-28) at 174:22-177:5 (Imperial Deputy Warden stated MTC did not “make any changes to the protective custody policies” or take “any corrective action” in response to report).

and mental health, and to *consider* whether any change in status is appropriate.”⁵³ At Imperial, during the time period our litigation covers, these meetings did not involve discussion of the mental health of people in segregation, despite the known negative mental health impact of segregation. Mental health staff were apparently not aware that they *could* recommend that a person be removed from a segregated unit if it was impacting their mental health.

In our client’s case, the committee declined to review or discuss the multiple grievances he had filed, begging to be relieved of the intense isolation of segregation. Indeed, the minutes of the meetings throughout 2020 indicate that the committee reviewed very little, if any, substantive information. Meetings generally took 30 minutes or less, even when there were upwards of 30 segregated detainees to discuss. At best, the meetings were a bare formality, falling far short of the robust evaluation that the PBNDS requires.

C. For years, MTC failed to conduct or record a single PBNDS internal compliance audit.

MTC also takes a blind eye to compliance with the PBNDS at Imperial. Imperial’s Compliance Manager admitted that from 2020-2021, MTC conducted no internal compliance reviews at Imperial. To the extent that MTC conducted any reviews of its compliance with ICE standards between 2021 and 2022, its staff admitted that they did not document them anywhere. The impact of this lack of internal compliance audits is amplified by the fact that OIG found the Nakamoto Group, the entity that ICE contracts with to inspect Imperial, to be woefully ineffective. OIG found that “Nakamoto’s inspection practices are not consistently thorough” and “its inspections do not fully examine actual conditions or identify all compliance deficiencies.”⁵⁴ When individuals detained at Imperial speak out about MTC’s noncompliance with the PBNDS, instead of making changes to policy that would bring the facility into compliance, MTC responds with retaliation.⁵⁵

VI. Because of MTC’s Persistent and Harmful Violation of the PBNDS, ICE Should Terminate its Contract with MTC at the Imperial Regional Detention Facility.

Despite years of oversight, inspections, and litigation, ICE and its contractors continuously sustain unlawful conditions and retaliate against those who speak up. Because ICE and its contractors at Imperial have proven unwilling to address these problems, ICE should:

1. Immediately end its contracts with MTC at the Imperial Regional Detention Facility; and

⁵³ PBNDS § 2.12(V)(A)(3)(g).

⁵⁴ See *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, Department of Homeland Security Office of the Inspector General 4 (June 26, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

⁵⁵ See *CRCL Complaint Re: First Amendment Retaliation, Medical Negligence, Violations of Civil Rights, and Other Abuses against Individuals in Immigration Detention at the Imperial Regional Detention Facility* (Sept. 12, 2022), <https://www.ccijustice.org/laf-09-13>.

2. Immediately end its contract with the Nakamoto Group, which is charged with inspecting facilities but has a track record of covering up systemic abuse.

We welcome the opportunity to further discuss this matter.

Sincerely,



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