



June 16, 2026

Court of Administrative Hearings
Administrative Law Judge Christa Moseng
600 North Robert Street, PO Box 64620
Saint Paul, Minnesota 55164-0620

Re: Comments on Proposed Permanent Rules Relating to Jail Facilities (Chapter 2911) Revisor ID No. R-4445; CAH Docket No. 22-9051-40960

Honorable Judge Moseng:

I am writing on behalf of The Advocates for Human Rights (“The Advocates” or “AHR”) with comments on the Proposed Permanent Rules relating to Minnesota jail facilities. On behalf of The Advocates, I served on the Rule 2911 Advisory Committee and am The Advocates’ executive director.

The Advocates for Human Rights is an independent, non-profit, non-governmental organization headquartered in Minnesota. AHR’s mission is to implement international human rights standards to promote civil society and reinforce the rule of law. AHR has provided free legal representation to people detained by federal immigration authorities in Minnesota county jails for 30 years and, since 2017, has systematically monitored hearings at the Fort Snelling Immigration Court. These programs inform our comment, as they are the contexts in which the Advocates regularly interacts with people who are detained in Minnesota county jails.

I. General observations:

Whenever a Minnesota jurisdiction takes a person into detention, it has the responsibility to ensure that person’s health, safety, access to due process, and dignity are respected, protected, and fulfilled. Minnesota laws and regulations must comply with international human rights obligations. Because detained persons depend upon their custodian to ensure these rights are upheld, and because detained persons are particularly vulnerable to human rights violations, special international standards relating to their treatment have been established.¹ Most fundamentally, when the State decides to deprive a

¹ UN Standard Minimum Rules for the Treatment of Prisoners, General Assembly resolution 70/175, annex, adopted on 17 December 2015, available at https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E_ebook.pdf. See also Appendix A detailing international legal standards relating to the human rights of detained persons.

person of their liberty, the State assumes the responsibility of guaranteeing the basic human rights of that person.²

In Minnesota, state law historically has provided little guidance or standards for jails beyond minimal licensure requirements, and approaches to budgets, oversight, and transparency vary widely. People who experience harm while detained face nearly insurmountable barriers to seeking redress in the courts. Lack of clearly defined standards, oversight, and accountability mechanisms, coupled with a system driven by cost and revenue concerns and with little popular support, have led to serious failures relating to health care and safety, solitary confinement, and due process. Indeed, these failures are precisely what finally propelled the Minnesota Legislature to pass the Hardel Sherrell Act.

Throughout the proceedings of the Rule 2911 Advisory Committee, discussion focused on the admittedly scarce resources available to elected county sheriffs to safely fulfill their custodial obligations. Sheriffs repeatedly underscored that any rule would require increased staffing and that mental health, chemical dependency, and physical health care was frequently unavailable, too often because hospitals refuse to admit people who are in custody. These practical concerns are real.

But continuing to allow county jails to enjoy a near total lack of oversight and accountability, outside of that provided by the election of sheriffs, is neither justifiable nor likely to result in the devotion of resources sufficient to solve this endemic problem. For this reason, we support the enactment of a Rule which requires minimum uniform standards for ensuring health, safety, and access to justice.

Though this Rule is a positive step toward improved standards of confinement, the Rule still fails to meet several significant international human rights standards and therefore, allows for ongoing rights violations. The Rule does not contemplate the circumstances of the many people held in long term detention in these pre-trial facilities, such as those under ICE custody. Further, the Proposed Rule lacks specificity in its oversight of solitary confinement standards.

This Comment highlights these areas where the Proposed Rule either fails to meet international standards or where it is altogether silent.

II. The Proposed Rule fails to address human rights violations resulting from long-term detention in pre-trial facilities:

The Proposed Rule fails entirely to address the distinct needs of people held for prolonged periods of time in Minnesota's county jails. Most people who cycle through Minnesota jails are held for a matter of days. But others, typically held under contract from state or federal authorities, may spend months or, in some cases, years, inside a Minnesota county jail. While tragedies like the deaths of Hardel Sherrell

² United Nations, Working Group on Arbitrary Detention, Report submitted to the Human Rights Council, A/HRC/10/21, Ch. III: Thematic considerations, ¶ 46 (adopted Feb. 16, 2009).

and Brent Huber, Jr. underscore that even a few days in custody can have life-ending consequences, prolonged detention in facilities designed for short-term stays inflicts unique harm.

Perhaps the clearest example of people held for long periods of time in pre-trial facilities are those held under Immigrations and Customs Enforcement (ICE) custody. AHR has gathered extensive information about these experiences through providing legal services to people who are detained, detention visits to pre-trial facilities across Minnesota, and our Immigration Court Observation Project. AHR trains hundreds of volunteers to observe immigration proceedings at the Fort Snelling Immigration Court, many of which pertain to people currently detained in facilities in Minnesota.

Though the information that AHR can provide is specific to people detained under ICE custody, the negative impacts of long-term detention are not exclusive to this population. We can surmise that other people held for long periods of time awaiting trial or appeal likely suffer similar situations.

AHR has observed for years that people detained by ICE in Minnesota facilities suffer from serious medical and mental health issues without adequate care. This population is uniquely vulnerable. People in Minnesota jails under ICE contracts include those who, because of immigration status, have been excluded from both the private health insurance market and publicly funded coverage. ICE also detains people who fled to the United States after suffering persecution, torture – including torture while detained in their home countries – and other trauma. Detention can stretch indefinitely while cases work their way through a chronically backlogged federal immigration court system. Further, federal immigration enforcement, which disproportionately targets Black, Latine, and Asian communities, amplifies the effects of underlying health disparities experienced by such communities. And, because people detained by ICE face civil immigration proceedings, they have no right to government-appointed counsel and never appear in front of independent courts who have the authority to address misconduct, order redress of harm, or, in many cases, even review custody status.

The complex demands of incarcerating people facing civil immigration proceedings explain the relatively high per diem rate paid by ICE to local jails, compared to the rates paid by municipal, county, state, and federal authorities to hold people with pending criminal charges or sentences following convictions. ICE's Performance-Based National Detention Standards reflect these needs by requiring access to the outdoors, accommodation of legal orientation programs, and specialized immigration legal research facilities, among other things.³

But ICE readily waives compliance with these standards when it contracts with Minnesota jails.⁴ Jails, in turn, use ICE detention contracts as windfall revenue sources, in some cases expanding jail capacity to

³ <https://www.ice.gov/factsheets/facilities-pbnds>.

⁴ See ICE Office of Inspector General, ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards, Jan. 29, 2019, available at

accommodate greater numbers of ICE detainees and generate additional revenue.⁵ Counties have made little investment in even the most basic functions – including interpretation, translation, court access, our access to the outdoors – needed to ensure people’s health, safety, dignity, and due process rights.

The federal government’s willingness to waive appropriate standards does not relieve Minnesota jurisdictions of their responsibility to ensure that the basic human rights of those they choose to incarcerate are met. Jails which contract with ICE have a responsibility to ensure that they have appropriate facilities, staffing, programming, and expertise to ensure the health, safety, and due process of the people it confines. Minnesota Rules should include standards that meet this minimum obligation.

a. Long-term detention in pre-trial facilities undermines health

Contracts between ICE and local jails obfuscate responsibility for people in detention, with both sides pointing to contract terms rather than to Minnesota’s medical, nursing, pharmacy, or psychology practice standards. And because people detained by ICE may be held for weeks, months, or in some cases, years, deprivation of medical care and access to the outdoors has serious consequences.

Court observers documented egregious health concerns in at least 70 hearings corresponding to 33 unique individuals held at Minnesota county jails in 2025 and the first 3 months of 2026. Some of these hearings regarded the same respondent presenting the same health concern over many months without medical intervention. In many cases, people were forced to decide between facing ongoing medical neglect while they defended themselves or accepting return to a country where they may face danger in order to save their health. While our observations are limited to people detained by ICE, we can surmise that people detained while awaiting trial for criminal matters face similar medical neglect that not only harms their health but could pressure them to take a guilty plea to get out of the facility and receive care.

Observers saw numerous people pressured to accept return to their home country as the only way to get medical care. One person had his hand broken by ICE when he was arrested and detained in winter 2026. This left his bone exposed and protruding from his palm. The only treatment he received in detention was pain medication. An observer stated: “I audibly gasped at this, as it’s an open fracture and

<https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf> (last accessed Feb. 19, 2021).

⁵ In September 2020, Steele and Freeborn counties renewed an agreement for Steele to take non-ICE detainees from Freeborn in order for Freeborn to increase capacity for more lucrative ICE detainees. See https://www.southernminn.com/owatonna_peoples_press/news/article_d7560861-78ba-598c-8744-b82e10573ccc.html (copies of the agreement on file with The Advocates).

very serious - requiring antibiotics and surgical repair within 24 hours.” He begged to be deported as soon as possible to get the necessary medical care.

Another person who had a pending application based on fear of government persecution reported he had been detained for one month without his HIV medication. The judge asked him three times if he wanted to be deported. Each time, he said that he did “because without my medications, I am getting sicker.”

Court observers also witnessed the case of a detained person with hemophilia who had not been given his medication while in detention. He reported bleeding in his mouth that wouldn’t stop. The judge asked the jail deputy to get him treatment. After being in detention for nearly a month, he finally reported he had received his medication - provided by an outside organization, not the jail.

Observers also saw people with severe mental illness who faced prolonged detention and lacked appropriate mental health care. Jails do not appear to provide ongoing treatment or to use trained and licensed mental health providers for assessment, monitoring, and treatment. Observers followed one person’s case throughout 7 hearings over 10 months. He had severe mental illness; the immigration judge was mostly unable to communicate with him and had to mute his microphone during proceedings. His attorney requested that he be transferred to a mental health treatment center. At the next hearing, the government’s attorney reported that the therapist at the county jail did not see any reason he could not remain detained and did not order a transfer to mental health treatment. The county jail stated it had no concerns, effectively rendering the person unable to participate in his legal proceedings.

b. Detention in pre-trial facilities results in due process violations

The Proposed Rule fails to require that Minnesota jails which choose to detain people under contract do not violate basic due process rights. By choosing to take custody of people in exchange for per diem payments, Minnesota jurisdictions assume the responsibility for ensuring that the basic human rights of those individuals are met.

Because Minnesota jails routinely and increasingly incarcerate people on behalf of ICE, the Proposed Rule should include standards to ensure due process for people detained under contract. At a minimum, these standards should address interpretation, translation, law library access, document filing procedures, and access to appropriate remote hearing facilities where sensitive testimony can be provided.

Minnesota’s pre-trial detention facilities evolved to work within Minnesota’s criminal legal system. Understanding their role in ensuring people appear at scheduled hearings and have access to legal paperwork and to their attorneys, jails are designed and staffed to meet this constitutional responsibility. For people held in pre-trial detention on criminal charges, jails can assume guaranteed access to counsel and timely appearance before an independent judge to determine custody status. But neither are present for people detained on civil immigration charges, and jails which elect to hold

people on civil immigration charges cannot avoid their responsibility to ensure due process simply because they are incarcerating people under contract.

Minnesota jails enable the arbitrary detention of people in immigration proceedings. Contracts with ICE may provide significant revenue for Minnesota jails that lack necessary resources, but they also enable long-term confinement without a chance to challenge their detention. These conditions violate human rights under the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights (ICCPR). Since ICE detention in Minnesota jails lacks an individualized assessment and process to challenge custody decisions, case management tailored to individual needs, and access to legal and support services, this detention is considered arbitrary in violation of ICCPR articles 9(1) and 9(4).

More concretely, people in long-term detention languish without access to attorneys. They attend court via iPads, dependent upon jail personnel to file paperwork with the Immigration Court on time. All too often, people give up and leave the country – even when they have the right to stay and fight their cases – because they cannot bear indefinite detention. Analogously, people in long-term detention awaiting a trial or appeal may face similar circumstances and feel they have no other choice but to plead guilty or give up on an appeal to get out of these conditions.

Federal immigration laws allow ICE to detain anyone facing removal charges while the case is pending and subject many people to “mandatory” detention during their immigration proceedings, meaning there is no judicial authority to order release while the case is pending. All defenses to deportation require the detained person to file lengthy, complex forms, fully completed in English, with the Immigration Court. Many defenses also require the detained person to file significant documentary evidence of past torture or other persecution, family relationships, length of time in the United States, medical conditions, employment history, and other information. None of these issues are new or specific to the recent expansion of mandatory immigration detention, but the scale of these problems has only grown.

People detained in Minnesota jails with ICE detention contracts must try to defend themselves from deportation despite limited access to attorneys, interpreters, translation services, legal resources, and evidence. People must file all documents in English with the Immigration Court, appear for hearings, and testify, often about their experience of persecution and torture, all from within the Minnesota county jails which hold them.

Detained people face significant barriers to finding and communicating with attorneys, posing serious due process concerns in a system already plagued by low representation rates. People detained by ICE have no access to a “public defender” system for civil deportation (removal) hearings. Most people must appear

before the judge, prepare lengthy applications, gather evidence, and present complex legal arguments in deportation hearings all by themselves.⁶

The Advocates for Human Rights' attorneys struggle to contact potential clients for case screening and to work with clients to prepare applications and testimony. Court observers document that difficulty communicating with attorneys resulted in case delays and continued detention.

People appearing pro se struggle to obtain, complete, and file required forms and evidence with the immigration court. Jails fail to provide detained people with access to reliable immigration court filing procedures, interpretation and translation assistance, copiers, and immigration legal resources. This failure directly undermines people's access to full and fair hearings and, ultimately, can mean permanent separation from families and communities or even return to a country where they face persecution or torture.

Further, all immigration paperwork must be completed in English and any non-English evidence must be accompanied by a certified translation, but jails fail to make language access or support available. Immigration judges, meanwhile, regularly direct unrepresented people to ask other detainees for help. Court observers documented one case where the person was visibly alarmed when the court told him it had not received his application. He told the judge that he had paid another detainee to translate the application into English but had not received a copy after providing it to the guard to be mailed to the court because there was no copier that he could use. The judge told him to re-file or risk being deported if the asylum application was not received within three weeks.

It is important to state that since COVID-19, all deportation hearings for detained people are remote. People appearing in front of the Immigration Judge no longer receive paper copies of charging documents, evidence, or even the list of free legal services during their hearings.⁷ Detained people can no longer file required forms and evidence in person at their hearings. People rely on jails to timely deliver paperwork to the Fort Snelling Immigration Court. Court observers documented several instances where required forms had not reached the immigration judge by the time of the hearing despite the person having given the paperwork to the guard to mail pursuant to policy. One person reported that he gave the application to the guard at the jail, but the court did not receive it. Another person, who was refiling his application in English after the court rejected his first attempt because the application was in Spanish, also told the judge that he had given the paperwork to a guard to mail. The guard subsequently reported that the

⁶ TRAC Immigration, State and County Details on Deportation Proceedings in Immigration Court, available at <https://trac.syr.edu/phptools/immigration/nta/> (last accessed Feb. 12, 2021).

⁷ As required by regulation, EOIR maintains the List of Pro Bono Legal Service Providers and roster of Recognized Organizations and Accredited Representatives. See 8 C.F.R. § 1003.61 and § 1292.2.

unmailed application had been located and would be sent to the court. Such delays not only impacted people's cases but resulted in prolonged detention as they waited for the guards to mail the paperwork.

Court observers first began to document problems that impeded detained peoples' access to full and fair immigration court hearings during remote court appearances during COVID-19. However, observers continue to report due process concerns related to county jails' approach to facilitating virtual hearings in 2026. Some jails consistently struggle to connect via Webex for their detainees' hearings. Recent examples include June 3, 2026, when observers witnessed the connection with Crow Wing County jail failing, meaning several cases scheduled were not heard. Respondents then have to wait weeks or more to have their next hearing, subjecting them to potentially even longer periods of detention. On June 4, 2026, observers witnessed multiple issues. One respondent was applying for asylum from Crow Wing. She asked jail staff to mail it for her and give her a copy to keep, but they told her she could not get a copy. The Immigration Judge said they never received her application. Then, during cases from Kandiyohi, observers said the video feed was barely functioning and black portions on the screen obscured the respondents' face.

Observers have even seen respondents forced to participate in their proceedings from what appeared to be solitary confinement. In spring 2026, an observer described a respondent who appeared in court "peeking through the slit" in his cell out at the tablet a jail guard held. The observer said it was "hard to hold back tears in court. The level of cruelty is astounding."

The observer later spoke with the respondent's brother who had attended the hearing. He said his brother struggled with mental health and was going through drug withdrawal in custody. A month later, observers saw this respondent again, still from his jail cell. The government then reassigned his case to an out-of-state judge who does proceedings on Webex (virtual platform) and does not allow observers. Court observers could not follow his case, despite significant concerns about his mental health, competency and access to a fair judicial process.

Problems with video technology undermine due process and lead to delays and prolonged detention. Immigration judges must assess credibility to determine eligibility for release on bond, asylum, protection under the Convention Against Torture, and other deportation defenses. Frozen and obscured screens interfered with judges' ability to assess eye contact, demeanor, and other indicia of credibility.

As one observer noted, "people are supposed to have a right to 'face their accuser'... but the setup of video doesn't even allow them to look at each other and that is the best of circumstances. What about without video or with a frozen image? Sometimes they couldn't even tell if the person was there or not. How does that uphold human dignity?"

III. The Proposed Rule introduces necessary but incomplete oversight of solitary confinement

The Proposed Rule attempts to introduce oversight of solitary confinement (referred to variously as “separation” or “segregation” in the Proposed Rule) in Minnesota jails, but it fails to define the minimum conditions of confinement necessary to meet international standards.

The United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the Nelson Mandela Rules, defines “solitary confinement” as “the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.”⁸ The Mandela Rules state that solitary confinement should be used only as a last resort, is prohibited in excess of 15 days, and should never be used for people with a mental or physical disability.⁹

Prolonged solitary confinement happens in Minnesota jails. For example, in 2021, AHR documented reports of people being held for 7 days without getting a daily 1-hour release and being in “the hole” for 23 days while suffering from mental health issues concerning to the immigration judge.¹⁰

a. However, the Proposed Rule lacks specificity in its definition of the conditions of separation

Section 2911.2790 “Administrative Separation and Disciplinary Segregation; Placement Generally” refers to “administrative separation” and “disciplinary segregation.” It is understood that these terms mean the person is not in the general population. However, there is no specific definition of what “separation” is. This raises concern that administrative separation could amount to solitary confinement. For example, it is not defined if someone in administrative separation would still go to meals with other inmates, have access to meaningful human contact, or have access to the outdoors. This sort of specificity is necessary to understand if this separation would amount to solitary confinement.

It is concerning that these terms are left open to interpretation. The lack of specificity means administrative separation *could* be the equivalent of solitary confinement, in violation of international

⁸ Jeffrey L. Metzner and Jamie Fellner, Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics, *Journal of the American Academy of Psychiatry and the Law Online* March 2010, 38 (1) 104-108, available at <http://jaapl.org/content/38/1/104>.

⁹ UN Standard Minimum Rules for the Treatment of Prisoners, General Assembly resolution 70/175, annex, adopted on 17 December 2015, available at https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E_ebook.pdf.

¹⁰ Advocates for Human Rights, James H. Binger Center for New Americans and Minnesota Immigrant Health Alliance. “Immigration Detention and COVID-19 in Minnesota: Illuminating Human Rights Concerns in Minnesota Jails. March 2021. P 13. [ice_detention_covid-19_and_mn_jails_final5.pdf](#)

law. Further, there is no specificity on the deprivation of privileges while in separation or segregation, which international law does contemplate.

International law speaks directly to the “regime” for those held in solitary confinement. According to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), people in solitary confinement for preventative purposes should have individualized plans that should maximize their contact with others, beginning with staff and then expanding to other prisoners, and should “provide as full a range of activities as is possible to fill the days.”¹¹ People on remand “should be treated as far as possible like other remand prisoners, with extra restrictions applied only as strictly required for the administration of justice.”¹² The regime for prisoners in disciplinary solitary confinement should not include a deprivation of family contact or access to a lawyer.¹³ Such prisoners should have at least one hour of outdoor exercise per day and access to reading material and stimulation to maintain their mental wellbeing.¹⁴

Having some access to the outside world mitigates the toll of separation. Therefore, the Advocates recommends that the Proposed Rules require that inmates in separation receive the same in-cell provisions and conditions as inmates who are not in solitary. AHR recommends that the Proposed Rule more specifically require that inmates in administrative separation be given access to mediums of interaction with the outside world like television, radio, or newspapers, or other activities with which they can occupy their time. AHR also recommends that, to the extent possible, if an inmate in disciplinary segregation wants to work during their confinement, that measures be taken to allow that inmate to participate in appropriate work. Finally, AHR recommends that the Proposed Rules require that inmates in separation have interactions with the outside world- beyond just interaction with prison staff- through either periodic contact with family members or other inmates.⁹

However, even with these connections to the outside world in place, separation cannot be indefinite. The European Court of Human Rights speaks to this fact. The Court examined the degree of isolation imposed on a prisoner in assessing whether a violation of Article 3 (prohibition against torture) has occurred. For instance, the court found that a complete “prohibition on visits” caused a prisoner “suffering clearly exceeding the avoidable level inherent in detention.”¹⁵ In other cases, the Court found there was not an

¹¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Solitary Confinement of Prisoners* (2011), available at <https://rm.coe.int/16806cccc6> at 7.

¹² *Id.* at 7.

¹³ *Id.* at 7.

¹⁴ *Id.* at 7.

¹⁵ *Onoufriou v. Cyprus*, Application No. 24407/04, European Court of Human Rights, para. 80 (2010)

Article 3 violation because the prisoner still had some contact with others (see *Ramírez Sanchez v. France* where the Court found no violation as the prisoner had access to television, newspapers, and language lessons, met with prison chaplain, and received weekly visits from his lawyers and some family members, meaning his “isolation was partial and relative”).¹⁶ However, the court has stated that even “relative isolation cannot be imposed on a prisoner indefinitely.”¹⁷

Finally, the Proposed Rule fails to ensure due process for people detained by ICE who are in either administrative or disciplinary separation/segregation. The Rules should make clear that people appearing for hearings from within Minnesota jails must be able to fully represent themselves, meet with counsel, access evidence, prepare and file paperwork, and have the ability to both appear on screen and see the judge and courtroom. Appearing via an iPad held through the slot of the cell does not meet the minimum standards of due process.

b. The Proposed Rule allows for prolonged and indefinite solitary confinement in violation of international law

International law prohibits both prolonged and indefinite solitary confinement. Rule 44 of the Nelson Mandela Rules defines prolonged solitary confinement as any exceeding 15 days. The Proposed Rule clearly contemplates solitary confinement of up to 60 days, far exceeding the 15-day limit, in clear violation of international law. Rule 43(1)(a) of the Mandela Rules prohibits “[i]ndefinite solitary confinement.” The Proposed Rule effectively fails to set any limit, again violating international law.

The Proposed Rule states that an inmate may not be in administration separation or disciplinary segregation for more than 60 consecutive days (Proposed Rule Sections 2911.2800 (4b(B)) and 2911.2850 (2A) respectively). Specifically, the Proposed Rule states an inmate must not be in disciplinary segregation longer than 60 consecutive days for “a rule violation.” Notably, the rules do not define what constitutes “a rule violation,” and does not provide any maximum limitation of time spent in separation if there are multiple rule violations. Without this specificity, a person could have back-to-back 60 consecutive day disciplinary segregations that go on indefinitely.

IV. Conclusion

The Advocates welcomes this Proposed Rule as an important step to require minimum health, safety and due process standards across Minnesota county jails. Previous discussions have focused on the insufficient resources available to county sheriffs to meet these minimum standards. This is clearly a

¹⁶ *Ramírez Sanchez v. France*, Application No. 59450/00, European Court of Human Rights, paras. 105, 106 and 135 (2006)

¹⁷ *Ramírez Sanchez v. France*, para. 145.

significant barrier, but not a way to avoid the responsibility of guaranteeing the basic human rights of the people the state deprives of liberty.

Though the Proposed Rule is a positive step toward implementing these minimum standards, it still fails to address significant human rights violations. The Rule does not contemplate the circumstances of the many people held in long term detention in these pre-trial facilities, such as those under ICE custody. The Advocates has documented egregious rights violations pertaining to health care and due process for people detained long term. Further, the Proposed Rule lacks specificity in its treatment of solitary confinement. It does not define minimum standards of confinement for solitary, nor does it prohibit prolonged and indefinite solitary confinement.

Sincerely,

A handwritten signature in black ink, appearing to read "Michele Garnett McKenzie". The signature is fluid and cursive, with the first name being the most prominent.

Michele Garnett McKenzie
Executive Director

Appendix A.

Overview of International Standards

In referencing the international standards on this topic, this comment looks to several international agreements and guidelines related to correctional facilities. These include: (i) the International Covenant on Civil and Political Rights (“ICCPR”); (ii) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”); (iii) the European Convention on Human Rights (“ECHR”); (iv) the American Convention on Human Rights (“ACHR”); and (v) the United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”).

The Mandela Rules

The Mandela Rules began as the Standard Minimum Rules for the Treatment of Prisoners, originally adopted by United Nations Member States during the first UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955. *The Nelson Mandela Rules*, UNITED NATIONS, <https://www.unodc.org/unodc/en/justice-and-prison-reform/nelsonmandelaruleshistory.html> (last visited Apr. 15, 2025). In December 2015, the United Nations General Assembly adopted by consensus the revised UN Standard Minimum Rules for the Treatment of Prisoners, naming them the “Nelson Mandela Rules,” in honor of the late president of South Africa who was imprisoned for 27 years due to his struggle for justice and human rights. *Id.* Now, the Mandela Rules have been adopted as the universally agreed minimum standards of the United Nations. *Id.* “The 122 Rules cover all aspects of prison management and outline the agreed minimum standards for the treatment of prisoners – whether pre-trial or convicted.” *UN Nelson Mandela Rules*, PENAL REFORM, <https://www.penalreform.org/issues/prison-conditions/standard-minimum-rules/> (last visited Apr. 15, 2025). Accordingly, the Mandela Rules provide states with widely accepted and detailed guidelines for protecting the rights of incarcerated persons deprived of their liberty – particularly when solitary confinement is utilized as an administrative or disciplinary procedure. *The Nelson Mandela Rules: Protecting the Rights of Persons Deprived of Liberty* (July 18, 2019), <https://www.un.org/en/un-chronicle/nelson-mandela-rules-protecting-rights-persons-deprived-liberty>. Here, the Mandela Rules serve as a primary point of reference in determining whether the standards pertaining to administrative separation and disciplinary segregation align with internationally accepted minimum standards.¹

ICCPR

The ICCPR was adopted and opened for signature, ratification and accession by United Nations General Assembly resolution 2200A (XXI) of 16 December 1966, with the United States joining in ratification in 1992. United Nations Hum. Rts. Off. of the High Comm’r, *Background to the International Covenant on Civil and Political Rights and Optional Protocols*, OHCHR, <https://www.ohchr.org/en/treaty-bodies/ccpr/background-international-covenant-civil-and-political-rights-and-optional-protocols> (last visited Apr. 15, 2025). The ICCPR aims to ensure the protection of civil and political rights, including

freedom from torture and the right to be treated with humanity in detention. *Id.* Ultimately, the ICCPR serves as a yardstick for nations drafting governing documents concerning basic human rights. Christian Tomuschat, *International Covenant on Civil and Political Rights*, UNITED NATIONS AUDIOVISUAL LIBR. OF INT’L L., <https://legal.un.org/avl/ha/iccpr/iccpr.html> (Oct. 2008). In most countries, the ICCPR has been made part and parcel of the national legal order. *Id.* Accordingly, the ICCPR is utilized across the world as a legal basis for protecting human rights. Here, the ICCPR serves as a point of reference in determining whether the Proposed Rules align with widely accepted international standards concerning the preservation of such basic human rights during periods of incarceration.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The CAT was adopted by the United Nations General Assembly on December 10, 1984, entering into force soon after on June 26, 1987 – having been ratified by twenty states. Hans Danelius, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UNITED NATIONS AUDIOVISUAL LIBR. OF INT’L L. (June 2008), <https://legal.un.org/avl/ha/catcidtp/catcidtp.html>. The United States ratified the CAT in October 1994. *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, United Nations Treaties, <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028003d679> (last visited Apr. 15, 2025). Like the ICCPR, the CAT serves as a “landmark document which has proven fundamental in the global struggle against torture and the fight for justice and reparation for victims, providing not only a basis for the work of the Committee against Torture, but also for other UN anti-torture mechanisms, civil society, and, most importantly, for States parties to the Convention.” Committee Against Torture, *40th Anniversary of the Convention Against Torture*, OHCHR, <https://www.ohchr.org/en/treaty-bodies/cat/40th-anniversary-convention-against-torture> (last visited Apr. 15, 2025). Accordingly, the CAT also serves as a point of reference in determining whether the Proposed Rules align with widely accepted international standards concerning torture and acts which amount to cruel or degrading treatment, again during periods of incarceration.

ECHR

The European Convention on Human Rights (ECHR) was adopted in 1950, entering into full force in 1953. *A Convention to Protect Your Rights and Liberties*, COUNCIL OF EUROPE, <https://coe.int/en/web/human-rights-convention/home> (last visited Apr. 15, 2025). The ECHR “lays down absolute rights which can never be breached by the States, such as the right to life or the prohibition of torture, and it protects certain rights and freedoms which can only be restricted by law when necessary in a democratic society, for example the right to liberty and security or the right to respect for private and family life.” *The European Convention on Human Rights*, COUNCIL OF EUROPE, https://www.echr.coe.int/documents/d/echr/Convention_Instrument_ENG (last visited Apr. 15, 2025). The ECHR’s application is overseen by the European Court of Human Rights, which interprets the provisions “dynamically, in light of the present-day conditions.” *Id.* Accordingly, the ECHR serves as an

additional benchmark by which to measure the Proposed Rules—determining how well they align with the standards set forth in Europe for the protection of human rights during periods of incarceration.

This comment also discusses foreign case law applying the ECHR. On this subject, the European Court of Human Rights evaluates cases of solitary confinement—in particular whether a member state’s imposition of solitary confinement violates Article 3 of the ECHR, which provides that: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

ACHR

The American Convention on Human Rights (ACHR) was adopted after the Inter-American Specialized Conference on Human Rights, on November 22, 1969. *What is the I/A Court H.R.?*, INTER-AM. CT. OF HUM. RTS., https://corteidh.or.cr/que_es_la_corte.cfm?lang=en#collapse1-2 (last visited Apr. 15, 2025). At its core, the ACHR lays out the rights and liberties, including the right to humane treatment and the right to judicial protection, that must be respected by state parties. *Id.* The ACHR’s application is overseen by the Inter-America Commission on Human Rights and the Inter-American Court of Human Rights. *Id.* Specifically, Article 5 of the ACHR recognizes the right to humane treatment, including that “[e]very person has the right to have his physical, mental, and moral integrity respected,” and that “[n]o one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.” This Convention has been interpreted by the Inter-American Court of Human Rights in evaluating alleged violations of the Convention in cases involving solitary confinement. Accordingly, the ACHR serves as an additional benchmark by which to measure the Proposed Rules—determining how well they align with the standards set forth in the Americas for the protection of human rights during periods of incarceration.