

AMENDMENT NO. _____ Calendar No. _____

Purpose: To protect alien detainees from unnecessary or inhumane solitary confinement.

IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.

S. 744

To provide for comprehensive immigration reform and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. BLUMENTHAL

Viz:

1 On page 668, line 16, strike “(b)” and insert the fol-
2 lowing:

3 (b) LIMITATIONS ON SOLITARY CONFINEMENT.—

4 (1) IN GENERAL.—Section 236(d) (8 U.S.C.
5 1226(d)) is amended by adding at the end the fol-
6 lowing:

7 “(3) NATURE OF DETENTION.—

8 “(A) DEFINITIONS.—In this paragraph:

9 “(i) ADMINISTRATIVE SEGREGA-
10 TION.—The term ‘administrative segrega-
11 tion’ means a nonpunitive form of solitary
12 confinement for administrative reasons.

1 “(ii) DISCIPLINARY SEGREGATION.—

2 The term ‘disciplinary segregation’ means
3 a punitive form of solitary confinement for
4 disciplinary reasons.

5 “(iii) SERIOUS MENTAL ILLNESS.—

6 The term ‘serious mental illness’ means a
7 substantial disorder of thought or mood
8 that significantly impairs judgment, behav-
9 ior, capacity to recognize reality, or ability
10 to cope with the ordinary demands of life.

11 “(iv) SOLITARY CONFINEMENT.—The
12 term ‘solitary confinement’ means cell con-
13 finement of 22 hours or more per day.

14 “(B) LIMITATIONS ON SOLITARY CONFINEMENT.—
15

16 “(i) IN GENERAL.—The use of soli-
17 tary confinement of an alien in custody
18 pursuant to this section, section 235, or
19 section 241 shall be limited to situations in
20 which such confinement—

21 “(I) is necessary—

22 “(aa) to control a threat to
23 detainees, staff, or the security of
24 the facility;

1 “(bb) to discipline the alien
2 for a serious disciplinary infrac-
3 tion if alternative sanctions
4 would not adequately regulate
5 the alien’s behavior; or

6 “(cc) for good order during
7 the last 24 hours before an alien
8 is released, removed, or trans-
9 ferred from the facility;

10 “(II) is limited to the briefest
11 term and under the least restrictive
12 conditions practicable and consistent
13 with the rationale for placement and
14 with the progress achieved by the
15 alien; and

16 “(III) complies with the require-
17 ments set forth in this subparagraph.

18 “(ii) CHILDREN.—Children who are
19 younger than 18 years of age may not be
20 placed in solitary confinement.

21 “(iii) SERIOUS MENTAL ILLNESS.—

22 “(I) IN GENERAL.—An alien with
23 a serious mental illness may not be
24 placed in involuntary solitary confine-
25 ment due to mental illness unless—

1 “(aa) such confinement is
2 necessary for the alien’s own pro-
3 tection; or

4 “(bb) if the alien requires
5 emergency stabilization or poses
6 a significant threat to staff or
7 others in general population.

8 “(II) MAXIMUM PERIOD.—An
9 alien diagnosed with serious mental
10 illness may not be placed in solitary
11 confinement for more than 15 days
12 unless the Secretary of Homeland Se-
13 curity determines that—

14 “(aa) any less restrictive al-
15 ternative is more likely than not
16 to cause greater harm to the
17 alien than the solitary confine-
18 ment period imposed; or

19 “(bb) the likely harm to the
20 alien is not substantial and the
21 period of solitary confinement is
22 the least restrictive alternative
23 necessary to protect the alien,
24 other detainees, or others.

25 “(iv) OWN PROTECTION.—

1 “(I) IN GENERAL.—Involuntary
2 solitary confinement for an alien’s
3 own protection may be used only for
4 the least amount of time practicable
5 and if no readily available and less-re-
6 strictive alternative will maintain the
7 alien’s safety.

8 “(II) MAXIMUM PERIOD.—An
9 alien may not be placed in involuntary
10 solitary confinement for the alien’s
11 own protection for longer than 15
12 days unless the Secretary of Home-
13 land Security determines that any less
14 restrictive alternative is more likely
15 than not to cause greater harm to the
16 alien than the solitary confinement pe-
17 riod imposed.

18 “(III) PROHIBITED FACTORS.—
19 The Secretary of Homeland Security
20 may not rely solely on an alien’s age,
21 physical disability, sexual orientation,
22 gender identity, race, or religion. The
23 Secretary shall make an individualized
24 assessment in each case.

1 “(v) MEDICAL CARE.—An alien placed
2 in solitary confinement—

3 “(I) shall be visited by a medical
4 professional at least 3 times each
5 week;

6 “(II) shall receive at least weekly
7 mental health monitoring by a li-
8 censed mental health clinician; and

9 “(III) shall be removed from soli-
10 tary confinement if—

11 “(aa) a mental health clini-
12 cian determines that such deten-
13 tion is having a significant nega-
14 tive impact on the alien’s mental
15 health; and

16 “(bb) an appropriate alter-
17 native is available.

18 “(vi) NOTIFICATION; ACCESS TO
19 COUNSEL.—If an alien is placed in solitary
20 confinement, the alien—

21 “(I) shall be informed verbally
22 and in writing of the reason for such
23 confinement and the intended dura-
24 tion of such confinement, if specified
25 at the time of initial placement; and

1 “(II) shall be offered access to
2 counsel on the same basis as detainees
3 in the general population.

4 “(vii) LONGER SOLITARY CONFINEMENT PERIODS.—If an alien has been sub-
5 ject to involuntary solitary confinement for
6 more than 14 consecutive days, the Sec-
7 retary of Homeland Security shall conduct
8 a timely review to determine whether con-
9 tinued placement is justified by an extreme
10 disciplinary infraction or is the least re-
11 strictive means of protecting the alien or
12 others. Any alien held in solitary confine-
13 ment for more than 7 days shall be given
14 a reasonable opportunity to challenge such
15 placement with the detention facility ad-
16 ministrator, which will promptly respond to
17 such challenge in writing.

18
19 “(viii) OVERSIGHT.—The Secretary of
20 Homeland Security shall ensure that—

21 “(I) he or she is regularly in-
22 formed about the use of solitary con-
23 finement in all facilities at which
24 aliens are detained; and

1 “(II) the Department fully com-
2 plies with the provisions under this
3 paragraph.

4 “(C) DISCIPLINARY SEGREGATION.—Dis-
5 ciplinary segregation is authorized only pursu-
6 ant to the order of a facility disciplinary panel
7 following a hearing in which the detainee is de-
8 termined to have violated a facility rule.

9 “(D) ADMINISTRATIVE SEGREGATION.—
10 Administrative segregation is authorized only as
11 necessary to ensure the safety of the detainee
12 or others, the protection of property, or the se-
13 curity or good order of the facility. Detainees in
14 administrative segregation shall be offered pro-
15 gramming opportunities and privileges con-
16 sistent with those available in the general popu-
17 lation, except where precluded by safety or se-
18 curity concerns.”.

19 (2) ANNUAL REPORT.—The Secretary shall—

20 (A) collect and compile information regard-
21 ing the prevalence, reasons for, and duration of
22 solitary confinement in all facilities described in
23 paragraph (3);

24 (B) submit an annual report containing
25 the information described in subparagraph (A)

1 to Congress not later than 30 days after the
2 end of the reporting period; and

3 (C) make the data contained in the report
4 submitted under subparagraph (B) publically
5 available.

6 (3) RULEMAKING.—The Secretary shall adopt
7 regulations or policies to carry out section 236(d)(3)
8 of the Immigration and Nationality Act, as amended
9 by paragraph (1) at all facilities at which aliens are
10 detained pursuant to section 235, 236, or 241 of
11 such Act.