

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 following:  
2

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 following:  
6

7 “(3) NATURE OF DETENTION.—

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

9 “(i) ADMINISTRATIVE SEGREGATION.—The term ‘administrative segregation’ means a nonpunitive form of solitary  
10 confinement for administrative reasons.  
11  
12



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—

4

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) 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.