

Written Statement on Immigration Detention and Deportation in the United States of America

A Report Submitted for the
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Photo Courtesy of American Friends Service Committee

Responses to Questions
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REPORTING ORGANIZATIONS

Human Rights Clinic, University of Miami School of Law

The Human Rights Clinic at the University of Miami School of Law (www.law.miami.edu/hrc) exposes students to the practice of law in the international and cross-cultural context of human rights litigation and advocacy at the local, national, and international levels. In the classroom, students critically engage with human rights law and contemporary social problems while honing their lawyering and advocacy skills. Outside the classroom, students gain hands-on experience working on cutting-edge human rights projects and cases before the United Nations, the Organization of American States, and other human rights bodies. The Clinic's main regional focus is the United States and Latin America, and its principal thematic areas are violence against women, gender and race discrimination, and immigrants' rights.

American Friends Service Committee

American Friends Service Committee (<http://afsc.org>) is a Quaker organization devoted to service, development, and peace programs throughout the world. Our work is based on the belief in the worth of every person, and faith in the power of love to overcome violence and injustice. One key issue AFSC focuses on is immigrants' rights. AFSC believes that U.S. immigration policy should protect human rights—for everyone. AFSC directly supports immigrant and refugee communities across the U.S. while advocating in Washington, D.C., for humane policy reform.

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The Center for Constitutional Rights

The Center for Constitutional Rights (<http://www.ccrjustice.org>) is a United States-based legal and educational non-profit organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is committed to the creative use of law as a positive force for social change. It has litigated numerous immigrants' rights cases in U.S. federal courts, challenging detention conditions, immigration policing abuses, and government secrecy on immigration policy.

Center for Reproductive Rights *

For 20 years, the Center for Reproductive Rights (<http://reproductiverights.org>) has used the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to protect, respect, and fulfill. The Center believes that reproductive freedom lies at the heart of the promise of human dignity, self-determination and equality embodied in both the U.S. Constitution and the Universal Declaration of Human Rights. The Center works toward the time when that promise is enshrined in law in the United States and throughout the world.

** Contributed to and endorses the section on reproductive rights, but not necessarily the entirety of the report.*

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Endorsing organizations and individuals jointly endorse this report as a statement of solidarity, but do not necessarily endorse every assertion or policy recommendation made herein.

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I. Executive Summary

In the years since the 2006 review of the United States (“U.S.”) by the Committee Against Torture and present day, the U.S. government has failed to comply with numerous Articles of the Convention Against Torture (“the Convention”) in terms of the treatment of non-citizens held in its detention facilities and subject to potential deportation from the U.S.

This report addresses breaches of the Convention that occur primarily in immigrant detention facilities—where non-citizens, including asylum seekers—are held for indefinite periods of time and in conditions violating their fundamental human rights. The report also looks at violations inherent in the deportation process, including the use of “expedited removals” to return non-citizens to their country of origin, raising the specter of refoulement of torture survivors and other asylum seekers. An increasing number of children and families entering the U.S. after fleeing violence in Central America have been welcomed with immediate detention in facilities entirely inappropriate for these populations. Questions about due process give rise to concerns about potentially returning these people to situations that may amount to persecution or torture.

Once in detention and under the custody of the United States immigration authorities, non-citizens may be subjected to discrimination, harassment, sexual or physical violence, prolonged solitary confinement, depression and other mental health effects, and deplorable conditions of confinement. Access to adequate medical treatment, health care and mental health services are not guaranteed. Immigrants report inadequately trained medical personnel, language barriers hindering the ability of detainees to communicate with medical staff, and limited hours during which doctors and psychiatrists are available to provide health care services.

Detainees are separated from family members and face significant barriers in accessing counsel. As a result, many non-citizens are detained longer than necessary and are not able to adequately represent themselves in their removal proceedings, putting them at risk of being returned to dangerous conditions in some cases. Many detention facilities are overcrowded, expose immigrants to extreme temperatures, and serve detainees food that lacks adequate nutrition, content, and hygiene standards.

In some cases, it is United States law and policy that allows for these violations to continue occurring. For example, Detention Standards for immigration facilities are not uniform or codified. In other cases, there are simply inadequate protections, training, and oversight to ensure that laws and policies are appropriately implemented. This is often the case when CBP officers turn away asylum seekers at the border or when ICE or jail officials engage in sexual or physical abuse of detainees. Regardless of whether it is policy or practice, the U.S. must improve its compliance with its obligations under the Convention and ensure the respect, protection, and fulfillment of the rights of the non-citizens held in custody throughout the nation.

II. Overview of Detention in the United States

The system of immigration detention in the United States is comprised of a complex jungle of both private and public facilities that are owned and staffed by a variety of different government and non-government entities, including county jails, federal facilities and for-profit businesses. Non-citizens are held under the authority of different agencies of the Department of Homeland Security (“DHS”), most

commonly Customs and Border Protection (“CBP”) and Immigration and Customs Enforcement (“ICE”). ICE is the entity responsible for the daily detention of the vast majority of the individuals held in immigration custody in the United States on any given day. Therefore, it will be the primary focus of this report.

A. Types of Detention Facilities

Most non-citizens held for immigration purposes in the United States are generally held by CBP or ICE authorities.

CBP

Customs and Border Protection—whose mandate was expanded significantly in 2003 in the midst of the United States’ “war on terror”—is responsible for the security at land borders, ports, and other points of entry into the United States, as well as anywhere within 100 miles of the border.¹ CBP generally holds non-citizens for relatively short periods of time in a smattering of facilities along the borders, most notable the southern border of the United States.

Often cited for an extreme lack of transparency and public oversight, CBP has been the subject of litigation for allegations of numerous human rights violations, such as “conducting enforcement activities outside border regions, making racially motivated arrests, employing derogatory and coercive interrogation tactics, and imprisoning arrestees under inhuman conditions.”²

ICE

There are three types of contractual arrangements DHS maintains that determine in which locations and under which entities’ immediate supervision non-citizens will be detained. The three types of contracted facilities are: (a) Service Processing Centers, which are owned by DHS but generally staffed by private companies, (b) Contract Detention Facilities, which are owned and operated by private corporations, and (c) Intergovernmental Services Agreements which are contracts with state and local governments whereby DHS pays them to hold ICE detainees in their jails and other detention facilities. Nearly 70% of all immigration detainees are held in county jails smattered throughout the country³—most held in wildly variant conditions of confinement usually determined by the whims of local sheriffs and their staff. ICE maintains little daily oversight of these facilities to ensure standards, procedures, and policies are within guidelines and standards.⁴

B. Detainee Profiles

DHS agencies hold a variety of non-citizens in immigration detention. These detained non-citizens include long-term lawful permanent residents with U.S. citizen family members, asylum seekers and torture survivors, victims of human trafficking, unaccompanied minors or minors with family members, and others.

The average length of stay during the months of November and December 2012 was 31 days.⁵ However this average does not explain that the majority of detainees are released within 1 day because ICE does not wait for court approval before deciding a detainee’s fate.⁶ Nor does it show that at the end of December 2012 about 4,793 detainees had already been detained for at least six months, and that there are individuals who have been held for over 6 to 8 years.⁷ The variation in detention time is staggering and points to the lack of legislative protection for individuals who, generally, have never been convicted

of any crime.⁸ DHS has even acknowledged that the majority of immigration detainees do not pose a threat to the public.⁹

Of all detainees, ironically, those held for the longest period of time are those people who are Lawful Permanent Residents and have families, community ties, and are the most likely to find immigration relief.¹⁰ Yet the forced separation from family, work, and community for the duration of their immigration proceedings due to detention is a significant source of stress to the entire family unit, and to communities. Many non-citizens eligible for relief from deportation end up giving up their viable cases and accept forced deportation away from their families and loved ones due to the continued psychological, economic, and/or physical hardships associated with prolonged detention.¹¹

C. ICE Bed Quota & Lack of Use of Alternatives to Detention

On any given day in the United States, ICE holds approximately 34,000 immigrants—about 400,000 each year—as part of a federal policy known as the “bed mandate.”¹² This term is derived from the 2014 Congressional Appropriations Act which states that “funding made available under this heading shall maintain a level of not less than 34,000 detention beds....”¹³ The bed number is completely arbitrary, and ICE and some members of Congress interpret the wording as a requirement to fill 34,000 beds on a daily basis.¹⁴

Setting a quota for the number of individuals who must be detained guarantees that more people—not less—are arbitrarily held by the U.S. government and exposed to deplorable conditions. Once these individuals are separated from their communities, they are placed in prison-like detention centers despite the fact that they may be held only for civil violations. Many of the facilities have come under scrutiny for ongoing inhuman treatment of detainees, while perpetrating agents of the U.S. government enjoy impunity,¹⁵ as will be discussed further herein.

The U.S. Government holds some detainees indefinitely, anywhere from one month to over a decade.¹⁶ Once placed in detention, immigrants face conditions that violate CAT obligations, including: prolonged placement in solitary confinement, lack of adequate nutrition, inadequate access to sufficient medical and mental health care, arbitrary and excessive punishment, lack of protection from verbal, sexual, and physical abuse, and others.¹⁷

International human rights norms, such as the Universal Declaration of Human Rights¹⁸ and the International Covenant on Civil and Political Rights,¹⁹ prohibit the use of arbitrary detention for immigrants.²⁰ Notably, the Human Rights Committee concluded in an Australian case that “remand in custody could be considered arbitrary if it is not necessary in all the circumstances of the case, for example to prevent flight or interference with evidence: the element of proportionality becomes relevant in this context.”²¹

Importantly, there are cost-saving and effective alternatives to detention that could largely reduce or eliminate the excessive rights violations of immigration detainees and their families, while saving U.S. taxpayers between \$600 million and \$2 billion per year.²² Despite this, the U.S. House of Representatives plans to spend \$5.6 million dollars a day—which is above the Department of Homeland Security’s budget request—to ensure that 34,000 beds are filled by immigrant detainees each night.²³ As a result, the average cost of detaining a non-citizen in an ICE facility is \$159 per person, per day.²⁴ Alternatives to detention, which generally include a combination of reporting and electronic monitoring, are effective

and significantly cheaper, costing as little as \$17 per person, per day, and still yield an estimated 96% appearance rate before the immigration courts.²⁵

D. Detention Standards

Despite the thousands of people held in their custody every year, DHS does not have enforceable detention standards. The detention standards that currently exist have been updated over subsequent years;²⁶ however, none of these standards are consistently enforced across facilities, and in fact different standards apply based upon the date and terms of the ICE contract with each individual facility.²⁷

One body that has made recommendations for civil detainee detention standards in the U.S. is the American Bar Association (“ABA”).²⁸ The ABA Standards were designed to help DHS progress towards a system that does not primarily rely on jail-like facilities.²⁹ The Standards call for detention as a last resort, using the least restrictive means necessary to ensure court appearances, and for strong external oversight by government entities, the press, and respected non-governmental organizations. They recognize that DHS is responsible for upholding the Standards, strictly overseeing its contract facilities, and making major decisions on classification, release, and reassignment of persons in its legal custody.³⁰ While ICE has its own set of previously developed standards, these are based primarily on jail-like settings and criminal incarceration, failing to adequately address the civil nature of immigration proceedings in the United States or the unique concerns often faced by immigrants in detention.³¹

The United States continues to defend the detention center conditions by trumpeting the most recent Performance-Based National Detention Standards, outlining the “robust safeguards” against detainee abuse.³² However, the PBNDS are only guidelines.³³ Currently there are no legally enforceable civil regulations for detention centers, leaving immigrant detainees vulnerable to abuse by ICE agents and their proxies.³⁴ The primary means for ensuring compliance is through internal, non-independent inspections of detention centers.³⁵ The lack of regulations hinders implementation of more humane detention conditions, reduces the ability to hold actors accountable for abuses, and truncates redress opportunities for abuse survivors. Until the PBNDS are improved and codified into law, detainee abuse victims are unable to find recourse and ensure ICE accountability through the court system.³⁶

III. Expedited Removal and the Specter of Refoulement of Torture Survivors and other Asylum Seekers

While there are many ways in which a non-citizen may come into the custody of U.S. immigration authorities, involving numerous policies and practices that have been alleged to be in violation of human rights norms,³⁷ one of the processes most likely to result in potential refoulement of asylum seekers, including those likely to face torture upon deportation—a direct violation of Article 3 of the Convention—is expedited removal.

Expedited removal is the process that a non-citizen is subject to if he or she is apprehended without proper documentation at any port of entry, or within 100 miles of any U.S. land or water border within 14 days of entry.³⁸

For financial year 2013, ICE reported that 235,093 non-citizen “recent border crossers” were deported, constituting nearly 64% of the total removals in FY 2014.³⁹ The “recent border crossers” were most likely subject to expedited removal. The rest of the removals were non-citizens apprehended in the “interior”

of the country, most of whom should have had access to some type of immigration proceedings before a judge.⁴⁰

A. Asylum Seekers and Expedited Removal

Non-citizens subjected to expedited removal will be automatically deported unless they express a fear of return or intention to apply for asylum to the apprehending authorities.⁴¹ Such an identified asylum seeker should then be provided the opportunity to have a “credible fear” interview with an Asylum Officer of the U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS) along with CBP and ICE.⁴²

An asylum seeker is an individual who is seeking recognition as a refugee in a country other than their country of origin.⁴³ Asylum seekers are seeking recognition as refugees, and allege to have suffered past persecution—including torture—or to have a well-founded fear of future persecution in their countries of origin. However, instead of finding protection and refuge upon reaching the U.S. border, asylum seekers are automatically detained by Department of Homeland Security officials (first CBP and then ICE). The consequences of this process can be devastating.

B. Prolonged Detention of Asylum Seekers

By law, these asylum seekers are subject to mandatory detention pending the final decision on credible fear.⁴⁴ There is no mandated time period by which USCIS must complete this credible fear interview,⁴⁵ and although the agency states that it attempts to complete 80% of credible fear interviews within 14 days of the case being referred the case, the wait time can be much longer.⁴⁶ And given the recent influx of asylum seekers and other non-citizens apprehended at the southern border of the U.S. in the past year, it can be expected that the wait time will likely increase further.

This means that asylum seekers—including torture survivors and victims of other forms of persecution—may have to spend lengthy periods of time in detention before becoming eligible for release. And even if legally eligible for release, these asylum seekers are often forced to remain detained throughout their immigration proceedings, including appeals, a process which could take months or longer.⁴⁷ While DHS regulations permit officers to release noncitizens who are not subject to mandatory detention and who do not pose a flight risk or a danger to the community, they are not required to do so.⁴⁸ Detainees may appeal initial custody determinations by DHS to an immigration judge, but are required to demonstrate “by clear and convincing evidence that release would not pose a danger to other persons or property ...[and that the immigrant] is likely to appear for any future proceeding.”⁴⁹ Even if detained immigrants meet this standard—difficult without access to appointed counsel—immigration judges are not required to release them. Moreover, U.S. law mandates that bond be set at no less than \$1,500.⁵⁰ The statutory and regulatory framework results in a high rate of prolonged detention, with limited availability to bond hearings.⁵¹ Discretionary determinations of granting bond or parole to asylum seekers are made inconsistently and infrequently, indicating a presumption of detention, despite the protections afforded asylum seekers under international law. (For more on the medical and mental health effects of detention of asylum seekers, see Section V.)

While the lack of information, communication, translation and other uncertainty inherent within the U.S. immigration system is harmful and can cause significant mental anguish in any non-citizen detainees,⁵² the situation is especially difficult for asylum seekers, particularly those who were fleeing from situations of torture, war, strife, and other significant human rights violations. In fact, experts have

found that “detention can induce fear, isolation and hopelessness, and exacerbate the severe psychological distress frequently exhibited by asylum seekers who are already traumatized.”⁵³

In a comprehensive study on the health effects of detention on asylum seekers, Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture found that: “The asylum seekers in this study, many of whom were victims of torture in their countries of origin, described numerous disturbing encounters with immigration officials. Such grievances began upon arrival at US airports, where they frequently reported enduring verbal abuse and other indignities, and complained that their right to apply for asylum was often not adequately explained to them. Many interview subjects reported that they were verbally abused during their detention. Reports of physical abuse were infrequent, but not absent. Solitary confinement, or the threat of solitary confinement, was frequently used as a means of punishment or intimidation.”⁵⁴

While precise numbers of asylum seekers and torture survivors is unavailable, in 2008, the last year in which DHS issued its semi-annual report to Congress, 8,480 asylum seekers were detained.⁵⁵ Moreover, it is estimated that from October 2010 to February 2013, the U.S. detained approximately 6,000 survivors of torture.⁵⁶

It is clear that detention has significant detrimental medical and mental health effects on persons fleeing to the United States to seek protection as refugees. For most asylum seekers—and particularly those who have suffered past torture—the experience of being detained and suffering numerous violations mentioned throughout this report, including verbal and physical abuse, lack of communication and information, solitary confinement, threats, and lack of sufficient medical and mental health care, easily amount to cruel, inhuman, and degrading treatment, if not torture in some cases.

C. Arbitrary Denial of Access to Asylum Procedures & Potential Refoulement

However, even worse is the fact that many asylum are denied the right under international law to apply for asylum because of U.S. authorities who arbitrarily apply the law. As a result, some of the thousands of people sent back yearly under expedited removal may be subjected to refoulement.

Despite the important role of screening non-citizens at the border for potential asylum claims, CBP officials and staff seem to view their border mandate primarily in terms of security and terrorism. In fact on the CBP website, the “Border Security” page indicates a clear focus on suspicion and security, not human rights or protection of non-citizens, particularly asylum seekers:

CBP’s top priority is to keep terrorists and their weapons from entering the U.S. while welcoming all legitimate travelers and commerce. CBP officers and agents enforce all applicable U.S. laws, including against illegal immigration, narcotics smuggling and illegal importation. CBP deploys highly trained law enforcement personnel who apprehend more than 1,000 individuals each day for suspected violations of U.S. laws.⁵⁷

Of the total 368,644 people deported by ICE in FY 2013, the top countries of removal were Mexico (241,493), Guatemala (47,769), Honduras (37,049), and El Salvador (21,602).⁵⁸ Given the current human rights situations in these countries, including gang violence, extreme murder rates, sexual violence,

impunity, and other Governmental rights violations, any individual from these countries should be carefully screened for asylum claims. That has not been the case.

As mentioned above, there is significant evidence that CBP officials—in more than just isolated incidents—consistently deny the right to seek asylum to non-citizens apprehended within the expedited removal process. CBP officers are often the first screening officials, and are supposed to inquire as to whether non-citizens have a fear of return to their home countries in order to refer them to USCIS for credible fear interviews. However, this process is rife with rights violations. One of the most problematic is the denial of access to credible fear interviews by ignoring pleas, denying interpreters, physical intimidation, or the use of other tactics like detention in horrific facilities with no access to even basic needs.⁵⁹

Three Central American sisters *with the same claims* were each interviewed by different CBP officers, a situation that led to wildly different outcomes—one sister was given an NTA, had her asylum case heard in court and was granted asylum by the immigration judge, while the other two sisters were denied access to credible fear interviews and given expedited removal orders by CBP—illustrating the arbitrariness of the expedited removal process and screenings for asylum seekers.

In one particularly illustrative case that is the subject of current litigation before the Inter-American Commission on Human Rights, three sisters from a Central American country were apprehended together by CBP in Texas in 2013.⁶⁰ The sisters had *identical* fears of return to their home country, they all arrived together at the same time, and were apprehended and detained in the same cell by CBP. However, the three sisters were each screened by different CBP officers, a situation that led to wildly different outcomes—one sister was given a “Notice to Appear,” had her asylum case heard in court and was granted asylum by the immigration judge, while the other two sisters were denied access to credible fear interviews and given expedited removal orders by CBP—illustrating the arbitrariness of the

expedited removal process and screenings for asylum seekers. The two sisters with expedited removals were fortunate that they were not from Mexico, or they could have been deported by CBP on the same day. Because they were from Central America and did not have passports, ICE became involved in their deportation, and they were fortunate to have received supervised release for a short time.⁶¹

Another case illustrates the treatment of a young mother who was also apprehended at the southern U.S. border by CBP officers:

Sofia is a mother in her early thirties. In the process of being taken into custody, a CBP Officer knocked her into the ground face first. He ordered her and others to “subete a la perrera,” which means “get in the dog kennel” in English. While freezing in her wet clothes, she could see a pregnant woman in the adjoining hielera and a two year old child. While detained, she was threatened with worse treatment elsewhere if she didn’t sign a deportation order written in English, which she could not understand. She was never once asked whether she had a fear or concern of being returned to her home country, which she clearly did.⁶²

D. Central American Minors and Families, and Lack of Access to Adequate Immigration Procedures

While expedited removal does not apply to unaccompanied minors, such children—and their families when they come accompanied by an adult, usually their mother or another relative—are nevertheless also subjected to removals without the ability to fully exercise their right to apply for asylum or their due process rights.⁶³

Since October 2013, there has been a significant increase of non-citizens entering the United States from Central America. Many of them are believed to be asylum seekers fleeing persecution and other violence in Honduras, Guatemala, and El Salvador. The response of the U.S. Government to this refugee and protection crisis has been not only to re-establish family detention centers in New Mexico, Texas, and Arizona, but also to “fast track” the legal process for children and families, including those seeking asylum, through the creation of highly expedited hearing proceedings.⁶⁴ The speed with which children and families are being forced to litigate their cases inhibits their ability to access any representation at all, much less counsel who can adequately develop their cases for asylum, Special Immigrant Juvenile Status, and other forms of immigration relief. In fact, a number of advocacy organizations recently sued the federal government to challenge what they call “policies of denying a fair deportation process to mothers and children who have fled extreme violence, death threats, rape, and persecution in Central America and come to the United States seeking safety.”⁶⁵

The due process violations include the following. One detainee held at Artesia Detention Center in New Mexico stated, “I told the ICE officer I wanted to speak to the supervisor-in-charge . . . [The supervisor] stood directly in front of me and vociferously and loudly proclaimed to me (and everyone in the room) that 'I want you to know that all of these people are going to be deported' and that 'Our job is to get them deported and there's maybe one in 1,000 entitled to stay in the United States, and the rest are going to go'.”⁶⁶ In one case, a woman was told by an asylum officer that the domestic violence she suffered several years ago was irrelevant to her claim, despite the fact that she fled from the continued abuse of her abuser.⁶⁷ Finally, some immigration judges in Artesia who were conducting reviews of negative credible fear findings, forbade lawyers from speaking during the hearings.⁶⁸

IV. Sexual, Physical and Verbal Abuse

Guards or other detention officer perpetrated most instances of reported sexual, physical and verbal abuse. There are also detainee reports of violations committed by other detainees, including criminal inmates with whom the immigration detainees are sometimes held. However, in all cases, DHS has the final responsibility to ensure protection of these individuals, and the failure to prevent or the tolerance of torture and cruel, inhuman or degrading treatment in these facilities rests at the feet of the federal Government.

A. Sexual Abuse

The Prison Rape Elimination Act (PREA)⁶⁹ was enacted in 2003 by Congress to protect people in custody by creating standards for prevention, detention, and response to sexual abuse. PREA was recently interpreted as applying to all federal centers of confinement including immigrant detention facilities.⁷⁰

Each federal agency bears the responsibility of implementing regulations, operating its centers and ensuring the safety of those in its custody.⁷¹

The establishment of uniform regulations protecting detainees from sexual abuse is a positive first step to aligning detainee treatment with the international obligations of the reporting State. It should be noted, however, that some detention facilities currently housing immigrants are exempt from PREA regulations because their current contract with ICE does not contain this language. The only opportunity for these facilities to be brought in line with PREA requirements is when contracts are renewed.⁷²

Complaints of sexual assaults have continued. During the years from 2010-14, fourteen percent of calls by detainees to the DHS Office of Inspector General's hotline were disconnected. Of those cases in which the detainee was able to file a complaint, a full 93 percent of the claims were deemed "unsubstantiated."⁷³ Sexual abuses have not limited to geographical pockets or individual facilities. Reports of sexual assaults in detention have been made in every state in which a detention facility operates.⁷⁴

Rape and sexual violence in detention centers is preventable, but the political will to protect the human rights of detainees must exist. Sadly, there are many stories of rape and other sexual abuse in detention centers. For example, on A's first night in ICE custody, he was raped and attacked in his sleep. Two days passed before A was able to talk to an ICE officer he trusted about his experience and to seek help. After reporting his attack, A was handcuffed, led to a small room and questioned without his attorney present.⁷⁵

B. Other Abuses of Detainees

Other types of abuse in detention runs the gamut from verbal to serious physical abuse, including inappropriate and prolonged use of solitary confinement, as well as other disciplinary techniques or use of force. Some of the abuse is directly at the hands of the U.S. Government employees or their proxies, or at the hands of others—always while within the aforementioned authorities' custody. And certain groups of detainees are sometimes subjected to differential harmful treatment.

1. Physical and Verbal Abuse

Individuals held in ICE detention centers face verbal and physical abuse by center staff that act with relative impunity.⁷⁶ According to a 2012 report, some detainees who filed grievances were subjected to retaliatory behavior by correctional officers such as being threatened or put in solitary confinement.⁷⁷

In 2014, non-governmental organizations documented systemic abuses of immigrant children and women held in DHS custody after fleeing violence in Central America.⁷⁸ Upon entering DHS custody, children and women often face detention conditions that undermine their humanity, including facilities ill-equipped for this particularly vulnerable population.⁷⁹ Detainees are often held in CBP holding cells for as long as 13 days, without mattresses, beds, chairs, or blankets, often in temperatures "so cold that the CBP officers themselves refer to them as 'hieleras,' or iceboxes in Spanish."⁸⁰ Children reported being subject to punching, kicking and use of stress positions while being held by CBP.⁸¹

Access to nutritious and hygienic food while in detention is a recurring concern in many detention centers. In one documented case a teenage woman, G.G., was given moldy bread to eat while in a CPB

facility then when she became violently ill due to the food conditions, CPB officials called her a “dirty liar” and claimed she was pregnant.⁸²

According to a staff member with a civil society organization who visited a new family based detention facility earlier this year, “women reported to me that they were subject to various types of abuse. They overheard ICE officers refer to them as animals. During mealtime, one woman overheard an ICE officer say, 'Look at the animals eat.' Women stated that ICE officers yelled at them and told them that they shouldn't take food out of turn. I also observed mothers using small hand towels to keep their children warm in the over-air conditioned detention facility.”⁸³

2. Use of Isolation or Segregation

One of the most egregious forms of detainee abuse, and one which can result in serious trauma, particularly for vulnerable persons, is the use of repeated and/or prolonged solitary confinement or segregation.

The United States has been criticized by many entities for its use of prolonged solitary confinement. As more studies are conducted into the psychological effects of isolation, concerns grow about the long term and irreversible impacts of this treatment. Those held in isolation commonly exhibit behaviors such as hyper-responsivity to external stimuli, paranoia, difficulty exercising impulse control, panic attacks, intrusive thoughts, hallucinations and other distortions of perception, and increased violent tendencies against oneself and others.⁸⁴ This collection of symptoms, found in no other psychiatric illnesses, has in some circles been identified as a psychiatric syndrome referred to as “prison psychosis.”⁸⁵ Suicides of those detainees placed in solitary confinement is far greater than in the general population, due in part to the psychological impacts of living under these conditions.⁸⁶

Of additional concern is the reliance on isolation as a “behavioral management tool” for those with psychological disturbances.⁸⁷ Solitary confinement is an inherently punitive practice. For those with a history of mental health issues, the consequences of placement in isolation are particularly harmful and the victims of this practice may suffer deterioration in their mental and emotional state.⁸⁸

Currently there are an estimated 300 immigrants held in solitary confinement each day in ICE facilities.⁸⁹ Nearly 50 percent of those placed in solitary spend longer than 15 days in isolation, the threshold at which experts believe risks of severe mental harm rise.⁹⁰

Individuals in solitary confinement are housed alone and generally kept in their own cells for 22 to 23 hours each day.⁹¹ Privileges typically available to detainees in the general population are restricted to those in isolation. Daily recreation time is limited to around an hour and, depending on the classification of their isolation, may be denied entirely.⁹²

Detainees are placed in solitary confinement for a variety of reasons. Unfortunately ICE records do not include why immigrants were subjected to this act, how many detainees are in solitary, nor the total length of stay. *The New York Times* reported that an estimated two-thirds of detainees were removed from the general population and placed in isolation as punishment for being uncooperative with guards or fighting.⁹³ Other common reasons include that the detainee was deemed threatening to staff, or that it was used to protect the immigrant because of mental illness or for being gay.⁹⁴ Out of all populations in the U.S. justice system, detained non-citizens may often have the most challenging experience in

seeking relief from solitary confinement because “(t)hey have no advocates,” and their family “is afraid to complain.”⁹⁵

The experience of two detainees illustrates the nature of abuses ICE is alleged to have committed. In one example a detainee was forced into solitary confinement for three months after arguing with a guard; in another case, a female detainee was isolated because she violated facility rules by having peanut butter and a Kool-Aid drink packet in her cell.⁹⁶

Of particular concern is that ICE places LGBT individuals in isolation under the pretense of protecting members of this community, when in reality this treatment fails to honor the dignity of these detainees. The prime example is the use of solitary confinement for people who identify as lesbian, gay, bisexual, or transgender as part of a protective status measure rather than dealing with the individuals’ unique circumstance.⁹⁷ Even more alarming is that solitary placement requires little justification, is usually against the express desire of the actual LGBT detainee,⁹⁸ and in some cases, can put the detainee at even greater risk of physical or sexual abuse.

One such detainee, T, was placed in administrative segregation while at Eloy Detention Center in Arizona, and reported one of the most extreme examples of abuse.⁹⁹ A guard sexually assaulted T during T’s placement in administrative segregation or solitary confinement. After the first assault, the immigration judge granted T immigration relief in the form of Withholding of Removal, but T was further detained for three more months, during which time the second sexual assault occurred.¹⁰⁰

ICE directs detention facility operators to provide humane conditions for those in isolation which commonly include adequate lighting, ventilation, access to reading materials, heating, mattress and bedding, sanitary conditions, nutritious meals, medical health provider visits, and facilities to maintain personal hygiene.¹⁰¹ Additional guidelines are also applicable based on the classification of isolation, such as Special Management Unit (SMU) placement for disciplinary reasons versus administrative purposes.¹⁰² Other relevant departmental guidance for detention conditions include the 2011 Performance Based National Detention Standards and the Segregation Directive of 2013.¹⁰³ However, as illustrated herein, the conditions of isolation at most facilities do not meet the Standards, and they are not codified in any case.

The 2013 ICE review of its segregation policies is supposed to protect vulnerable populations against placement in isolation solely because of their special vulnerability and requires an individual assessment prior to being put in isolation.¹⁰⁴

Despite the existence of suggested conditions for isolation, a great deal of latitude is granted to facility operators in some classifications of solitary confinement. For example the PBNDS allows facilities to feed immigrants in SMU differently from the way in which it is provided to the general population.¹⁰⁵ These permitted deviations create an opportunity for substandard and ad-hoc treatment of detainees in isolation.

In 2013, the United Nations Special Rapporteur on Torture and other cruel, inhuman, and degrading treatment or punishment, Juan Mendez, called on the U.S. government to end its reliance on solitary confinement and use isolation only limited circumstances.¹⁰⁶ He further encouraged the U.S. to prohibit periods of isolation beyond 15 days due to grave concerns that sensory deprivation could constitute torture, and to outright ban isolationist use against juveniles and those with mental disabilities.¹⁰⁷

Notably, the Special Rapporteur recently stated, “(t)he United States is in breach of its obligations under the torture convention.”¹⁰⁸

V. Lack of Adequate Medical and Mental Health Care in Detention

Individuals held in detention are entirely reliant on the U.S. government to provide life-sustaining health care, making the subpar medical system in detention centers particularly heinous. Delays in medical treatment and low quality health services undermine the fundamental human rights of detainees and in extreme cases may contribute to the unnecessary deaths of individuals in the custody of the U.S. government.

Catherine Rouse a former contract nurse at a detention center in Arizona reported to the Washington Post “dogs get better care in the pound” than the ICE detainees.¹⁰⁹ Chief among the reasons why Ms. Rouse quit her position was the number of patients being taken off their necessary, prescribed medication, and the level of tasks nurses performed without proper training.¹¹⁰

A. Lack of Adequate Medical Care in Detention

One of the most persistent areas in which the U.S. government fails to comply with CAT obligations is in terms of restricted access to medical treatment¹¹¹ and the poor quality of health services provided.

One hundred and forty-one immigrant detainees in the custody of Immigration and Customs Enforcement (“ICE”) died between the years of 2003 to 2013.¹¹² At least 30 detainees were under the age of 40 at the time of their death.¹¹³ The causes of death range from liver failure, chronic colitis, heart attack, suicide, sepsis, pneumonia, electrocution, to diabetes complications.¹¹⁴

Common allegations of inadequate health care include:

- Patients being taken off of necessary medications;¹¹⁵
- Inadequately trained medical personnel;¹¹⁶
- Limited hours during which a medical doctor is present at facilities to provide treatment to detainees;¹¹⁷
- Severely restricted access to mental health care providers despite overwhelming requests for psychological aid;¹¹⁸
- Language barriers between detainees and medical personnel, resulting in misdiagnosis and erroneous medications being issued;¹¹⁹ and
- Significant delays between the time at which medical assistance is requested to when it is provided.¹²⁰

B. Violations of Female Detainees’ Reproductive Rights

Under the Fifth Amendment of the U.S. Constitution, immigrants have a right to receive medical care and to be free from inhumane or unsafe conditions.¹²¹ Civil detainees also have a right to a higher standard of care than those accused or convicted of a crime.¹²² Despite these constitutional guarantees, which should be in line with international norms, women are subjected to cruel and inhumane practices such as shackling during pregnancy and have been routinely denied access to medically necessary reproductive healthcare including prenatal care, postpartum care, and obstetric services.¹²³

Pregnant women detained in immigration facilities are vulnerable to many forms of ill treatment including denial of appropriate care as well as physical and mental harm caused by the use of physical restraints. ICE policy dictates that “absent extraordinary circumstances,” pregnant or nursing immigrants should not be detained.¹²⁴ Nevertheless, reports reveal that since 2012, 559 pregnant women have been detained in just six of ICE’s 250 detention facilities.¹²⁵ A recent independent investigation uncovered that in 2013, the ICE facility in El Paso, TX, alone held 40 pregnant women, including one woman who was seven months pregnant.¹²⁶ The updated standards require a showing that that pregnant women be provided with routine or specialized prenatal care, but women’s access to pregnancy care differs drastically depending on the facility where they are held, with reports of some denied nutritional supplements and food.¹²⁷

The PBNDS 2011 directs ICE detention facilities to refrain from using restraints on women in active labor, delivery, or during transport to an outside facility.¹²⁸ Reports of shackling pregnant women in immigration detention have decreased in recent years, but incidents continue due to the numerous barriers to enforcing the PBNDS 2011 and the absence of laws banning shackling of pregnant women in 28 states.¹²⁹

Federal law prohibits funding to cover abortions for immigrant women in detention, even when a woman’s health is at risk. Under a provision called the Aderholt Amendment, an amendment to the Department of Homeland Security Appropriations Act,¹³⁰ federal funds may not be used to pay for a detained woman’s abortion except in cases of rape, incest, and life endangerment (defined narrowly to exclude a health exception).¹³¹ While ICE must continue to escort women who arrange and pay for an abortion outside of the detention facility, the law includes language allowing ICE employees to refuse to “perform, or facilitate in any way the performance of, any abortion” based on their “philosophical beliefs.”¹³² This provision makes it possible for ICE employees to refuse to transport women choosing to exercise their constitutional right to abortion. Given the low economic status of many immigrant detainees and the high cost of an abortion, the funding prohibition effectively bars their access to abortion.

C. Lack of Adequate Mental Health Care in Detention

Even if immigrants entering detention may not have suffered from mental illness or distress prior to arriving at a facility, there is increasing evidence that the nature of detention, especially indefinite detention, has harmful psychological effects.¹³³ Physicians for Human Rights found that “a detainee who is unprepared for the possibility of being taken into custody or being indefinitely detained – which is the case for many of those in both immigration and national security detention – is particularly susceptible to suffering from PTSD and other psychiatric disorders on account of the uncertainty associated with his detention.”¹³⁴

And for asylum seekers and unaccompanied minor children, the situation can be worse. As one report stated, children who are escaping mass violence, crossing multiple state borders without their families, and are immediately subjected to detention in a country that does not share their native cultures or language, lack the cognizance and empowerment necessary to protect themselves from the systematic inhuman treatment experienced while under ICE custody.¹³⁵

For non-citizens with previously diagnosed mental disabilities immigration detention implicates even more significant rights violations. The mentally ill are often subjected to isolation, punishment, and a lack of adequate treatment for their issues. In at least one detention center, immigrants who reported

mental health issues have been put in straightjackets and solitary confinement to deter the other detainees from seeking medical help.¹³⁶

According to information gathered by the U.S. federal government, approximately ten percent of immigrant detainees put in solitary confinement were suffering from mental health complications.¹³⁷ Individuals with major mental disorders placed in isolation experience psychological impacts greater than people who do not suffer from mental illness. The conditions in solitary confinement (lack of meaningful human contact, stress, unstructured days, etc.) may intensify symptoms of their illness and cause their mental health to decompensate. Additionally, psychological treatment for their condition is often limited while they are in isolation, in part due to regulations preventing them from leaving their cell for therapeutic treatment.¹³⁸

The tragic case of Tiombe Carlos who was held in York, Pennsylvania provides a stark representation of the larger medical and mental health issue at detention centers. Ms. Carlos, who was diagnosed with paranoid schizophrenia at age 15, committed suicide in 2013 after 3 years in detention despite repeated petitions for her release and a delayed ICE mental health evaluation confirming her disease.

Detainees deemed incompetent to represent themselves due to mental illness languish in ICE custody while the immigration authorities decide how to proceed. This issue is integrally related to the lack of guaranteed counsel in immigration proceedings and the courts' unfamiliarity with invoking a guardian ad litem. Human Rights Watch and others have documented the prolonged detention of detainees with mental illness.¹³⁹

While immigration judges have been more proactive in recognizing the issue of mental incompetency,¹⁴⁰ not all courts have received training or implemented procedures for ensuring the due process rights of mentally ill deportees. The ICE practice of continuing to detain the mentally ill—often in segregation—punishes these non-citizens due to a mental illness, a practice that is cruel and degrading.

VI. Other General Conditions Issues in Immigration Detention

In addition to the aforementioned human rights violations—including physical, verbal, and sexual abuse, insufficient medical and mental health care and other harms—the general conditions of detention in some facilities may amount to cruel, inhuman, and degrading treatment. The Special Rapporteur on Torture, Juan Mendez, in accordance with Article 16, refers to the “structural deprivation of most human rights, mainly the rights to food, water, clothing, health care and a minimum of space, hygiene, privacy and security necessary for a humane and dignified existence” as a form of systematic torture.¹⁴¹

Given the significant variety of locations, facilities, authorities, practices, and relevant standards in detention facilities around the country, it is not surprising that conditions of detention vary greatly. What they do have in common is the lack of enforceable standards ensuring the protection of the detainees.¹⁴²

Some of the most common conditions complaints include:

- **Separation from family and counsel.**

Many of the detention facilities where ICE detainees are held are located in remote, often rural areas.¹⁴³ In other cases, people are transferred from one facility to another.¹⁴⁴ The result is that detainees are often held or transferred a significant distance away from their family and counsel.¹⁴⁵ Women may be particularly affected by these issues since there are fewer facilities that hold women detainees, meaning that more women are likely to be transferred farther from their homes.¹⁴⁶

Family Separation

In terms of family separation, the distance is further complicated by the visitation practices at many facilities—in particular county jails with their own rules—that only allow for visitation via video.¹⁴⁷ This results in detainees, including mothers and fathers of U.S. citizen children, from seeing their family members for the duration of their detention. Moreover, the expense of telephone calls makes even occasional conversations prohibitive for many detainees.¹⁴⁸

The separation from family can be incredibly difficult for many detainees, including long-time green card holders who have families in the U.S. or elsewhere whom they supported. In some cases, detention (and eventual deportation) of parents of U.S. citizen children can result in adoption of the children to other families. The knowledge that these types of things can be happening while they are detained is often incredibly mentally harmful to detainees.

Access to Counsel

A study in New York City found that 60% of immigration detainees are unrepresented by the time their cases are complete,¹⁴⁹ although this is higher in some areas than others. **For detained non-citizens without representation, only 3% of them will have a positive outcome.**¹⁵⁰ The figure for detainees with legal representation rises to 18%.¹⁵¹ For non-detained unrepresented immigrants, the figure is 13%. **But for those immigrants who are not detained and have legal representation, they achieve successful outcomes in 74% of the cases.**¹⁵² This stark difference illustrates the importance of adequate representation, and the extreme consequences of detention and corresponding lack of counsel.

For the minority of detainees *with* counsel, transfers and other complications such as the lack of affordable phone calls, insufficient confidential meeting space at facilities, and other access issues complicate the ability of counsel to adequately represent their detained clients.

For the majority of detainees without counsel, their detention further complicates their ability to attempt to find adequate affordable legal assistance. The remote locations where detainees are held are less likely to have a significant supply of immigration lawyers and legal aid attorneys.

- **General Conditions of Confinement.**

Some common complaints include overcrowding, extremely cold temperatures of cells, lack of natural light, and lack of recreation time and space.

The extreme cold temperatures in some facilities, particularly CBP holding areas along the southern U.S. border, have become so prevalent that they have become colloquially known as “hieleras,” or “iceboxes.”¹⁵³

In addition to those detainees held in extremely cold places or in isolation—as described in Section VI—many other immigration detainees are held daily in cells or pods that have a complete lack of natural light. In other cases, there is such overcrowding that some detainees are forced to sleep in “boats” or plastic bin-type beds, on the floor. This also leads to a common complaint about the general near-constant noise level in some detention pods.¹⁵⁴

- **Insufficient and unsanitary food.**

Complaints about the inadequate and unhygienic food are another common issue. In some detention facilities, the food has been expired or contained bugs or other foreign materials. For people with special nutritional needs like children, youth, or people with medical conditions, or religious requirements, the food can provide significant problems.¹⁵⁵ One immigrant stated, “We have been given in our food trays expired juices, apples with worms in them, Jell-O that tastes like soap...but the worst was on August 18, 2013, for dinner we were served ground turkey meat, but the meat was badly spoiled, a very foul smell spread all over the dorm. It was so bad, some gagged at the smell, others almost threw up when they noticed maggots in the meat.”¹⁵⁶

For detainees who want to supplement their meager meals, the only option is to purchase food through the commissary. The high prices make this impossible for many detainees. But even for those who can afford it, they are sometimes unable to prepare the food in a satisfactory manner. In Glades County Jail in Moore Haven, Florida, even the detainees who can afford the commissary complain that they have no access to a microwave or other method of heating the food. Therefore they must use the warm water from the bathroom sinks to heat up their food.¹⁵⁷ The insufficient temperature and poor smell of the bathroom tap water makes this method of complimenting lack of meals unpalatable.

- **Conditions of confinement for children and families.**

The current influx of children and families from Central America since the Fall of 2013 has further complicated the situation of detention. The government predicts that about 90,000 unaccompanied children will cross the border in fiscal year 2014.¹⁵⁸

Before this present surge, children were generally held for only 12 hours even though U.S. law allows children to be detained for a maximum of 72 hours.¹⁵⁹ Presently, however, it is common practice for CBP to unlawfully hold children for 10 days to two weeks. That period of detention is sometimes extended after the children are transferred to the Office for Refugee Resettlement in the Department of Health and Human Services where their detention might continue.¹⁶⁰

As the number of children and family members fleeing to the United States increases, the degrading treatment children suffer while in ICE detention is also expected to rise.¹⁶¹ For example, witnesses visiting Artesia Detention Center saw babies and toddlers without any blankets shivering as their mothers held them close for warmth.¹⁶² Multiple officers denied the same witnesses’ request to buy blankets for children to prevent their health from deteriorating further.¹⁶³ Female detainees also complained that ICE officers called them “animals” and yelled at them for taking food out of order.¹⁶⁴

- **Punishment of Detainees for Protesting Conditions of Confinement**

To compound the situation, complaints of conditions violations are not met with the appropriate concern and response by authorities. Instead detainees who complain are often punished, including in ways already outlined in Section VI, like the use of isolation or other discipline techniques.

For example, in March 2013, approximately 24 detainees at the Northwest Detention Center in Tacoma, Washington were placed in solitary confinement after organizing a hunger strike to protest facility conditions and inadequate payment for work performed at the center. The operators of the center released the detainees from isolation only after a lawsuit was filed alleging that placement in isolation was retaliation against detainees engaging in actions covered under the First Amendment.¹⁶⁵

In another case in 2013, prison staff at the Reeves County Detention Center in Pecos, Texas, sprayed detainee dormitories with tear gas, shot at them with rubber bullets, and later locked them in isolation cells in retaliation for organizing a petition to protest crowded conditions, bad food, and lack of medical care.¹⁶⁶

The officials at these detention facilities expressly violate Article 13 of the Convention by using excessive force as a mean to intimidate detainees who are attempting to exercise their right to complain about their torture and have such allegations be examined promptly and impartially examined.

The State is failing in its role as a party to the Convention when it uses powerless legislation, the ICE Detention Standards, in defense of its flagrant disregard for the well-fare of the Congressionally mandated 34,000 detainees that are required to fill the beds of the detention centers each night.¹⁶⁷

VII. Conclusion

The U.S. government has expressed an unambiguous commitment to preventing and prohibiting acts of torture. On the International Day in Support of Victims of Torture in 2011 President Barak Obama stated, "I have therefore made it clear that the United States will prohibit torture without exception or equivocation, and I reaffirmed our commitment to the Convention's tenants and our domestic laws."¹⁶⁸ On the same anniversary in 2014, the White House Press Secretary commented that "[torture] is abhorrent, an instrument of repression, and a brutal assault on human dignity. Today, we reaffirm our solemn commitment to the Convention and our obligations under it."¹⁶⁹

It is in this spirit of facilitating U.S. compliance with the Convention that this report outlines acts of torture and other cruel, inhuman, and degrading treatment committed in U.S. immigrant detention facilities and in the process of some deportations. Those who have lost their freedom due to their immigration status in the United States are highly vulnerable to human rights abuses. Non-citizens may fear reporting abuses out of concern that they will face retaliation and can be at risk for mistreatment due to language barriers. U.S. overreliance on immigration law enforcement has resulted in non-citizens being subjected to violations of human rights norms. This occurs when the U.S. deports immigrants who may face torture or other forms of persecution in their countries of origin and on a daily basis when the U.S. utilizes its indiscriminate detention bed "quota" to drive more and more people into detention where they face horrific conditions of confinement.

While the United States may have policies and standards on these issues; however, the on-the-ground effectiveness of the policies and their applicability are questionable. The U.S. government has failed to honor its obligations as a State Party to the Convention Against Torture.

Specifically, **the U.S. government is noncompliant with Article 2** by, *inter alia*, routinely imposing isolation upon detainees. This is a practice designed to cause emotional distress, despite being utilized for both punishment and ostensible “protection” of vulnerable populations. Detainees suffering from mental illnesses are often subjected to solitary confinement, a form of stimuli to which this unique population is particularly vulnerable.

The U.S. has not adhered to its Article 3 obligations to prevent the deportation of asylum seekers to a State in which there is a substantial likelihood of being subjected to persecution, including torture. The use of expedited removal and the lack of adequate safeguards violates the assurance that all non-citizens should be able to exercise the right to seek asylum and to be free from being returned to a situation of torture or other form of persecution in their home country.

The State **cannot be said to be in compliance with Article 10** when detention numbers are rising, staffing shortages at facilities remain acute, and an average of 14 immigrants die each year while in U.S. custody.¹⁷⁰

The State’s systematic review of the detention facilities does not lead to actual improvements, and torture or other cruel, inhuman and degrading treatment continues to be prevalent and carried out by state-sanctioned authorities, **violating Article 11**.

The State has not complied with Article 13, as detainees who voice concerns about inhuman treatment received while in U.S. custody may face retaliation for filing their grievances or otherwise protection. It also fails in compliance by permitting detention officers, who act as its agent, to use force as a means of intimidation against detainees raising concerns about their treatment and other rights violations.

Article 16 has not been honored by the U.S. Government. The U.S. has failed to protect detainees in their custody from harm and to provide a safe environment free from sexual violence. The use of verbal and physical abuse against detainees as well as the operation of unsanitary facilities is cruel and inhuman. Prolonged placement in isolation is cruel and known to cause harmful psychological effects that include anger, boredom, loss of sense of reality, suicidal thoughts, sensitivity to stimuli, hallucinations, and difficulty concentrating.¹⁷¹ The State has not adhered to Article 16 principles by delaying detainees’ access to medical treatment and by inadequately training medical personnel, thereby exposing detainees to a myriad of unnecessary health complications. Inhuman treatment at the hands of the U.S. Government also includes subjecting individuals with mental illness to punishments that exacerbate their symptoms and may cause their condition to reoccur.¹⁷² Despite previous inquiry and review by this Committee, the State further remains noncompliant with Article 16 because of the insufficient steps taken to mitigate the degrading treatment of children in detention centers. The Special Rapporteur on Torture cited “structural deprivation of most human rights, mainly the rights to food, water, clothing, health care and a minimum of space, hygiene, privacy and security necessary for a humane and dignified existence” as a form of systematic torture.¹⁷³ Thus in allowing these types of conditions to continue unabated in detention centers, the State has failed to uphold its obligations under Article 16.

VIII. Questions for the Committee to Pose to the U.S. Delegation

1. Given the cost-saving and efficiency benefits of alternatives to detention, what is the rationale for continuing to detain non-violent and non-threatening immigrants, particularly given the State’s international human rights obligations?

2. How does the United States guarantee that expedited removal is being appropriately implemented, particularly given that there are many illustrative cases of individuals who have been denied access to credible fear interviews who were indeed legitimate asylum seekers?
3. How does the United States rectify the idea of expedited removal with immediate deportations, particularly when the four greatest countries of return are Mexico, Guatemala, El Salvador, and Honduras, all suffering from significant violations of human rights and from which it is likely that legitimate asylum seekers would originate?
4. Why does the United States not act to ensure greater transparency and oversight of CBP operations, so as to avoid the phenomenon of an opaque border area where rights are not guaranteed?
4. Has the United States considered broadening its Temporary Protective Status scheme to include a greater number of individuals, thus guaranteeing them protection, particularly given that the individuals fleeing after a massive natural disaster or the human rights violations implicated in general public disorder situations are also in need of international protection?
5. What level of specialized training is being provided in light of the large influx of unaccompanied children and families being detained in detention centers, particularly given the history of rights violations?
6. Does the State have plans to address ongoing concerns about access to and quality of physical and mental health care for detainees? If so, what solutions are being considered? If not, why not?
7. How does the State monitor and evaluate the quality of medical care provided at each detention facility? Are these reports available to the public?
8. When a detainee dies in the custody of the U.S. government while detained, what investigatory actions are taken? Are the results of these investigations made public?
9. Does the State have plans to codify detention center standards that would apply to all detention centers in the U.S.? If so, what is the timeline for the creation of regulations, consultations with stakeholders, and implementation of the agreed upon standards? If there are no plans, how can the State ensure that treatment of detainees in these centers is aligned with the State obligations under the CAT?
10. What is the State's official policy regarding the use of isolation in immigration detention facilities?
11. How does the State address acts of retaliation committed by detention officials against detainees who assert their rights and/or file complaints about their treatment?
12. What is the process for documenting, reviewing and sanctioning excessive uses of violence against detainees? Are the results of these processes made public? If not, why not?

IX. Recommendations for the U.S. Delegation

1. DHS should end the civil detention of immigrants, except in the most egregious cases, and adopt, in consultation with immigrant stakeholder communities, humane alternatives to immigrant detention.
2. DHS should make the 2011 Performance-Based National Detention Standards legally binding and actionable and terminate contracts with non-compliant detention facilities.
3. Congress should create an independent monitoring body to oversee ICE detention facility compliance with the 2011 PBNDS.
4. The Prison Rape Elimination Act should be made applicable to all immigration detainees in every facility in the United States.

5. The United States should ratify the Optional Protocol to CAT and allow full and unfettered access to its detention facilities to United Nations officials, as well as other oversight bodies.
6. The State should ensure independent evaluation by a non-ICE organization of any and all allegations of physical, sexual, or serious verbal abuse to ensure fair and just investigations and outcomes. The results of these evaluations should be made public.
7. The U.S. should improve training for officers, officials, and any other staff who have access to or are in any way involved in the detention and care of immigration detainees.
8. The U.S. should ensure greater oversight of Customs and Border Protection, including requiring CBP to submit public information at regular intervals, and to ensure that an oversight body is able to review and sanction CBP for any violations against non-citizens in its custody.
9. Each facility where a non-citizen is detained for immigration purposes must have a full-time medical doctor on staff and on-site for detainees' consultations. A mental health provider must be available to detainees at least several times a week, and at all times for emergencies.
10. The mental health professional should be involved in the decision-making process by facility staff regarding the restriction of movement and/or housing conditions of detainees with mental disabilities, to ensure that adjustments to the detainees' living conditions are appropriate given their individual situation.
11. Indefinite or prolonged use of solitary confinement should generally be prohibited.
12. Placement in solitary confinement and/or uses of force should never be used as retaliation against or punishment for detainees seeking to exercise their fundamental rights, including the right of free speech and redress for violations of their rights.
13. Uses of force by detention center staff should be employed only when *absolutely necessary* to prevent imminent serious bodily injury to a detainee or center staff member. Any act of use of force must automatically trigger an investigation of the incident by an independent oversight body, and consider sanctions or changes if necessary.
14. All detainee deaths should be reported to the DHS Office for Civil Rights and Civil Liberties (OCRCL) or another independent body within 24 hours. Information about deaths in detention should be made public.
15. When a detainee is accused of disciplinary violations, detainees should be given free and full access to any videos, reports, witnesses, or other information held by the facility or others that may or may not contain exculpatory evidence. The detainee should be allowed to present this evidence in his/her defense, employ the assistance of counsel if desired, and have it fairly adjudicated by an impartial body.

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APPENDIX I

PROCEDURAL BACKGROUND AND QUESTIONS FROM LIST OF ISSUES

This is the United States' third review by the Committee Against Torture. The U.S. initially ratified the Convention on October 21, 1994. The Committee subsequently reviewed the compliance of the U.S. in 2000 and 2006. The Committee's List of Issues ("LOI") for the current review process was issued on January 20, 2010.¹⁷⁴ The United States' response to the LOI was published on December 13, 2013.

This report intends to provide a broad review of some of the violations of the Convention that are inherent in the United States' immigration detention and deportation laws, policies, and practice. In particular, this report is responding to the following questions in the Committee's 2010 List of Issues, but also includes a broadening of the substance to illustrate what has occurred since the time of the LOI, and to provide a greater overview to the Committee.

A. Relevant Articles of the Convention Against Torture

The Articles of the Convention covered in this report—and referred to in the Committee's List of Issues—include the following:

- Article 2:¹⁷⁵ Prohibition of torture and cruel, inhuman, and degrading treatment.
- Article 3:¹⁷⁶ Prohibition of Refoulement
- Article 10:¹⁷⁷ Requirement to train any officials involved in custody of others on prohibition of torture and cruel, inhuman, and degrading treatment.
- Article 11:¹⁷⁸ Each State Party shall keep under systematic review ... arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.
- Article 13:¹⁷⁹ Rights of complainants to have allegations of torture to complain and have cases promptly and impartially examined by authorities; and to protection.
- Article 14:¹⁸⁰ Right to redress for victims of torture.
- Article 16:¹⁸¹ Prohibition of Cruel, inhuman and degrading treatment.

In addition, it is possible that other Articles of the Convention may be implicated as well.

B. Questions from the List of Issues

The relevant Questions from the Committee's 2010 LOI (with the corresponding related Articles of the Convention) are as follows:

- **Question 9 (Art. 2) Due Process Guarantees for Immigration Detainees**
 - "Please describe steps taken to ensure that ... immigration laws are not used so as to detain persons suspected of terrorism or any other criminal offences with fewer guarantees than in criminal proceedings."¹⁸²

- **Question 10 (Art. 3): Ban on Refoulement**
 - "In light of the Committee's previous concluding observations (para. 20), please provide updated information on:
 - (a) Steps taken to ensure that the State party applies the non-refoulement guarantee to all detainees in its custody, including those detained outside its territory. Please provide information on steps taken to establish adequate judicial mechanisms to challenge all refoulement decisions.
 - (b) Whether the State party has ceased the rendition of suspects, in particular by its intelligence agencies, to States where they face a real risk of torture, as recommended by the Committee in its previous concluding observations.
 - (c) Steps taken to ensure that the State party conducts investigations into all allegations of violation of article 3 of the Convention. Please elaborate on the outcome of these investigations."¹⁸³

- **Question 16 (Art. 10): Training of Detention Personnel**
 - "Please include information on steps taken to:
 - (a) Ensure that education and training of all law enforcement or military personnel is conducted on a regular basis, in particular for personnel involved in the interrogation of suspects. Does this include training on interrogation rules, instructions and methods, as well as specific training on how to identify signs of torture and cruel, inhuman or degrading treatment? Are personnel instructed to report such incidents?
 - (b) Ensure specific training for all medical personnel dealing with detainees in the detection of signs of torture and ill-treatment and ensure that the Istanbul Protocol of 1999 becomes an integral part of the training provided to physicians and others involved in care of detainees.
 - (c) Develop and implement a methodology to evaluate the implementation of its training/educational programmes, and their effectiveness and impact on the reduction of cases of torture and ill-treatment. Please provide information on the content and implementation of such methodology, as well as on the results of the measures implemented."¹⁸⁴

- **Question 23 (Art. 13): Investigation & Prosecution of Torture Cases**
 - "In light of the Committee's previous concluding observations, please provide information on:
 - (a) Steps taken to ensure that all forms of torture and ill-treatment of detainees by its military or civilian personnel, in any territory under its de facto and de jure

jurisdiction, as well as in any other place under its effective control, is promptly, impartially and thoroughly investigated, and that all those responsible, including senior military and civilian officials authorizing, acquiescing or consenting in any way to such acts committed by their subordinates are prosecuted and appropriately punished, in accordance with the seriousness of the crime (para. 26). Are all suspects in prima facie cases of torture and ill-treatment as a rule suspended or reassigned during the process of investigation?
[...].”¹⁸⁵

- **Question 27 (Art. 14): Redress & Rehabilitation for Victims of Torture**
 - “Pursuant to the Committee’s previous concluding observations (para. 28), please provide:
 - (a) Information on steps taken to ensure that mechanisms to obtain full redress, compensation and rehabilitation are accessible to all victims of acts or torture, including sexual violence, perpetrated by its officials. In this respect, please provide information about any reparation programmes, including psychological treatment and other forms of rehabilitation, provided to victims of torture and ill-treatment, as well as about the allocation of adequate resources to ensure the effective functioning of such programmes.
[...].”¹⁸⁶

- **Question 32 (Art. 16): Sexual Violence in Detention**
 - “With reference to the Committee’s previous concluding observations (paras. 32 and 42), please provide:
 - (a) Information on steps taken to design and implement appropriate measures to prevent all sexual violence in all its detention centres. In this respect, please elaborate on the measures taken to implement the Prison Rape Elimination Act and on the standards developed by the National Prison Rape Elimination Commission in 2009 to detect, prevent, reduce, and punish prison rape, as well as on the implementation thereof.
 - (b) Please provide data on the prevalence of this problem.
 - (c) Please indicate steps taken to ensure that all allegations of violence in detention centres are investigated promptly and independently, as well as that perpetrators are prosecuted and appropriately sentenced.
 - (d) Information on steps taken to ensure that victims can seek redress, including appropriate compensation. Information should also be provided on the number of requests for redress made, the number granted and the amounts ordered and those actually provided in each case.

Please provide information on the impact and effectiveness of these measures in reducing cases of sexual violence in detention centres.”¹⁸⁷

- **Question 33 (Art. 16): Detained Women**
 - “In light of the Committee’s previous concluding observations, please elaborate on the measures adopted by the State party to ensure that women in detention are treated in conformity with international standards, as well as on the implementation of these measures (para. 33). Furthermore, please provide information on the impact and effectiveness of these measures in reducing cases of ill-treatment of detained women.”¹⁸⁸

- **Question 34 (Art. 16): Detained Children**
 - “Please provide updated information on steps taken to address the concern about the conditions of detention of children, in particular about the fact that they may not be completely segregated from adults and the use of excessive force in juvenile prisons (para. 34). Please provide information on the impact and effectiveness of these measures in improving detention of children. Furthermore, please provide information on the status and content of the draft legislation Juvenile Justice and Delinquency Prevention Reauthorization Act of 2009, which would reform the juvenile justice system.”¹⁸⁹

- **Question 39 (Art. 16): Medical Care in Detention (Women & HIV-positive persons)**
 - “Please inform the Committee of steps taken to address the reports of inconsistent and inadequate medical care for immigrant women held by United States Immigration and Customs Enforcement detention system and for HIV-positive immigration detainees.”¹⁹⁰

- **Question 42 (Art. 16): Brutality and Use of Force Against Vulnerable Groups, including Racial Minorities**
 - “The Committee expressed its concern about reports of brutality and use of excessive force by law enforcement officials and ill-treatment of vulnerable groups, in particular racial minorities, migrants and persons of different sexual orientation (para. 37). Such concerns have also been voiced by the Committee on the Elimination of Racial Discrimination and the Human Rights Committee (CERD/C/USA/CO/6, para. 25, and CCPR/USA/CO/3/Rev.1, para. 30). Please:
 - (a) Describe steps taken to address this concern. Do these steps include establishing adequate systems for monitoring police abuses and developing adequate training for law enforcement officials? Furthermore, please indicate steps taken by the State party to ensure that reports of police brutality and excessive use of force are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished. Information should also be provided on the impact and effectiveness of these measures in reducing cases of police brutality and excessive use of force.
 - (b) Provide information on measures taken by the State party to put an end to racial profiling used by federal and state law enforcement officials. Have the federal Government and state governments adopted comprehensive legislation prohibiting racial profiling? Statistical data should also be provided on the extent to which such practices persist, as well as on complaints, prosecutions and sentences in such matters.”¹⁹¹

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- ¹ U.S. Customs and Border Protection, Federal Register: The Daily Journal of the United States Government, available at <https://www.federalregister.gov/agencies/u-s-customs-and-border-protection>.
- ² American Immigration Council: Legal Action Center, *CBP Abuse of Authority*, available at <http://www.legalactioncenter.org/cbp-abuse-authority>.
- ³ National Immigration Forum, *The Math of Immigration Detention*, (Aug. 2013), at 4, available at <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf>.
- ⁴ Susan Carroll, *ICE paints bleak picture of detention system*, THE HOUSTON CHRONICLE (Oct. 10, 2011), available at <http://www.chron.com/news/houston-texas/article/ICE-paints-bleak-picture-of-its-detention-system-2209428.php>.
- ⁵ TRACImmigration, *Legal Noncitizens Receive Longest ICE Detention* (June 3, 2013), available at <http://trac.syr.edu/immigration/reports/321/>.
- ⁶ *Id.*
- ⁷ *Id.*
- ⁸ According to DHS data, the majority of immigration detainees held from 2005-2009 had no criminal convictions whatsoever. TRACImmigration, *Detention of Criminal Aliens: What Has Congress Bought?* (Feb. 11, 2010), available at <http://trac.syr.edu/immigration/reports/224/index.html>.
- ⁹ See Dora Schriro, U.S. Immigration and Customs Enforcement, *Immigration Detention Overview and Recommendations* (Oct. 2009), at 2, available at <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>.
- ¹⁰ *Legal Noncitizens Receive Longest ICE Detention*, *supra* note 5.
- ¹¹ Associated Press, *Immigrants Face Long Detention, Few Rights*, NBC (Mar. 15, 2009), available at http://www.nbcnews.com/id/29706177/ns/us_news-security/t/immigrants-face-long-detention-few-rights/#.VB91rksYEEds.
- ¹² Nick Miross, *Controversial Quota Drives Immigration Detention Boom*, The Washington Post (October 13, 2013), available at http://www.washingtonpost.com/world/controversial-quota-drives-immigration-detention-boom/2013/10/13/09bb689e-214c-11e3-ad1a-1a919f2ed890_story.html.
- ¹³ H.R. 3547, 113th Cong. (2013- 2014), available at <http://www.gpo.gov/fdsys/pkg/BILLS-113hr3547enr/pdf/BILLS-113hr3547enr.pdf>.
- ¹⁴ National Immigrant Justice Center, *Immigration Bed Quota 101* (2014), available at <http://immigrantjustice.org/sites/immigrantjustice.org/files/Bed%20Quota%20101%20Backgrounder%20FINAL.pdf>.
- ¹⁵ Detention Watch Network, *Expose and Close* (2013), available at <http://www.detentionwatchnetwork.org/ExposeAndClose>.
- ¹⁶ Detention Watch Network, *End the Quota*, available at <http://www.detentionwatchnetwork.org/EndTheQuota>.
- ¹⁷ *Id.*
- ¹⁸ Universal Declaration of Human Rights, G.A. Res. 217A III, U.N. GAOR, 3d Sess., U.N. Doc. A/RES/217(III) (Dec. 10, 1948), at art. 9.
- ¹⁹ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (Dec. 16, 1966), at art. 9(i).
- ²⁰ Lutheran Immigration and Refugee Service, *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* (2012), at 15, available at <http://www.lirs.org/wp-content/uploads/2012/05/RPTUNLOCKINGLIBERTY.pdf>
- ²¹ A. v. Australia, U.N. Human Rights Committee, Communication No. 560/1993, UN Doc. CCPR/C/59/D/560/1993 (Apr. 30, 1997), at ¶ 9.2, available at <http://www1.umn.edu/humanrts/undocs/html/vws560.html>.
- ²² The annual cost of immigration detention is \$2 billion dollars, \$600 million of which is spent detaining immigrants who are not subject by statute to mandatory detention. See Sharita Grunberg, Center for American Progress, Infographic, *Do We Need to Detain 34,000 Immigrants Every Day?* (May 9, 2014), available at <http://www.americanprogress.org/issues/immigration/news/2014/05/09/89389/infographic-do-we-need-to-detain-34000-immigrants-every-day/>.
- ²³ *The Math of Immigration Detention*, *supra* note 3.
- ²⁴ Doris Meissner, et. al., Migration Policy Institute, *The Rise of a Formidable Machinery* (2013), at 130, available at <http://www.migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery>.
- ²⁵ *The Math of Immigration Detention*, *supra* note 3.
- ²⁶ Including: National Detention Standards (NDS) of 2000, and Performance Based National Detention Standards (PBNDS) in 2008 and 2011.
- ²⁷ *Fact Sheet: ICE Detention Standards 2012*, Immigration and Customs Enforcement, available at <http://www.ice.gov/news/library/factsheets/facilities-pbnlds.htm>. (there may even be some facilities housing non-citizens that are not governed by any of ICE's National Detention Standards).
- ²⁸ American Bar Association, *ABA Civil Immigration Detention Standards* (2012), available at <http://www.americanbar.org/content/dam/aba/administrative/immigration/abaimmdetstds.pdf>.
- ²⁹ *Id.* at 1.

³⁰ *Id.* at 4-5, ¶ C, H, I.

³¹ U.S. Govt., *Immigration and Customs Enforcement 2000 Detention Operations Manual* (2000), available at <https://www.ice.gov/detention-standards/2000/>.

³² Convention Against Torture Comm., Third to Fifth Report: United States of America State, U.N. Doc. CAT/C/USA/3-5, December 4, 2013, at ¶ 174, [Hereinafter “Periodic Report”].

³³ Detention Watch Network, *Conditions in Immigration Detention*, available at <http://www.detentionwatchnetwork.org/node/2383>.

³⁴ Tyler Ray, American Civil Liberties Union, *President Obama: Close the 10 Worst Immigration Detention Facilities* (Nov. 29, 2012), available at <https://www.aclu.org/blog/immigrants-rights/president-obama-close-10-worst-immigration-detention-facilities>.

³⁵ Human Rights Committee, Fourth Periodic Report: United States of America State, U.N. Doc. CCPR/C/USA/4, May 22, 2012, at ¶¶ 241-3.

³⁶ *Conditions in Immigration Detention*, *supra* note 33.

³⁷ See e.g., The Committee Against Racial Discrimination, Concluding Observations, Seventy-second Sess., U.N. Doc. CERD/C/USA/CO/6, May 8, 2008. The Committee Against Racial Discrimination highlighted their concern regarding the U.S. practice of racial profiling, which include, for example immigration detainers and secure communities. Such policies will be discussed further in separate shadow reports that are being submitted to the Committee for this review of the U.S.

³⁸ Immigration Nationality Act § 235 (b)(1)(A)(i)-(iii). The geographic area falling within this scope is so extensive that the entire state of Florida falls within these parameters.

³⁹ U.S. Immigration Customs and Enforcement, *FY 2013 ICE Immigration Removals*, ICE Enforcement and Removal Operations Annual Report, available at <https://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf>.

⁴⁰ *Id.*

⁴¹ Immigration Nationality Act § 235(b)(1)(A)(i)-(iii). CBP, according to Immigration Nationality Act § 235(b)(2)(C), can directly deport Mexicans, while the citizens of any other country must first be transferred to ICE custody for deportation. (Immigration Nationality Act § 235(b)(2)(C) states that “In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 240 (8 USC Sec. 1229a).”)

⁴² Immigration Nationality Act § 235(b)(1)(B)(v) (clarifying that “credible fear of persecution” means a finding that there is a “significant possibility... that the alien could establish eligibility for asylum under section 208.” This is a lower standard than that needed to show actual eligibility.)

⁴³ The definition of a “refugee” is enshrined at 8 United States Code 1101(a)(42); see also Convention Relating to the Status of Refugees at Art.I(a).

⁴⁴ Immigration Nationality Act § 235(b)(1)(B)(iii)(IV) (stating that “Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”).

⁴⁵ Conversely, 8 C.F.R. § 208.31(b) requires “reasonable fear interviews,” for non-citizens who already have final removal orders to take place within 10 days of referral from ICE authorities. This provision does not apply for any new asylum seekers entering the country for the first time.

⁴⁶ Center for Victims of Torture, *Tortured & Detained: Survivor Stories of U.S. Immigration Detention* (2013), at 7, available at http://www.cvt.org/sites/cvt.org/files/Report_TorturedAndDetained_Nov2013.pdf (citing Hearing on Border Security Oversight before H. Comm. On Oversight and Gov’t Reform, 113th Cong. (2013) (answers of Joseph Langlois, Associate Director of the Refugee, Asylum, and International Operations Directorate, U.S. Citizenship and Immigration Services), available at <http://oversight.house.gov/hearing/border-security-oversight-part-iii-examining-asylum-requests/>).

⁴⁷ See, U.S. Immigration and Customs Enforcement, *Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture*, available at <http://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole-of-arriving-aliens-found-credible-fear.pdf>; see also, Immigration Policy Center, *Mexican and Central American Asylum and Credible Fear Claims: Background and Context*, available at <http://www.immigrationpolicy.org/special-reports/mexican-and-central-american-asylum-and-credible-fear-claims-background-and-context>.

⁴⁸ 8 C.F.R. § 236.1.

⁴⁹ 8 C.F.R. § 100.3(19)(h)(3).

⁵⁰ 8 U.S.C. § 1226 (a)(2)(A).

⁵¹ Challenges to this framework have had some success in establishing the right to a bond hearing after prolonged detention. Some U.S. courts have held that immigrants who are subject to prolonged discretionary detention must be given bond hearings at which the government must show that the detainee would pose a flight risk or a danger to the community if released. See, e.g., *Casas-Castrillon v. Dep’t of Homeland Security*, 535 F.3d 942, 951 (9th Cir. 2008); *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013).

⁵² Physicians for Human Rights, *Punishment Before Justice: Indefinite Detention in the US* (2011), available at <http://physiciansforhumanrights.org/library/reports/indefinite-detention-june2011.html>.

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- ⁵³ Physicians for Human Rights and Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* (2003), at 1, available at <http://www.survivorsoftorture.org/files/pdf/perstoprison2003.pdf>.
- ⁵⁴ *Id.*
- ⁵⁵ *Punishment Before Justice*, *supra* note 52, at 26.
- ⁵⁶ *Tortured & Detained: Survivor Stories of U.S. Immigration Detention*, *supra* note 46, at 5.
- ⁵⁷ U.S. Customs and Border Protection website, “Border Security,” available at <http://www.cbp.gov/border-security>.
- ⁵⁸ Immigration and Customs Enforcement, ERO Annual Report, FY 2013 ICE Immigration Removals, at 4, available at <https://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf>.
- ⁵⁹ See e.g., American Immigration Council, Legal Action Center, *CBP Abuse of Authority* webpage, available at <http://www.legalactioncenter.org/cbp-abuse-authority>.
- ⁶⁰ Precautionary Measures Petition (MC-7-14), filed by University of Miami Human Rights Clinic before the Inter-American Commission on Human Rights, November 2013. The Petition is confidential and is on file with the Human Rights Clinic.
- ⁶¹ *Id.*
- ⁶² Americans for Immigrant Justice, *The “Hieleras”: A Report on Human & Civil Rights Abuses Committed by U.S Customs & Border Protection* (August 7, 2013), <http://www.aijustice.org/the-hieleras-a-report-on-human-civil-rights-abuses-committed-by-u-s-customs-border-protection-2/>.
- ⁶³ For background, see e.g., Ruth Allen Wassem, Congressional Research Service, *Asylum Policies for Unaccompanied Minors Compared with Expedited Removal Policies for Unauthorized Adults: In Brief* (July 30, 2014), available at <http://fas.org/sgp/crs/homesec/R43664.pdf>.
- ⁶⁴ Julia Edwards, *U.S. to Put Child Migrants on Fast Track in Deportation Hearings: Official*, Reuters (July 8, 2014), available at <http://www.reuters.com/article/2014/07/08/us-usa-immigration-justice-idUSKBN0FD2A220140708>
- ⁶⁵ American Civil Liberties Union, *Groups sue U.S. Government over Life-Threatening Deportation Process against Mothers and Children Escaping Extreme Violence in Central America* (Aug.22, 2014), available at <https://www.aclu.org/immigrants-rights/groups-sue-us-government-over-life-threatening-deportation-process-against-mothers> (containing link to the complaint in the case of *M.S.P.C. v Johnson*, filed in the U.S. District Court for the District of Columbia on August 22, 2014).
- ⁶⁶ National Immigration Law Center, *Declarations from Witnesses to Injustice at Artesia, New Mexico, Detention Facility* (Aug. 22, 2014), available at <http://www.nilc.org/artesiadecs.html>.
- ⁶⁷ *Id.*
- ⁶⁸ *Id.*
- ⁶⁹ PRISON RAPE ELIMINATION ACT OF 2003, PL 108–79, September 4, 2003, 117 Stat 972.
- ⁷⁰ Standards to Prevent, Detect, and Respond to Sexual Abuse in Confinement Facilities [hereinafter “Standards to Prevent, Detect and Respond”], 79 Fed. Reg. 13,099 (Mar 7, 2014) at § III(B), available at <https://www.federalregister.gov/articles/2014/03/07/2014-04675/standards-to-prevent-detect-and-respond-to-sexual-abuse-and-assault-in-confinement-facilities#h-14>.
- ⁷¹ National Prison Rape Elimination Commission, *Report* (2009), at 22, available at <https://www.ncjrs.gov/pdffiles1/226680.pdf>.
- ⁷² *Standards to Prevent, Detect and Respond*, *supra* note 70, at §115.112.
- ⁷³ Center for American Progress, *Dignity Denied: LGBT Immigrants in U.S. Immigration Detention*, (Nov. 2013), available at <http://cdn.americanprogress.org/wp-content/uploads/2013/11/ImmigrationEnforcement.pdf>.
- ⁷⁴ American Civil Liberties Union, *Sexual Abuse in Immigration Detention Facilities*, available at <https://www.aclu.org/maps/sexual-abuse-immigration-detention-facilities>.
- ⁷⁵ National Immigrant Justice Center, *Demand Justice for Immigrant Rape Survivor*, available at http://org2.salsalabs.com/o/5967/p/dia/action3/common/public/?action_KEY=15796.
- ⁷⁶ American Civil Liberties Union, *Prisoners of Profit: Immigrants and Detention in Georgia*, available at http://www.acluga.org/download_file/view_inline/42/244/.
- ⁷⁷ *Id.*
- ⁷⁸ *Detained Immigrant Children Report Physical, Verbal, and Sexual Abuse By Border Patrol Agents*, The Daily Beast (June 11, 2014), available at <http://www.thedailybeast.com/articles/2014/06/11/detained-immigrant-children-report-physical-verbal-and-sexual-abuse-by-border-patrol-agents.html>;
- American Civil Liberties Union Arizona, *Letter to Department of Homeland Security: Systemic Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection* (June 11, 2014), available at <http://www.acluaz.org/sites/default/files/documents/DHS%20Complaint%20re%20CBP%20Abuse%20of%20UICs.pdf>.
- ⁷⁹ *Detained Immigrant Children*, *supra* note 78.
- ⁸⁰ Americans for Immigrant Justice, *supra* note 62.
- ⁸¹ *Letter to Department of Homeland Security*, *supra* note 78, at 11.
- ⁸² *Id.*
- ⁸³ National Immigration Law Center, *supra* note 66.

⁸⁴ National Immigration Justice Center, *Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention* (2012), at 12, available at https://www.immigrantjustice.org/sites/immigrantjustice.org/files/Invisible%20in%20Isolation-The%20Use%20of%20Segregation%20and%20Solitary%20Confinement%20in%20Immigration%20Detention.September%202012_7.pdf.

⁸⁵ *Id.*

⁸⁶ *Id.* at 13.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Ian Urbina, *Immigrants Held in Solitary Cells, Often for Weeks*, THE NEW YORK TIMES (Mar. 23, 2013), available at http://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html?pagewanted=all&_r=4&.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Joint Shadow Report to the UN Human Rights Committee, John Marshal Law School Human Rights Project, National Immigrant Justice Center, Heartland Alliance, and National Lawyers Guild International Committee, *Concerning the Use of Solitary Confinement in Immigrant Detention Facilities in the United States of America* (2013), available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=USA&Lang=EN.

⁹⁸ *Id.*

⁹⁹ Center for American Progress, *Dignity Denied: LGBT Immigrants in U.S. Immigration Detention* (November 2013) available at <http://cdn.americanprogress.org/wp-content/uploads/2013/11/ImmigrationEnforcement.pdf>

¹⁰⁰ *Id.*

¹⁰¹ 2000 INS Detention Standard: Special Management Unit (Administrative Segregation), available at http://www.ice.gov/doclib/dro/detention-standards/pdf/smu_adm.pdf; 2000 INS Detention Standard: Special Management Unit (Disciplinary Segregation), available at http://www.ice.gov/doclib/dro/detention-standards/pdf/smu_dis.pdf; 2011; 2011 Performance Based National Detention Standards 2.12 at 179; <https://www.ice.gov/detention-standards/2011/>; U.S. Immigration and Customs Enforcement Segregation Directive of September 4, 2013 at 5, available at http://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

¹⁰² 2000 INS Detention Standard: Special Management Unit (Administrative Segregation), available at http://www.ice.gov/doclib/dro/detention-standards/pdf/smu_adm.pdf; 2000 INS Detention Standard: Special Management Unit (Disciplinary Segregation), available at http://www.ice.gov/doclib/dro/detention-standards/pdf/smu_dis.pdf; 2011; 2011 Performance Based National Detention Standards 2.12

¹⁰³ 2011 Performance Based National Detention Standards 2.12, at 179, available at <https://www.ice.gov/detention-standards/2011/>; U.S. Immigration and Customs Enforcement Segregation Directive of September 4, 2013, at 5, available at http://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

¹⁰⁴ U.S. Immigration and Customs Enforcement, Segregation Directive of September 4, 2013, at 5, available at http://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

¹⁰⁵ 2011 Performance Based National Detention Standards 2.12, *supra* note 103, at 189.

¹⁰⁶ *Immigrants Held in Solitary Cells, Often for Weeks*, *supra* note 89.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Dana Priest and Amy Goldstein, *System of Neglect*, The Washington Post (May 11, 2008), [Hereinafter “*System of Neglect*”] available at http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d1p1.html.

¹¹⁰ *Id.*

¹¹¹ Alanso Yanez, *Living in the Shadows: Detention Centers Deaths Raise Immigrant Rights Questions*, News America Media (Feb. 19, 2014), available at <http://newamericamedia.org/2014/02/living-in-the-shadows-detention-centers-deaths-raise-immigrant-rights-questions.php>; Azadeh N. Shahshahani, American Civil Liberties Union Georgia, *Prisoners of Profit: Immigrants and Detention in Georgia* (May 30, 2012), available at <https://www.aclu.org/blog/immigrants-rights-prisoners-rights/prisoners-profit-immigrants-and-detention-georgia>; *Hearing Before the Subcomm. On Detention and Removal: Immigration Detainee Medical Care*, 110th Cong. 110-53 (2007), available at <http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg38115/html/CHRG-110hhrg38115.htm>.

¹¹² U.S. Immigration and Customs Enforcement, *List of Deaths In ICE Custody from October 2003-December 2013*, available at <http://www.ice.gov/doclib/foia/reports/detaineedeaths2003-present.pdf>.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *System of Neglect*, *supra*, note 109; Noah Nehemiah Gillespie, *Positive Law: Providing Adequate Medical Care for HIV-Positive Immigrant Detainees*, 81 GEO. WASH. L. REV. 1329 (2013) at 1331, available at <http://www.gwlr.org/wp-content/uploads/2013/07/Gillespie.pdf>.

¹¹⁶ *System of Neglect*, *supra* note 109.

¹¹⁷ Detention Watch Network, *Expose and Close: Polk County Detention Facility*, available at <http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/ExposeClose/Expose-Polk11-15.pdf>.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ See, e.g., *Estelle v. Gamble*, 429 U.S. 97 (1976); see also *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000); see also *Dahlan v. DHS*, 215 Fed. App'x 97, 100 (3d Cir. 2007).

¹²² See e.g., *Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Cir. 2004), cert. denied, 546 U.S. 820 (2005); cf. *Youngberg v. Romeo*, 457 U.S. 307, 321-32 (1982).

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¹²⁴ U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), *Memorandum for All ICE Employees: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens* from John Morton, Assistant Director (June 30, 2010), available at <http://www.ice.gov/doclib/news/releases/2010/civil-enforcement-priorities.pdf>.

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¹²⁹ See, e.g. Univ. of Arizona, *Unseen Prisoners: A Report on Women in Immigration Detention Facilities in Arizona*, (Jan. 2009), at 21, available at http://www.law.arizona.edu/depts/bacon_program/pdf/Unseen_Prisoners.pdf. In 2008, an immigrant woman was detained by local police enforcement in Maricopa County, Arizona on immigration-related charges and shackled during labor under a 72-hour “detainer” protocol that allows ICE 72 hours to investigate the detainee’s immigration status before transferring them to an ICE-contracted facility. Arizona is one of 32 states that have not enacted anti-shackling legislation and provide a loophole for police enforcement to shackle pregnant immigrant women. See also Cristina Costantini, *It’s Still Legal to Shackle Women During Childbirth in America*, FUSION (Oct. 14, 2013), available at <http://fusion.net/justice/story/legal-shackle-women-childbirth-immigration-detention-11308>; Joanne Lin, American Civil Liberties Union, *End Near for Shackling of Pregnant Women* (Jan. 21, 2014), available at <https://www.aclu.org/blog/immigrants-rights-reproductive-freedom/end-near-shackling-pregnant-women>.

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¹³⁹ See e.g., HUMAN RIGHTS WATCH, *Rights on the Line* (Dec. 1, 2010), available at <http://www.hrw.org/node/94813/section/7>.

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¹⁵¹ *Id.*

¹⁵² *Id.* (emphasis added).

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¹⁷² Metzner, & Fellner, *supra* note 138.

¹⁷³ UN General Assembly, Meetings Coverage, *Special Rapporteur on Torture Tells Third Committee Use of Prolonged Solitary Confinement on Rise, Calls for Global Ban on Practice*, U.N. Doc. GA/SHC/4014, (Oct.18, 2011) available at <http://www.un.org/News/Press/docs/2011/gashc4014.doc.htm>.

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http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fQ%2f3-5&Lang=en.

¹⁷⁵ Convention Against Torture, Article 2: "(1) Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. (2) No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. (3) An order from a superior officer or a public authority may not be invoked as a justification of torture."

¹⁷⁶ Convention Against Torture, Article 3: "(1) No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be subjected to torture. (2) For the purpose of determining whether there are such grounds, the authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

¹⁷⁷ Convention Against Torture, Article 10: "(1) Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. (2) Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person."

¹⁷⁸ *Id.*

¹⁷⁹ Convention Against Torture, Article 13: "Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."

¹⁸⁰ Convention Against Torture, Article 14: "(1) Each State Party shall ensure that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation. (2) Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law."

¹⁸¹ Convention Against Torture, Article 16: "(1) Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment. (2) The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion."

¹⁸² List of Issues, *supra* note 173, Question 9.

¹⁸³ *Id.*, Question 10.

¹⁸⁴ *Id.*, Question 16

¹⁸⁵ *Id.*, Question 23.

¹⁸⁶ *Id.*, Question 27.

¹⁸⁷ *Id.*, Question 32.

¹⁸⁸ *Id.*, Question 33.

¹⁸⁹ *Id.*, Question 34.

¹⁹⁰ *Id.*, Question 39.

¹⁹¹ *Id.*, Question 42.