

HUMAN RIGHTS COMMITTEE COUNTRY REPORT

United States

Independent Information for the 107th session of the Human Rights Committee (HRC)

MIDWEST COALITION FOR HUMAN RIGHTS and THE LEGAL CLINIC OF THE UNIVERSITY OF IOWA COLLEGE OF LAW

CRITICAL ISSUES

- Failure to properly and completely outlaw torture at the federal and state levels.
- Prolonged solitary confinement causing psychosis in otherwise healthy people.
- Sexual abuse and denial of adequate medical care in immigration detention.
- Lack of redress for victims of police torture, including innocent victims still incarcerated.
- Unnecessary and sometimes-fatal use of electroshock Tasers by law enforcement.

PROPOSED QUESTIONS FOR THE GOVERNMENT OF THE UNITED STATES

Laws Against Torture

1. Please explain what efforts are underway to enact legislation or regulation at the federal level prohibiting torture. Please provide the text, if any, of proposed legislation or regulations.

Solitary Confinement

2. Please describe measures being taken to ensure that solitary confinement is used only in very exceptional circumstances and for as short a time as possible.
3. Please describe how the U.S. will provide care for victims of solitary confinement who suffer from ongoing psychosis or depression.
4. Please provide the Committee with a detailed plan for the closure of the Tamms Correctional Center, in Tamms, Illinois.

Immigration Detention Facilities

5. Please provide a detailed account of plans to extend to immigration detainees the basic protections of the law, including the Prison Rape Elimination Act.
6. Please explain the measures in place to guarantee to immigration detainees an independent and impartial investigation of claims that their rights have been violated.
7. Please explain why the U.S. has not enacted the Detainee Basic Medical Care Act that ensures adequate medical care is provided to detainees to prevent death and unnecessary suffering—as with Francisco Castaneda and others.
8. Please provide the Committee with a detailed plan for the closure of the Tri-County Detention Center in Ullin, Illinois and the Jefferson Detention Center in Mt. Vernon, Illinois.

Chicago Police Torture

9. When will any remaining, innocent and still-incarcerated victims convicted using tortured confessions extracted by the Chicago Police Department be granted new evidentiary hearings? What is the U.S. Government's position on the recently-filed class action seeking such hearings?
10. Please describe restitution, if any, that will be provided to the remaining torture victims of the Chicago Police Department.
11. Please describe the Justice Department's current procedure on responding to current or future allegations of police torture and how that procedure will ensure that systematic police torture and associated cover-ups will not occur again.

Electroshock

12. Please describe measures to implement a federal law about the appropriate police use of electroshock devices.
13. Please describe measures to implement a federal law allowing greater access by electroshock victims to claim a remedy for excessive force.

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I. Overview

1.1 The United States subjects its citizens to torture and to cruel, inhuman, and degrading treatment. This report focuses on the American Midwest, where:

- State and federal laws do not provide appropriate punishment or accountability for perpetrators of torture when these acts occur domestically;
- Otherwise healthy inmates develop severe depression and clinical psychosis as a result of prolonged solitary confinement;
- Detained immigrants are routinely sexually abused and denied adequate medical care;

- Chicago police systematically tortured confessions from suspects, many of whom are innocent and still incarcerated;
- Law enforcement officers routinely and unnecessarily use electroshock devices on unarmed citizens, whether young, old, or pregnant.

1.1 In its General Comment 20, the Committee recognized that it is not enough for States Parties to prohibit torture as well as other cruel, inhuman, or degrading treatment or punishment; rather, states must act to prevent such acts, to protect individuals—particularly vulnerable populations—and to “effectively guarantee[] the immediate termination of all acts proscribed by article 7”¹ In its prisons, detention facilities, and police forces the United States fails to uphold those obligations.

1.2 The Committee has recognized that Article 2 requires States Parties to, among other things, a) address claims of violations of rights, specifically to “investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies²; and, b) to provide reparations to victims through means generally recognized in international law, including compensation, satisfaction, rehabilitation, restitution, public apologies, and guarantees of non-repetition.³

1.3 The United States violates the ICCPR in a variety of ways: (1) U.S. federal and state laws do not provide appropriate punishment or accountability for perpetrators or torture when acts of torture occur within U.S. territory, (2) the U.S. supports and uses prolonged solitary confinement, a known method of torture; (3) the U.S. improperly manages its immigration detention system by allowing endemic sexual abuse and refusing adequate medical care, and failing to provide remedies or redress for abuses; (4) the U.S. failed to prevent the Chicago Police Department from torturing civilians, and further failed to provide redress; and (5) the U.S. allows and promotes routine electrocution of its citizenry by police.

II. Inadequacy of United States Laws against Torture

2.1 The Human Rights Committee (“the Committee”) has stated that a) under state law torture must at least be considered a criminal activity;⁴ b) state laws must effectively further the goal of preventing and punishing acts of torture;⁵ and, c) that states should not impose any limitations on preventing torture or punishing the individuals responsible for acts of torture.⁶ However, the United States consistently refuses to enact state or federal legislation completely

¹ General Comment 20, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, *available at* [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument).

² UN International Covenant on Civil and General Political Rights, *CCPR General Comment No. 31 [80]: Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (May 26, 2004) <http://www.unhchr.ch/tbs/doc.nsf/0/58f5d4646e861359c1256ff600533f5f?Opendocument>.

³ *Id.*, para. 16.

⁴ *C.f.* Human Rights Comm., General Comment 20 [hereinafter *General Comment*], ¶ 4, 44th Sess., March 10, 1992, U.N. Doc. HRI/GEN/1/Rev.6, at 151 (2003), at ¶ 8 (arguing that it is not sufficient for a state to merely make an offense under article 7 of ICCPR a crime, thus it is necessary that an infraction be a criminal offense).

⁵ *C.f. id.* (arguing that, in addition to making offenses of article 7 criminal acts, states must inform the committee of “legislative, administrative, judicial, and other measures they take to prevent and punish” these infractions).

⁶ *C.f. id.* at ¶ 3 (arguing that there are no limitations to protecting people from abuses under article 7); *c.f. also id.* at ¶ (arguing that all violators of article 7 must be held responsible, without stipulating any exceptions).

banning torture conducted within its territory (although it has enacted, but not enforced, legislation penalizing torture conducted outside its territory).

A. *Gaps in State Law*

2.A1 Despite assertions by the United States to the contrary⁷, significant gaps in federal and state laws effectively legalize torture and immunize torturers when they occur within U.S. territory. State laws criminalizing the acts that amount to torture are subject to short statutes of limitation after which a victim has no legal cause of action or remedy. For example, in Illinois crimes must be prosecuted within three years of the commission of a felony, and within eighteen months of the commission of a misdemeanor.⁸ In cases of “misconduct in office by a public officer or employee,” however, charges may be filed within one year of the discovery of the crime but in any event no more than six years after the crime was committed.⁹ This statutory scheme creates a six-year window after which torturers enjoy impunity. In both Iowa¹⁰ and Minnesota¹¹ the window is even smaller; the statutes of limitations set the deadline for filing charges for a felony at three years after the commission of the offense.

2.A2 The Chicago Police Torture Cases, discussed below, illustrate the danger of such a statutory scheme. Despite significant press coverage and pressure from civil society, city and state officials managed to obstruct investigations and delay prosecution until the statute of limitations had run and only one of the individual police officers responsible for the torture of more than 100 suspects in police custody could only be charged with perjury and obstruction of justice for the lies he told denying the torture rather than torture acts in and of themselves.

B. *Gaps in Federal Law*

2.B1 Federal law fails to step in where state law falls short. Torture falls under the federal law prohibiting “Deprivation of Rights Under Color of Law” (“DoR”).¹² This statute makes it a federal crime for anyone acting “under color of any law, statute, ordinance, regulation, or custom” to “willfully subject” any person to the “deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States”¹³ As with state law, however, the statute of limitations is short; a person must seek an indictment within five years of the commission of the offense.

2.B2 Furthermore, the United States consistently refuses to follow through with prosecutions under the DoR law. From 1999 to 2003 the Department of Justice declined to prosecute 97.4% of all allegations falling under the DoR law.¹⁴ This is the highest declination rate for any federal law.¹⁵ For context, from 1999 to 2003 the declination rates for tax evasion, sexual exploitation of minors, and embezzling funds from federal programs were 43.4%, 48.0%,

⁷ U.S. State Department, *Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the ICCPR*, ¶ 171, (Dec. 30, 2011), <http://www.state.gov/j/drl/rls/179781.htm#> (citing U.S. State Department, *Initial Report of the United States of America to the UN committee on Human Rights Concerning the ICCPR*, ¶ 149-187, U.N. Doc. CCPR/C/81/Add.4 (August 24, 1993)).

⁸ 38 ILL. COMP. STAT. 5/3-5

⁹ 38 ILL. COMP. STAT. 5/3-6(b)

¹⁰ IOWA CODE § 802.3

¹¹ MINN. STAT. § 628.26

¹² 18 U.S. C. § 242 (2011).

¹³ *Id.*

and 64.3% respectively.¹⁶ Less than one percent of all violations of 18 USC § 242 referred to the DOJ result in conviction.¹⁷ Nevertheless, this is the statute that the United States claims protects individuals against torture at the federal level.¹⁸

III. Prolonged Solitary Confinement as Torture

A. Background on Prolonged Solitary Confinement

3.A1 The United Nations has continually rejected prolonged solitary confinement as an appropriate means of punishment.¹⁹ Prolonged “segregation, isolation, separation, cellular, lockdown, Supermax, the hole, Secure Housing Unit . . . whatever the name,” constitutes torture²⁰ because it foreseeably induces temporary and permanent extreme physical²¹ and psychological harm²² in so many of the prisoners exposed to it. Prolonged solitary confinement may also constitute a violation of international customary law.²³ But still, the laws of the United States permit prolonged solitary confinement in violation of the ICCPR; in the United States, “as long as a prisoner receives adequate food and shelter, the extreme sensory deprivation that characterizes supermax confinement will . . . almost always be considered within the bounds of permissible treatment.”²⁴ However, as stated by a U.S. court, solitary confinement is a “virtual

¹⁴ *Under Color of Law*, TRAC REPORTS, Dec. 1, 2004, <http://trac.syr.edu/tracreports/civright/107/> (last viewed April 25, 2012) (The Transactional Records Access Clearinghouse is a data gathering, data research and data distribution organization at Syracuse University).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *C.f. Fourth Periodic Report*, *supra* note 17 at ¶ 181.

¹⁹ *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Note by Secretary-General, A/66/268 (Aug. 5, 2011); The Committee Against Torture has continually spoken out against solitary confinement except “as a last resort” and for “as short a time as possible.” *See, e.g.*, COMMITTEE AGAINST TORTURE, CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT § 37, CAT/C/MDA/Q/3 (July 11, 2012); CAT Committee, Annual Report to the UN General Assembly (concluding observations on Denmark), UN Doc. A/52/44 (Sept. 10, 1997) at §§ 181, 186.

²⁰ *Solitary Confinement Should Be Banned In Most Cases, UN Expert Says*, UN NEWS CENTRE (Oct. 18, 2011), <http://www.un.org/apps/news/story.asp?NewsID=40097#.UL7tz-2dF8w>; *Council of Europe Anti-torture Committee: Solitary Confinement in Prisons Should Be Minimised*, COUNSEL OF EUROPE (Oct. 11, 2011), <http://www.cpt.coe.int/en/annual/press/2011-11-10-eng.htm>; Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. REV. L. & SOC. CHANGE 477 (1997).

²¹ Haney & Lynch, *supra* note 20 (“In sum, studies of the secondary effects of prison isolation and segregation indicate that such confinement is associated with increases in psychiatric complaints, self-mutilation, [and] suicide . . .”).

²² “[A]lthough many of the acute symptoms suffered by these inmates are likely to subside upon termination of solitary confinement, many—including some who did not become overtly psychiatrically ill during their confinement in solitary—will likely suffer permanent harm as a result of such confinement.” Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 J. LAW & POLICY 325, 333-34 (2006), available at <http://law.wustl.edu/journal/22/p325grassian.pdf>.

²³ Elizabeth Vasiliades, *Solitary Confinement and International Human Rights: Why the U.S. Prison System Fails Global Standards*, 21 AM. U. INT’L L. REV. 71, 95-99 (2005).

²⁴ NEW YORK CITY BAR, SUPERMAX CONFINEMENT IN U.S. PRISONS 2 (Sept. 2011), available at <http://solitarywatch.com/2011/09/19/nyc-bar-association-issues-report-on-the-brutality-of-supermax-confinement/>; see also *Hutto v. Finney*, 437 U.S. 678, 685 (1978); *Madrid v. Gomez*, 899 F.Supp. 1146, 1260-66 (N.D. Cal. 1995); *Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

incubator of psychoses—seeding illness in otherwise healthy inmates and exacerbating illness in those already suffering from mental infirmities.”²⁵ Researchers have found that inmates in solitary confinement develop psychopathologies at near double the rate of the general population.²⁶

3.A2 It is estimated that in the United States, 80,000 prisoners are in a form of solitary confinement, and at least 25,000 of those are in “supermax” facilities—where prisoners are kept in extreme isolation, usually for 23-24 hours a day.²⁷ The cells may be perpetually illuminated; inmates may not be allowed any timekeeping devices; sometimes inmates are forbidden to have reading material; visitation is extremely limited²⁸; and prisoners may be prohibited from having basic personal hygiene items.²⁹ The effect of prolonged solitary confinement is one of “almost complete isolation and sensory deprivation” where “smeared feces, self-mutilation, and incessant babbling and shrieking are almost everyday occurrences.”³⁰

3.A3 That serious and “irreversible psychological damage”³¹ and physical harm results from prolonged solitary confinement is beyond doubt. A report by the Special Rapporteur of the Human Rights Council lists 27 distinct and negative “[e]ffects of solitary confinement” including panic attacks, major depression, and psychosis.³² Half of inmates in solitary self-mutilate, a condition recognized as a “secondary effect of prison isolation and segregation.”³³ The Professors & Practitioners of Psychology & Psychiatry concluded in an *Amici Curiae* brief for *Wilkinson v. Austin* that all studies on “the effects of solitary or supermax-like confinement . . . last[ing] longer than 60 days . . . [found] evidence of negative psychological effects.”³⁴ Similar conclusions have been “reached by different researchers examining different facilities, in different parts of the world, in different decades, using different research methods.”³⁵ And indeed, doctors recognized negative psychological outcomes of solitary confinement since at least 1983, and perhaps as early as the 19th century.³⁶ By one estimate, a third of prisoners in solitary confinement “develop[] acute psychosis with hallucinations.”³⁷ Indiana supermax prison

²⁵ *Ruiz v Johnson*, 154 F. Supp. 2d 975, 984 (S.D. Tex. 2001).

²⁶ Andersen et al., *A Longitudinal Study of Prisoners on Remand: Psychiatric Prevalence, Incidence, and Psychopathology in Solitary vs. Non-Solitary Confinement*, 102(1) ACTA PSYCHIATRICA SCANDANAVICA 19 (2000).

²⁷ Browne, Angela et al. (2011). Prisons Within Prisons: The Use of Segregation in the United States. Federal Sentencing Reporter 24:1 (October): <http://www.vera.org/files/FSR-Editors-Observations-Sentencing-Within-Sentencing-October-2011.pdf>.

²⁸ *Id.*; NEW YORK CITY BAR, SUPERMAX CONFINEMENT IN U.S. PRISONS 11-16 (2011), available at <http://www2.nycbar.org/pdf/report/uploads/20072165-TheBrutalityofSupermaxConfinement.pdf>.

²⁹ See Vasiliades *supra* note 23 (citing JOSEPH T. HALLINAN, GOING UP THE RIVER: TRAVELS IN A PRISON NATION 5 (2003)) (in one facility the only personal hygiene item was a “small box of baking soda” instead of toothpaste).

³⁰ NEW YORK CITY BAR, SUPERMAX CONFINEMENT IN U.S. PRISONS 12, 15 (2011), available at <http://www2.nycbar.org/pdf/report/uploads/20072165-TheBrutalityofSupermaxConfinement.pdf>.

³¹ Mike Corradini, *UN Advisors Says Solitary Confinement in the US Is Torture*, PHYSICIANS FOR HUMAN RIGHTS (Oct. 16, 2012), <http://physiciansforhumanrights.org/blog/un-advisor-says-solitary-confinement-in-us-is-torture.html>.

³² *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Note by Secretary-General, Annex A/66/268 (Aug. 5, 2011).

³³ Haney & Lynch, *supra* note 20 (“In sum, studies of the secondary effects of prison isolation and segregation indicate that such confinement is associated with increases in psychiatric complaints, self-mutilation, [and] suicide . . .”).

³⁴ Brief for Professors & Practitioners of Psychology & Psychiatry as *Amici Curiae* Supporting Respondent at 4, *Wilkinson v. Austin*, 545 U.S. 209 (2005).

³⁵ *Id.* at 22.

³⁶ Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHIATRY 1450 (1983).

³⁷ *Hellhole*, NEW YORKER (Mar. 30, 2009), available at

officials admit that “well over half” of their inmates suffer from mental illness.³⁸ Staff at the Tamms supermax prison in Illinois estimated that “probably 95 percent of the Tamms population suffers from a diagnosable psychiatric problem,” with schizophrenia and bipolar disorder the most common.³⁹

B. Tamms Supermax Prison

“Something happened in my brain.”

—Inmate describing the deterioration of his mental state after prolonged solitary confinement at Tamms. A visitor observed that the inmate’s “left and right arms are a mass of snarled, overlapping scar tissue”; the inmate repeatedly said that “he will kill himself at the first opportunity [but] until then, he would like to cut off one of his hands.”⁴⁰

3.B1 Tamms Prison is a supermax, state-run prison in Illinois notorious for its harsh treatment of prisoners.⁴¹ Guards use pepper spray, tear gas, and antipsychotics to control prisoners,⁴² who “scream uncontrollably, smear themselves with feces, and attempt suicide”⁴³—the latter of which is not uncommon. The state of Illinois charged one prisoner \$56 for the torn bed sheet with which he attempted to hang himself.⁴⁴ Self-mutilation resulting from prolonged solitary confinement at Tamms is also common. When stitching up inmates, a Tamms medical doctor does not “always inject anesthetic because the skin of many Tamms inmates [is] numb from massive scarring from repeated self-mutilation.”⁴⁵ If and when prisoners are granted exercise time, they are relegated for one-hour, alone, to either an outdoor cage with a pull-up bar,⁴⁶ or an empty concrete courtyard with a view of the sky only.⁴⁷

http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande (“Stuart Grassian, a Boston psychiatrist, has interviewed more than two hundred prisoners in solitary confinement. In one in-depth study, prepared for a legal challenge of prisoner-isolation practices, he concluded that about a third developed acute psychosis with hallucinations.”).

³⁸ http://www.aclu.org/files/assets/anthony_gay_amicus.pdf page 27 (quoting Howard Greninger, *Suit Targets Carlisle Prison*, TERRE HAUTE TRIBUNE-STAR, Feb 4., 2005).

³⁹ Robert Manor, *Monitoring Tour of Tamms Supermax Prison*, JOHN HOWARD ASSOCIATION OF ILLINOIS (Nov. 9, 2010), <http://www.law.uchicago.edu/files/file/Tamms%20Report.pdf>.

⁴⁰ *Id.*

⁴¹ It is worth noting that Although Illinois Governor Pat Quinn has proposed closing Tamms prison, the prison is still operating at the time of this writing. The reasons for closing the prison are primarily budgetary; the policies and laws that permit prolonged solitary confinement remain in place. It is probable that even if Tamms is closed, the prisoners currently housed there in solitary confinement will be relocated to similar solitary housing units at other facilities.

⁴² <http://tammsyearten.mayfirst.org/node/5>

⁴³ <http://tammsyearten.mayfirst.org/node/2>

⁴⁴ <http://www.dartsociety.org/cms/magazine/2012/01/the-gray-box-an-original-investigation/>

⁴⁵ See Hundsdorfer *supra* note 48; Andrew Cohen, *Feds in Supermax Lawsuit: Suicidal Prisoner? What Suicidal Prisoner?*, Atlantic (Sept. 23, 2011), available at <http://www.theatlantic.com/national/archive/2012/09/feds-in-supermax-lawsuit-suicidal-prisoner-what-suicidal-prisoner/260226/>; Eric Kahnert, *Lawsuit: Southern Colorado Supermax Prison Is ‘Monster Factory’*, 9News (Jun. 18, 2012), available at

<http://www.9news.com/rss/story.aspx?storyid=273097>; *Watchdogs Urge Quinn to Stick By Move to Close Tamms Supermax Prison*, CBS CHICAGO (Sept. 26, 2012), available at <http://chicago.cbslocal.com/2012/09/26/watchdogs-urge-quinn-to-stick-by-move-to-close-tamms-supermax-prison/>.

⁴⁶ See photograph in Annex 1.

3.B2 It is in this environment that Anthony Gay is currently serving a 99-year sentence at Tamms. Gay was initially imprisoned for violating his probation as a 20-year-old. The probation stemmed from an incident in which he punched another young man for stealing a dollar from him. Now, because of administrative violations and other non-violent crimes while in prison, Gay is serving a 99-year sentence in solitary confinement.⁴⁸ After his transfer to Tamms, Gay suffered psychological harm and he began to mutilate his body.⁴⁹ Gay wrote that: “If I happen to become extremely anxious, I’ll slice my penis like a hot dog or my testicle like a tomato.”⁵⁰ On August 27, 2010, Gay cut out his testicle and tied it to his cell door.⁵¹ Epitomizing the mindset of some staff members at Tamms, Gay’s psychiatrist alleged that Gay’s behavior “primarily serve[d] to manipulate and harass prison staff.”⁵²

3.B3 As with many Supermax facilities, in Tamms prisoners are punished by sensory deprivation, right down to the interior design of the prison. Tamms cells are 7 by 12 feet, smaller than a compact car parking space,⁵³ with a window showing a “sliver of sky.”⁵⁴ Prisoners are constantly monitored by video camera and receive food through a “chuck hole.”⁵⁵ For misbehavior, guards may put prisoners on “Extended Property Reduction,” a technique where guards dress inmates in revealing paper gowns as thin as a “restaurant paper napkin” and place them in “utterly empty cells for days at a time.”⁵⁶ Over the next eighty (80) days the “inmate gradually is authorized to possess more items, such as a regular prison uniform, standard bedding, and mail.”⁵⁷ However, any misstep and guards may return the prisoner to the beginning of the process—“half naked in a cell bare of personal possessions,” without even a blanket.⁵⁸ One inmate punished under the “extended property reduction” regime had been “found in possession of an ink pen.”⁵⁹ Tamms guards even punish inmates by depriving them of taste, prohibiting regular food and instead serving “meal loaf,” a nutritionally sound but uniformly “disgusting” baked purée of vegetables and beans.⁶⁰ Shower privileges are conditional. Tamms

⁴⁷ *Id.*

⁴⁸ Beth Hundsdorfer, *Trapped in Tamms: Inmates in Illinois’ Only Supermax Prison Face Battle Proving Mistreatment*, THE NEWS-DEMOCRAT (Aug. 3, 2009).

⁴⁹ *Id.*

⁵⁰ Susan Greene, *The Gray Box: An Investigative Look at Solitary Confinement*, DART SOCIETY REPORTS (Jan. 24, 2012), <http://www.dartsociety.org/cms/magazine/2012/01/the-gray-box-an-original-investigation/>.

⁵¹ *Gay v. Clover*, No. 09-cv-925-JPG-PMF, 2 (S.D. Ill. Aug. 4, 2011).

⁵² *Id.* at 5.

⁵³ Compare Dusty Rhodes, *Tougher than Guantanamo: Illinois Supermax Prison With No Way Out*, ILLINOIS TIMES (June 18, 2009), <http://www.illinoistimes.com/Springfield/article-6047-tougher-than-guantanamo.html> (“7-by-12-foot cell”) with *Design and Improvement of Parking*, ROSEVILLE MUNICIPAL CODE 19.26.040 (“compact car spaces shall be a minimum of nine feet by 16 feet”), <http://qcode.us/codes/roseville/view.php?topic=19-iii-19-26-19-26-040&frames=on> (last visited Dec. 4, 2012) and “7ft*12ft,” WOLFRAM ALPHA, http://www.wolframalpha.com/input/?i=7ft*12ft (“84 [square feet] . . . [equals approximately] [40% to 80%] of the area of a typical American parking space”) (last visited Dec. 4, 2012).

⁵⁴ Malcolm C. Young, *Ten Years and Counting: A Legislator’s Visit to Prisoners in Tamms Supermax*, JOHN HOWARD ASSOCIATION OF ILLINOIS, 3 (Nov. 15, 2008).

⁵⁵ *Id.*

⁵⁶ Manor, *supra* note 39.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *See, e.g.,*

http://www.slate.com/articles/news_and_politics/jurisprudence/2008/06/tastetesting_nutraloaf.single.html; <http://www.chicagomag.com/Chicago-Magazine/September-2010/Dining-Critic-Tries-Nutraloaf-the->

inmates are initially granted a shower once per week, but with good behavior shower privileges may be ramped up to five times per week.⁶¹

3.B4 Tamms policy on visitation and the facility's physical location accentuates detrimental sensory deprivation and isolation. Visitation is "rare" for three reasons.⁶² First, Tamms policy limits visitation for segregated prisoners to twice per month and only once on a weekend for a total of three hours. And guards may further reduce visitation as punishment.⁶³ Second, all visitors are "thoroughly strip-searched both before and after the visit, even though [the prisoner] and [the] guest sit in separate secure boxes, communicating via intercom through a thick glass slab, never allowed to touch."⁶⁴ And finally, visitors are hampered by sheer distance. Seventy-percent of the Tamms inmates are from the Chicago area,⁶⁵ but Tamms is in the rural south of Illinois, almost a six hour drive away—a distance equivalent to driving from Geneva to Frankfurt.

C. *Other Issues with Prolonged Solitary Confinement*

3.C1 Prolonged solitary confinement is used as a form of punishment, rather than for the limited purposes of security or safety. Five prisoners in the Ohio State penitentiary have been in solitary confinement for 23 hours per day since 1994 and will continue to be so confined until they are put to death.⁶⁶ The state convicted the five prisoners—who acted as spokesmen for the prison population during a riot—for murder, despite official assurances that no one would be prosecuted for those crimes and despite the absence of any physical evidence linking them to the murders.⁶⁷ Generally, the state grants basic rights and privileges to death row prisoners. The five spokesmen, however, have been held in complete isolation at the Ohio State Penitentiary since their conviction. They are given no visitation rights with family, and they have been specifically told that they will be kept in these conditions until they are executed regardless of their behavior.⁶⁸

3.C2 Not only does United States law permit prolonged solitary confinement, the United States does not provide prisoners with reasons for, or a means to, challenge their status. David Ayala has been in prison since 1983 when he received a life sentence for the killing of two rival gang members. He was transferred to Tamms prison after he was deemed a security threat due to his gang affiliation. Ayala has since renounced that affiliation and has completed the state Department of Corrections' Gang Renunciation Program.⁶⁹ Despite his rehabilitation, the State continues to hold Ayala at Tamms Prison without an explanation or legal recourse.⁷⁰

Prison-Food-for-Misbehaving-Inmates/; http://poststar.com/news/opinion/editorial/editorial-the-loaf-is-effective-deterrent/article_e0f409a2-407a-11e0-8eeb-001cc4c002e0.html

⁶¹ Manor, *supra* note 39.

⁶² TAMMS YEAR TEN, TAMMS YEAR TEN CAMPAIGN 2, *available at* http://yearten.files.wordpress.com/2008/03/tammsyeartenpresskit3_3.pdf.

⁶³ Tamms Visitation Rules, <http://www2.illinois.gov/idoc/facilities/Pages/VisitationRules.aspx>

⁶⁴ <http://www.illinoistimes.com/Springfield/article-6047-tougher-than-guantanamo.html>

⁶⁵ <http://www.illinoistimes.com/Springfield/article-6047-tougher-than-guantanamo.html>

⁶⁶ Jason, Wendy. "Ohio Prisoners Begin Hunger Strike After 17 Years In Solitary Confinement," (2011).

⁶⁷ Lynd, Staughton. "The Lucasville Uprising: New Discoveries." (2006).

⁶⁸ *Id.*

⁶⁹ Hundscorfer, Beth. (2009). *Former Gang Boss Feeding Spiders in Tamms Prison*. The Associated Press, October 5.

⁷⁰ Mr. Ayala's suit for procedural and civil rights violations was dismissed by the court before trial. *David Ayala, N-30314 v. Odie Washington et al. N.D. Illinois*.

IV. Sexual Abuse and Denial of Medical Care in Immigration Detention

4.1 The United States has failed to properly manage immigration detainees and prevent sexual abuse in accord with the ICCPR and General Comment 20, and the United States has further failed to redress its violations in accord with Article 2.

A. *Failure to Prevent Sexual Abuse in Immigration Detention*

4.A1 Sexual abuse is endemic in immigration detention.⁷¹ The United States government has received more than 200 allegations of sexual assault from immigration detainees according to documents released by the United States government in response to a request under the Freedom of Information Act (“FoIA”).⁷² Official reports of sexual abuse are likely a gross understatement of actual conditions. Sexual abuse—widely underreported outside prisons—is likely even more widely underreported in immigration detention facilities⁷³ where detainees may be unaware of their rights, unable to access an attorney, and easily intimidated because the perpetrators could adversely affect their immigration status.⁷⁴ As Human Rights Watch notes, “[v]ictims of abuse in detention face a range of obstacles and disincentives to reporting, from a lack of information about rules governing staff conduct, to fear of speaking out against the same authority that is seeking their deportation, to trauma from the abuse in detention and possibly from violence and other abuse they have previously suffered in their countries of origin.”⁷⁵

4.A2 The following allegations of sexual abuse are from immigration detention facilities in the Midwestern states Wisconsin, Michigan, and Illinois. Illinois is the site of the privately run “Tri-County Detention Center,” listed one of the “worst immigrant prisons in the U.S.”⁷⁶:

- On December 13, 2011 three gang members sexually assaulted an Indian immigrant in an “Illinois detention facility.” When he reported the assault to an officer based in Chicago: “he just looked at me and sat there, you know, and went and got some tissue paper for me to just, because I was crying, and I was begging him not to send me back over there, and I even told him like, ‘If you send me back, I’m going to kill myself.’” The Indian immigrant had to

⁷¹ See, e.g., Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention* (Aug. 2010), available at <http://www.hrw.org/en/reports/2010/08/25/detained-and-risk-0>.

⁷² *Sexual Abuse in Immigration Detention Facilities*, AM. CIVIL LIBERTIES UNION (last accessed Oct. 31, 2012), <http://www.aclu.org/maps/sexual-abuse-immigration-detention-facilities>.

⁷³ *Id.*

⁷⁴ “Terrified of deportation and separation from their families, immigrants in detention are often extremely reluctant to file grievances against facilities run by the very people who can expel them from the country; and there is little question that deportation is sometimes used as retribution against immigration detainees who complain, and sometimes as a way of forestalling investigations into abuses.”

<http://www.nybooks.com/blogs/nyrblog/2011/nov/23/immigrant-detainees-new-sex-abuse-crisis/>.

⁷⁵ *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, HUMAN RIGHTS WATCH 3-4 (2010), available at <http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf>.

⁷⁶ <http://www.detentionwatchnetwork.org/ExposeAndClose>

spend additional months at the same detention center where the assault took place. (*Undisclosed Illinois Detention Center*)⁷⁷

- [A] Thai detainee in Wisconsin who was sexually assaulted in custody by other inmates. She reported the sexual assault to jail guards, but they refused to help her, even after one assault resulted in an overnight stay in the hospital. Because the jail facility did not afford her the ability have a private telephone conversation, the Thai woman could not safely tell her lawyer of the incident for three months. Finally, the client was able to arrange a private meeting with her attorney, who intervened to have the client transferred to another local facility.⁷⁸
- One immigrant “was raped and repeatedly forced to perform sexual acts by other people held in the facility. When he tried to tell facility staff he felt unsafe, they jeered at him. Eventually, [the immigrant] reported the attacks to ICE, which interviewed him and transferred him to another facility. [He] has not received an update on the investigation’s status and local law enforcement authorities have no record of a report being filed.” (*Tri-County Detention Center in Ullin, Illinois*)⁷⁹
- A young Russian man from Michigan was forced to watch his mother strip searched in immigration detention. Ivan Nikolov remembers his mother crying the whole time, and begging the officers to stop humiliating her. He says instead of responding with human decency, the Immigration and Customs Enforcement (ICE) officer told her to be glad they didn’t shoot her in the head. (*Michigan detention center*)⁸⁰

B. *Failure to Provide Adequate Medical Attention in Immigration Detention*

4.B1 In addition to widespread sexual abuse, immigration detainees are routinely denied adequate medical treatment in violation of the obligations of the U.S. Government under the ICCPR and in violation of U.S. law. The Due Process Clause of the Fifth Amendment of the U.S. Constitution requires that Immigration and Customs Enforcement (“ICE”) provide adequate medical care to detainees when a medical need has been “diagnosed by a physician as mandating treatment or [for a medical need] that is so obvious that even a lay person could recognize the

⁷⁷ National Public Radio, *Immigration Detainees Seek Prison-Rape Protection* (Dec. 2011), available at <http://www.npr.org/2011/12/13/143638236/immigration-detainees-seek-prison-rape-protection>.

⁷⁸ National Immigrant Justice Center, Briefing Paper for the United Nations Special Rapporteur on the Rights of Migrants re: The Situation of Women Detained in the United States, April 16, 2007, http://www.immigrantwomensnetwork.org/Resources/Briefing%20Paper_Women%20in%20Detention_UN%20Special%20Rapporteur%202007%2004%2017%20FINAL.pdf (last visited December 4, 2012).

⁷⁹ <http://www.immigrantjustice.org/sites/immigrantjustice.org/files/DWN%20Expose%20&%20Close-%20Tri%20Co%20Report%20FINAL.pdf>

⁸⁰ *Michigan Immigrant Community Testifies on ICE Abuse*, SAN DIEGO IMMIGRANT RIGHTS CONSORTIUM (May 2, 2011), <http://immigrantsandiego.org/2011/05/02/michigan-immigrant-community-testifies-on-ice-abuse/>.

necessity for a doctor's attention."⁸¹ The ICE policy manual requires that detainees have access to "appropriate and necessary medical, dental, and mental health care, including emergency services."⁸²

4.B2 But despite federal law and ICE's own policy, between 2003 and 2008, 83 detainees died while detained in immigration detention,⁸³ and improper medical decisions, or inaction, contributed to at least 30 of those deaths.⁸⁴ Shortages of qualified personnel, lack of funding, delays in care, and neglect are commonplace.⁸⁵ During January 2008, the medical office of one detention center had a backlog of more than 2,000 appointments.⁸⁶ In 2007, at a "high-level headquarters meeting about staff shortages, one official complained . . . 'We're going to be responsible if something happens, because it's well documented that we know there's a problem, [and] that the problem is severe.'"⁸⁷

4.B3 The UN Human Rights Committee noted its concern of the frequent occurrence of seriously inadequate medical treatment in detention centers.⁸⁸ In certain circumstances, inadequate medical treatment can be fatal for detainees. Francisco Castaneda noticed a painful, "irregular, raised lesion" growing on his penis while he was being detained by ICE.⁸⁹ He "promptly brought his condition to the attention of medical personnel," noting that the lesion "frequently bled and emitted a discharge."⁹⁰ For ten months he "persistently sought treatment for his condition" as the lesion became increasingly painful and interfered with his urination, defecation, and sleep.⁹¹ Castaneda noticed a lump growing on his groin; but was refused a biopsy despite the recommendation of three outside specialists and a U.S. Public Health Service physician's assistant.⁹² Instead of the recommended biopsy, ICE treated him with ibuprofen and "an additional ration of [underwear]."⁹³ Eventually, "after a fourth [outside] specialist recommended a biopsy" the procedure was authorized.⁹⁴ Unfortunately, but not surprisingly, the biopsy was positive for penile cancer and surgeons amputated Castaneda's penis the next day.⁹⁵ The amputation did not save him. After a year of chemotherapy, Castaneda died on February 16, 2008, aged 36.⁹⁶ Medically speaking, Mr. Castaneda should not have died from this form of

⁸¹ See, e.g., *Cesar v. Achim*, 542 F. Supp. 2d 897, 907 (E.D. Wisc. 2008); *Dahlan v. Dept. of Homeland Sec.*, 215 Fed. Appx. 97 (3d Cir. 2007).

⁸² *Performance-Based National Detention Standards 2011*, U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT 233 (2011).

⁸³ Dana Priest & Amy Goldstein, "System of Neglect", May 8, 2008, available at http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d1p1.html

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ UN Human Rights Committee (HRC), *Consideration of reports submitted by States parties under article 40 of the Covenant : International Covenant on Civil and Political Rights : concluding observations of the Human Rights Committee : United States of America*, 15 September 2006, CCPR/C/USA/CO/3, available at <http://www.unhcr.org/refworld/docid/45c30bb20.html>.

⁸⁹ *Hui v. Castaneda*, 130 S. Ct. 1845, 1849 (2010).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

cancer because penile cancer “confined to the penis” has an 85% 5-year survival rate.⁹⁷ However, his cancer was left untreated and it metastasized in his groin, “lymph nodes and throughout [the rest of] his body.”⁹⁸ In such cases, penile cancer is devastating: the 5-year survival rate for penile cancer that has spread throughout the body is only about 11%.⁹⁹ In 2011, after over three years of litigation, the federal government agreed to pay Castaneda’s family \$1.95 million.¹⁰⁰

4.B4 Medical personnel, guards, and other important gatekeepers routinely cause medical care to be delayed or denied altogether by refusing to pass along/investigate detainees’ medical complaints. One woman went blind for fifteen days because of untreated diabetes. Despite “many sick calls” over the two weeks her blood sugar was so high that she was “about to go into a diabetic coma or have a heart attack.”¹⁰¹ A cellmate cried for help when Yusuf Osman collapsed onto the floor of his cell from chest pains. Before going on lunch break, the guard notified the clinic nurse and, without investigating, she “decided there was no emergency” because his medical file was blank. Another guard notified the nurse, who then requested he be brought to the clinic. It took 40-minutes for guards to bring him a wheelchair to remove him from his cell. Soon after paramedics arrived Yusuf Osman, a U.S. legal resident from Ghana, died on June 27, 2006 at the age of 34. The immigration detention facility’s medical staff “knew his care was deficient.” On Page 3 of an internal review of his death is this question: “Did patient receive appropriate and adequate health care consistent with community standards during his/her detention . . . ? [The detention facility]’s medical director, Esther Hui,¹⁰² checked ‘No.’”¹⁰³

1. Disparate Care for Women

4.A.1-1 Women in immigration detention particularly face “delays in getting requested medical attention, compromised doctor-patient relationships, unnecessary use of restraints and strip searches, interruptions in care, [and] unwarranted denials of testing and treatment.”¹⁰⁴ The UN Human Rights Committee noted its concern of the frequent occurrence of seriously inadequate medical treatment in detention centers, including shackling pregnant women.¹⁰⁵ One pregnant woman in detention had both of her hands shackled to the bed while

⁹⁷ *Survival Rates for Penile Cancer*, AMERICAN CANCER SOCIETY (Last Medical Review on May 2, 2012), <http://www.cancer.org/cancer/penilecancer/detailedguide/penile-cancer-survival-rates>.

⁹⁸ *Castaneda v. U.S.*, 546 F.3d 682, 686 (9th Cir. 2008) *reversed on other grounds by* *Hui v. Castaneda*, 130 S. Ct. 1845 (2010).

⁹⁹ *Survival Rates for Penile Cancer*, AMERICAN CANCER SOCIETY (Last Medical Review on May 2, 2012), <http://www.cancer.org/cancer/penilecancer/detailedguide/penile-cancer-survival-rates>.

¹⁰⁰ Adele P. Kimmel, *Reforming Immigration Detention Health Care Standards Through the Courts: The Legacy of Francisco Castaneda*, PUBLIC JUSTICE (last accessed Oct. 31, 2012), <http://publicjustice.net/content/reforming-immigration-detention-health-care-standards-through-courts-legacy-francisco-cast-0>; Editorial, *Obama’s Moral Obligation to Detainees Regardless of Immigration Status*, L.A. TIMES (Apr. 8, 2011), <http://articles.latimes.com/2011/apr/08/opinion/la-ed-detention-20110408>.

¹⁰¹ *Id.*

¹⁰² Esther Hui is the same medical director who denied treatment to Francisco Castaneda.

¹⁰³ *Supra*, note 84.

¹⁰⁴ Human Rights Watch, “Detained and Dismissed: Women’s Struggles to Obtain Health Care in United States Immigration Detention”, March 17, 2009, *available at* http://www.hrw.org/sites/default/files/reports/wrd0309web_1.pdf. Unless otherwise indicated, information in the following paragraphs is drawn from this report.

¹⁰⁵ UN Human Rights Committee (HRC), *Consideration of reports submitted by States parties under article 40 of the Covenant : International Covenant on Civil and Political Rights : concluding observations of the Human Rights*

she was giving birth. She begged the sheriff to no avail, “[p]lease let me free – at least one hand.”¹⁰⁶ Then, this same woman was denied her prescribed breast pump, which caused her “great pain” after she gave birth.¹⁰⁷ Furthermore, in another immigration atrocity, a nursing mother was allegedly prohibited from holding or nursing her baby for “almost seventy days.”¹⁰⁸ These are not isolated incidents.¹⁰⁹ Federal prisons and Immigration and Customs Enforcement (“ICE”) allegedly do not permit “shackling of pregnant inmates during the birthing process,” but these women are often placed on “detainer,” which puts them in the custody of state and local authorities.¹¹⁰ State laws vary regarding shackling of pregnant women, and only a few specifically prohibit it.¹¹¹

4.A.1-2 Women in immigration detention are not guaranteed routine gynecological care, cannot count on receiving pap smears (which have a 90% success rate in detecting cervical cancer risk), have difficulty obtaining enough sanitary pads during menstruation, and are not provided with routine screening for breast cancer—the leading cause of cancer death among women.¹¹² Several women have reported being told to drink water for a range of conditions, including intense menstrual cramping.¹¹³

2. Disparate Care for Inmates with Mental Illnesses

4.A.2-1 Detainees with mental illness can expect an even lower standard of care. In 2008, officials estimated that 15% of detainees, approximately 4,500 individuals, suffered from mental illness.¹¹⁴ The ratio of staff to mentally ill detainees is approximately 1 to 1,142, as opposed to 1 to 400 in prisons and 1 to 10 in prisons for the mentally ill. Furthermore, doctors and nurses have trouble detecting mental illness and even more trouble successfully treating or managing it in detention.¹¹⁵

4.A.2-2 In detention, individuals at risk of suicide may be ignored or sent to solitary confinement. Hassiba Belbachir, a 27-year old Algerian woman, committed suicide by

Committee : United States of America, 15 September 2006, CCPR/C/USA/CO/3, available at <http://www.unhcr.org/refworld/docid/45c30bb20.html>.

¹⁰⁶ *Undocumented Women Forced to Give Birth While Shackled And In Police Custody*, HUFFINGTON POST (Sept. 21, 2011 8:39AM), http://www.huffingtonpost.com/2011/09/20/undocumented-pregnant-woman-gives-birth-in-shackles_n_971955.html.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See, e.g., http://abcnews.go.com/ABC_Univision/News/woman-shackled-giving-birth-states/story?id=17436798#.UJHUUe0oN8w; http://colorlines.com/archives/2011/10/shackling_women_in_prison_during_childbirth.html; <http://www.npr.org/templates/story/story.php?storyId=128563037>;

¹¹⁰ Abby Keane, *State Birth-Shackling Laws Cause Controversy*, IMMIGRATION DIRECT (Oct. 14, 2012 4:03PM), <http://www.immigrationdirect.com/immigration-news/immigration/state-birth-shackling-laws-cause-controversy/index.html>.

¹¹¹ New America Media, *Nationwide, states move to ban Shackling*, available at

<http://newamericamedia.org/2012/02/nationwide-states-move-to-ban-shackling.php>

¹¹² Dana Priest & Amy Goldstein, *Suicides Point to Gaps in Treatment*, WASHINGTON POST, May 13, 2008, available at http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d3p1.html.

¹¹³ Meghan Road, *Immigration Detention Reform, a Matter of Life and Death*, May 11, 2011, available at <http://www.rhrealitycheck.org/blog/2011/05/03/immigration-detention-reformmatter-life-death>.

¹¹⁴ Dana Priest & Amy Goldstein, *Suicides Point to Gaps in Treatment*, WASHINGTON POST, May 13, 2008, available at http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d3p1.html.

¹¹⁵ *Id.*

strangling herself with her socks.¹¹⁶ It was her second suicide attempt while in custody. Four days before she died, following a panic attack, Ms. Belbachir informed a social worker that she wanted to die, and told her that “[d]eath is dripping, drop by drop.” She was not placed on suicide watch. A guard saw her on the floor of her cell after she choked herself, but did not open the door until mealtime.¹¹⁷

4.A.2-3 Jose Lupez-Gregorio strangled himself with a bedsheet. Days earlier, the psychologist at his detention center overruled the staff’s decision to place Mr. Lupez-Gregorio on suicide watch. Moreover, even detainees who are granted suicide prevention care may not receive it. Geovanny Garcia-Mejia, a 27-year old Honduran, “wrote notes in blood on his Texas cell floor and hanged himself from a ventilation grate while supposedly under 15-minute checks around the clock.” Upon an internal review of his death, the facility’s sheriff noted that “[i]t goes without saying that the incident could have been avoided.”¹¹⁸

C. *Failure to Provide Redress for Immigration Detention Violations of ICCPR*

4.C1 The immigration detainees of the United States are lost in a “legal black hole.”¹¹⁹ Detention standards in the United States are non-binding and are well below international human rights standards. An immigration detainee can be held in a detention center indefinitely and as a result, immigrants are often detained for weeks, months, or even years before their final removal hearing.¹²⁰ This problem is exacerbated because a detainee has an extremely limited ability to obtain a meaningful investigation of his complaints.

4.C2 Because immigrant detainees are held in civil, not criminal, detention, they are not afforded the right to counsel under the U.S. Constitution.¹²¹ However, even if they could hire an attorney or find one pro bono, there are sometimes-insurmountable obstacles to contact anyone outside the detention facility. Unlike federal prisoners immigrant detainees have no access to e-mail.¹²² The National Immigration Project recommends immigrants to “[m]emorize the telephone number of [their] attorney”¹²³ but other problems hamper telephone calls. In Wisconsin, a Thai detainee—who was repeatedly sexually assaulted despite pleas to the guards—was unable to safely contact her attorney because the phone was not private and she feared retribution from her assaulters.¹²⁴ At the Illinois detention facility in Boone County

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Dana O’Day-Senior, *The Forgotten Frontier? Healthcare for Transgender Detainees in Immigration and Customs Enforcement Detention*, 60 HASTINGS L.J. 453, 456 (2008).

¹²⁰ The Constitution Project. *Recommendations for Reforming our Immigration Detention System and Promoting Access to Counsel in Immigration Proceedings*, at 13 (December 2009), available at <http://www.constitutionproject.org/pdf/359.pdf>.

¹²¹ Gretchen Gavett, *What Are Immigration Detainees’ Legal Rights?*, PBS (Oct. 18, 2011), <http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/what-are-immigration-detainees-legal-rights/>.

¹²² Transcript of Senate Judiciary Committee Hearing on Oversight of the Homeland Security Department, 40-41 (Apr. 25, 2012), available at

http://www.micevhill.com/attachments/immigration_documents/hosted_documents/112th_congress/TranscriptOfSenateJudiciaryCommitteeHearingOnOversightOfDHS.pdf.

¹²³ <http://www.nationalimmigrationproject.org/community/Detention%20-%20Know%20Your%20Rights%20-%20English.pdf>.

¹²⁴ See *supra* note 78 and accompanying text.

detainees said it was “almost impossible to contact attorneys.”¹²⁵ Illinois’ U.S. Senator Dick Durbin personally visited the Illinois Tri-County Detention Center where something “very basic . . . caught [his] attention, and that was lack of access to the telephone.” On his visit, Senator Durbin attempted to use the phones to make a local call but they did not work, and he reported that when they did allegedly work the cost was upwards of \$1 to \$2 per minute, a significant price for very poor detainees.¹²⁶

4.C3 In an effort to correct this problem, ICE recently promulgated a new set of guidelines applicable to all facilities housing ICE detainees.¹²⁷ However, these guidelines remain non-binding, unenforceable in court, and unenforced in practice. Furthermore, at the time of this writing no facility had even agreed to the new guidelines; they are not implemented anywhere in the immigration detention system. The Jefferson County Jail in Mt. Vernon, Illinois (“JCJ”) is an unfortunate example of how loosely the aforementioned regulations are enforced: inmates at JCJ report receiving a hot meal only once every two weeks, the mentally ill pay for their own care, detainees are forced to pay for basic hygiene items, and it was rated deficient by ICE in 2007, 2008, and 2009. Still, JCJ’s contract was renewed in 2009.¹²⁸ Recently, ICE removed its detainees from Jefferson County Jail following the resignation of the facility’s senior medical staff. ICE did not, however, cancel its contract with the jail, instead describing the removal as temporary, “until the medical staffing levels at Jefferson County can be resolved, and to ensure that all ICE detainees receive timely and appropriate medical treatment.”¹²⁹

4.C4 With regard to inmate/detainee complaints, the ICE guidelines prevent detainees from obtaining an independent investigation of rights violations.¹³⁰ Detainees are urged to resolve the issues informally. If that fails, detainees may file a written grievance with an on-site officer. Then, if the issue remains unsolved, the detainee may write to the particular officer’s supervisor. Finally, as a last gasp, a detainee may write to ICE headquarters if the issue still remains unsolved. After receiving a complaint, an officer is required to respond to it in writing, but she is not required to perform an investigation of the complaint. Furthermore, a detainee does not have access to judicial review of a final decision on his complaint.

4.C5 Moreover, unlike inmates in the prison system, detainees are not protected against sexual assault. In 2003, Congress passed the Prison Rape Elimination Act (“PREA”) to combat the epidemic of sexual violence in detention centers across the United States, and amongst other things, it required sexual violence regulations to be in place by 2010 – no regulations were adopted until 2012. Furthermore, when the regulations were finally promulgated, immigration detention centers were excluded. The Department of Homeland Security received an additional 360-day extension for creating appropriate rules applicable to immigration detainees.

¹²⁵ *Problems Persist at Three Immigrant Jails in Ill.*, DAILY HERALD (Dec. 12, 2011), available at <http://www.dailyherald.com/article/20111212/news/712129875/print/>.

¹²⁶ See *supra* note 122.

¹²⁷ See Immigration and Customs Enforcement, 2011 Operations Manual ICE Performance-Based National Detention Standards (PBNDS), available at <http://www.ice.gov/detention-standards/2011/>. It is also important to note that previous guidelines issued by ICE applied only to the facilities operated directly by ICE, which meant the previous guidelines were not widely applicable.

¹²⁸ *Not too Late for Reform*, National Immigrant Justice Center and the Midwest Coalition for Human Rights, December 2011, available at <http://goo.gl/nVILz>.

¹²⁹ Rorye O’Connor, *ICE Detainees Withdrawn from Jail*, (6 December 2012), available at <http://register-news.com/local/x942844335/ICE-detainees-withdrawn-from-jail>.

¹³⁰ See ICE, *PBNDS 2011 – 6.2 Grievance System*, Department of Homeland Security, available at <http://goo.gl/U5W1R>. Unless otherwise indicated, information in this paragraph is drawn from this document.

V. Chicago Police Torture and U.S. Violation of ICCPR

5.1 The United States has failed in its obligation to prevent the Chicago Police Department (“CPD”) from committing systematic torture and the United States has violated its duty to ensure accountability and provide redress for the victims. Some of the CPD’s victims have had their liberty restored, and a few have received reparations *via* civil rights lawsuits they brought,¹³¹ but many remain behind bars and vast majority of victims have never received any compensation from state actors, including, the City of Chicago, the State of Illinois and the United States.

A. Failure to Prevent Chicago Police Torture

5.A1 Jon Burge, a former Commander of the CPD, and his detectives systematically tortured at least 110 African American men and women from 1972 to 1991.¹³² Although state, local, and federal authorities were aware of credible evidence of the torture, they did nothing to prevent it.¹³³ Burge and other white detectives forced confessions from victims with severe beatings, suffocation with plastic bags, and electrical shocks with a hand-cranked possibly homemade generator, a cattle prod,¹³⁴ and a high-voltage, high-frequency “wand” used to test neon signs.¹³⁵ Burge and the detectives under his command used these devices to electrically shock victims all over their bodies, including on victims’ genitals¹³⁶ and in their mouths¹³⁷ and rectums.¹³⁸ Burge’s victims were not just adults—in a recent class action complaint, Johnnie Plummer alleges that at age fifteen Burge’s detectives forced a murder confession from him after beating him with a flashlight.¹³⁹ And, at age thirteen Burge and his detectives used electroshock

¹³¹ To date, a total of \$53.6 million has been paid to exonerated victims. Starla Muhammad, *Police Torture Panel Shuts Down but what About Victims?* (Aug. 3, 2012, 7:03 p.m.)

http://www.finalcall.com/artman/publish/National_News_2/article_9084.shtml.

¹³² CHICAGO JUSTICE MEMORIALS, <http://chicagotorture.org/history/> (last visited May 1, 2012).

¹³³ Joey Mogul, *The Chicago Police Torture Cases: 1972 to 2011*, THE PEOPLE’S LAW OFFICE *passim*.

¹³⁴ Pulitzer Prize winning journalist Austin Wehrwein tested a cattle prod similar to those used on civil rights protesters in the early 1960s. It delivered a shock “as strong as that from a home electric socket” that “made him jump.” The shock left “painful marks on the palm that lasted more than half an hour” and left a “slight ache” in his arm. Austin C. Wehrwein, “Prod Used in South ‘Makes You Jump,’” N.Y. TIMES at 10 (June 22, 1963).

¹³⁵ John Conroy, *The Mysterious Third Device*, CHICAGO READER (Feb. 4, 2005), available at <http://www.chicagoreader.com/chicago/tools-of-torture/Content?oid=917876>.

¹³⁶ See, e.g., Affidavit of Darrell Cannon, State of Illinois v. Darrell Cannon, No. 83-11830 (June 8, 1985), at P000006-7, available at http://chicagotorture.org/files/2012/03/17/Darrell_Cannon_Affidavit_and_Drawings.pdf (“The officer with the electric cattle prod was sticking it to my penis and testicles while my pant[s] and shorts were pull[ed] down around my ankles, and he kept his feet on top of mine just as the other officer[s] were doing so I wouldn’t be able to kick my legs . . .”).

¹³⁷ See, e.g., Brief of the Plaintiff-Appellant, Darrell Cannon, Cannon v. Burge et al., No. 12-1529 (7th Cir., filed Aug. 8, 2012), available at <http://peopleslawoffice.com/wp-content/uploads/2012/02/Darrell-Cannon-Brief.pdf> (“At the [Chicago Police] auto pound, the defendants . . . instead of ramming the gun into his mouth shoved in the cattle prod.”).

¹³⁸ John Conroy, *The Mysterious Third Device*, CHICAGO READER (Feb. 4, 2005), available at <http://www.chicagoreader.com/chicago/tools-of-torture/Content?oid=917876>.

¹³⁹ Mr. Plummer remains incarcerated to this day based on his confession in 1991. Notice of Hearing, *Class Action Petition for Relief Under the Post-Conviction Hearing Act*, Circuit Court of Cook County Nos. 91 CR 21451, 84 C 01010801, at 8 (Oct. 16, 2012), available at <http://peopleslawoffice.com/wp-content/uploads/2012/10/Class-Action-Petition-for-the-Still-Incarcerated-Burge-Victims.pdf>.

to torture Marcus Wiggins and compel a confession.¹⁴⁰ According to the testimony of just one of the 110 victims:

[Burge] put some handcuffs on my ankles, then he took one wire and put it on my ankles, he took the other wire and put it behind my back, on the handcuffs behind my back. Then after that . . . he went and got a plastic bag, put it over my head, and he told me, don't bite through it. I thought, man, you ain't fixing to put this on my head, so I bit through it. So he went back and got another bag and put it on my head [over the first bag] and he twisted it. When he twisted it, it cut my air off and I started shaking, but I'm still breathing because I'm trying to suck it in where I could bite this one, but I couldn't because the other bag was there and kept me from biting through it. So then he hit me with the voltage. When he hit me with the voltage, that's when I started gritting, crying, hollering . . . It felt like a thousand needles going through my body. And then after that, it just feel like, you know – it feel like something just burning me from the inside, and um, I shook, I gritted, I hollered, then I passed out.¹⁴¹

5.A2 Anthony Holmes, who provided the statement above, was one of the first of Burge's victims in Burge's nineteen-year string of systematic torture, and Mr. Holmes went through several rounds of torture before he was finally coerced to confess.¹⁴² Judge Lefkow, who delivered Burge's sentence for obstruction of justice and perjury, called Mr. Holmes' testimony "particularly moving," especially Mr. Holmes' testimony that he "remember[ed] looking around the room at the other officers, and [thinking] one of them would say 'that's enough,' but they didn't."¹⁴³ There is little dispute that these acts happened as described. No less than eleven court cases "have found or noted the practice of torture by Burge and his men."¹⁴⁴ In 1990, the Office of Professional Standards, an agency of the Chicago Police Department that oversees police misconduct, released a study of over fifty of the alleged torture cases from 1972 to 1985 and found that "the preponderance of the evidence [showed] that abuse did occur and that it was systematic."¹⁴⁵ The report further found: "The number of incidents in which [a police command member] is identified . . . lead[s] to only one conclusion. Particular command members were

¹⁴⁰ After officers hooked two electrical leads onto his hands and began to shock him, Mr. Wiggins testified the following during a deposition: "[M]y hands started burning, feeling like it was being burned. I was – I was shaking and my – and my jaws got tight and my eyes felt they went blank . . . It was like I was spinning . . . It felt like my jaws was like – they was – I can't say the word. It was like my jaws was sucking in . . . I felt like I was going to die." See *Human Rights at Home; The Chicago Police Torture Archive*, UNIVERSITY OF CHICAGO HUMAN RIGHTS PROGRAM, <http://humanrights.uchicago.edu/chicagotorture/victimstatements.shtml> (last accessed Oct. 29, 2012) (quoting from a deposition taken as part of *Wiggins v. Burge*, 173 F.R.D. 226 (N.D. Ill. 1997)).

¹⁴¹ *Statement to Special Prosecutors by Torture Victim Anthony Holmes*, REPORT ON THE FAILURE OF SPECIAL PROSECUTORS EDWARD J. EGAN AND ROBERT D. BOYLE TO FAIRLY INVESTIGATE SYSTEMIC POLICE TORTURE IN CHICAGO 1 (2007) [Hereinafter: REPORT ON THE FAILURE OF SPECIAL PROSECUTORS].

¹⁴² *Id.* at 49.

¹⁴³ G. Flint Taylor, *Judge Sentences Chicago Police Commander Jon Burge in Torture Case*, 10 POLICE MISCONDUCT AND CIVIL RIGHTS L. REPORT 1, 6 (2011).

¹⁴⁴ IN THE SHADOWS OF THE WAR ON TERROR: PERSISTENT POLICE BRUTALITY AND ABUSE OF PEOPLE OF COLOR IN THE UNITED STATES 8 n.23 (2007).

¹⁴⁵ GOLDSTON-SANDERS REPORT 3 (1990), available at <http://humanrights.uchicago.edu/chicagotorture/torturebypolice/GoldstonSanders.pdf>.

aware of the systematic abuse and perpetuated it either by actively participating . . . or failing to take any action to . . . end [it].”¹⁴⁶ This same report “led to [Burge’s] firing in 1993.”¹⁴⁷

5.A3 The African-American population of Chicago targeted by Burge and his detectives was particularly vulnerable. Burge and his detectives operated in the South Side of Chicago, an area characterized by a predominately impoverished minority African-American population in the 1980s and 1990s.¹⁴⁸ One adult victim, Andrew Wilson, grew up in Chicago without ever graduating elementary school; he could not read, and he could barely write.¹⁴⁹ There is strong evidence that Burge’s tactics were racially motivated, and designed to take advantage of the existing vulnerabilities of the targeted group of poor African-Americans: Burge referred to many of his victims as “niggers,” called one of his electroshock torture device a “nigger box,” and threatened lynchings¹⁵⁰—an American term for a racially motivated extrajudicial execution of an African-American by a white vigilante mob. Burge further exploited his class and race over his victims by saying things like: “Who are people going to believe – a ‘nigger’ like you or a copy like me.”¹⁵¹ Despite the egregiousness and scope of the CPD’s torture, the state, local and federal governments made little effort, if any, to prevent the violations.

5.A4 Over the years, officials at the local and federal level refused to take action to stop the abuse in spite of concrete and credible evidence that torture was taking place.¹⁵² Until 2008, no one from the Chicago Police District was ever criminally charged for the nineteen years of systematic torture, despite repeated complaints from victims throughout this period of abuse.¹⁵³

5.A5 The Police Superintendent Richard Brzezczek and State’s Attorney and future mayor Richard M. Daley were notified in 1982 about torture under the direction of Jon Burge by a report detailing injuries sustained by victim Andrew Wilson.¹⁵⁴ Neither Brzezczek nor Daley took any action after being notified. The CPD’s Office of Professional Standards (“OPS”) dismissed Wilson’s claims in 1985 after failing to conduct an investigation.¹⁵⁵ During Daley’s time as the State’s Attorney, the State’s Attorney Office was aware of over 55 of the victim’s complaints of torture, yet the Office continued to use the coerced testimony in hearings and criminal trials to incarcerate victims for decades.¹⁵⁶

5.A6 In 1989, OPS reopened its investigation into Wilson’s torture allegations.¹⁵⁷ In 1990, OPS released its official report, recommending that Burge and other be terminated.¹⁵⁸ The

¹⁴⁶ *Id.*

¹⁴⁷ Don Terry, *Civilian Investigator of Burge Recalls the Excitement, but Now Feels Pity*, N.Y. TIMES (June 19, 2010).

¹⁴⁸ <http://tannerlectures.utah.edu/lectures/documents/Wilson95.pdf>;

<http://www4.uwm.edu/ced/publications/milwecon/chap4.cfm>; WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* (Chicago: University of Chicago Press, 1990); <http://www.lib.uchicago.edu/e/collections/maps/chiincpe.gif>

¹⁴⁹ John Conroy, *House of Screams*, CHICAGO READER (Jan. 25, 1990) (“Q: Are you able to read today? A: No. Q: Are you able to write? A: What I know how. . . . Q: Do you know how many words you know? A: It’s not that many.”).

¹⁵⁰ REPORT ON THE FAILURE OF SPECIAL PROSECUTORS, *supra* note 141 at 27-45.

¹⁵¹ *Supra* note 144 at 8.

¹⁵² *Id.*

¹⁵³ Joey Mogul, *The Chicago Police Torture Cases: 1972 to 2011*, THE PEOPLE’S LAW OFFICE 3.

¹⁵⁴ *Timeline*, HUMAN RIGHTS AT HOME: THE CHICAGO POLICE TORTURE ARCHIVE, (last visited March 25, 2012) <http://humanrights.uchicago.edu/chicagotorture/timeline.shtml>.

¹⁵⁵ HUMAN RIGHTS AT HOME: THE CHICAGO POLICE TORTURE ARCHIVE, *supra* note 154.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

report cited 50 cases of torture and abuse.¹⁵⁹ Burge was not fired from the police force until 1993.¹⁶⁰ Pressure from civil society led to the appointment of special prosecutors in 2002¹⁶¹; however, the prosecutors determined that the statute of limitations on the claims of torture had expired. Neither Burge nor the other officers involved in torturing victims were ever criminally prosecuted for their actual crimes of torture.¹⁶² It was only after the United Nations' Committee Against Torture called on the U.S. Government to bring the perpetrators to justice in 2006, that Burge was indicted for one count of perjury and two counts of obstruction of justice for the lies he told under oath that neither he or other detectives engaged in acts of torture. He was convicted on all three counts on June 28, 2010 and sentenced to four and half years in prison.¹⁶³ At Burge's sentencing hearing, torture survivors, family members, activists, attorneys and community members filled the courtroom. To date, only Burge has served any jail time for his role in the systematic torture, and no other perpetrator has ever been charged with any crime.

B. *Failure to Provide Redress and Accountability for Chicago Police Torture*

5.B1 Pursuant to Article 2, States Parties must address and investigate claims of violations of rights, and provide reparations to victims through means generally recognized in international law, including compensation, satisfaction, rehabilitation, restitution, public apologies, and guarantees of non-repetition.¹⁶⁴ Even after the Committee Against Torture specifically requested the United States to “promptly, thoroughly and impartially investigate all allegations of acts of torture”¹⁶⁵ the City of Chicago and the United States have made very little progress.

5.B2 State and federal officials have repeatedly failed provide redress over the course of the last 20 years. Burge was not fired from the CPD until 1993, and only then as a result of the 1982 beating of Andrew Wilson. In 2008, Burge was indicted for perjury and obstruction of justice charges relating to torture and physical abuse.¹⁶⁶ In 2011, he began serving a 4-½ year sentence at Butner Federal Correctional Complex in North Carolina on obstruction of justice and

¹⁵⁸ Micheal Goldston & Francine Sanders, *Special Report*, GOLDSTON-SANDERS REPORT (1990), available at <http://humanrights.uchicago.edu/chicagotorture/torturebypolice/GoldstonSanders.pdf>

¹⁵⁹ HUMAN RIGHTS AT HOME: THE CHICAGO POLICE TORTURE ARCHIVE, *supra* note 154.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Edward J. Egan & Robert D. Boyle, *Report of the Special State's Attorney*, CHICAGO JUSTICE PROJECT, 18 (2006) available at http://chicagojustice.org/foi/relevant-documents-of-interest/report-of-the-special-states-attorney-critique-of-that-report/s_report_section_a.pdf.

¹⁶³ William Lee and Matthew Walberg, *Burge Found Guilty*, CHICAGO TRIBUNE, (June 28, 2010) available at http://articles.chicagotribune.com/2010-06-28/news/ct-met-burge-trial-0629-20100628_1_burge-chicago-police-cmdr-special-cook-county-prosecutors.

¹⁶⁴ UN International Covenant on Civil and General Political Rights, *CCPR General Comment No. 31 [80]: Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (May 26, 2004) <http://www.unhchr.ch/tbs/doc.nsf/0/58f5d4646e861359c1256ff600533f5f?Opendocument>.

¹⁶⁵ COMMITTEE AGAINST TORTURE, REPORT OF THE COMMITTEE AGAINST TORTURE § 25, p. 71-72 (2006), A/61/44.

¹⁶⁶ *U.S. Indicts Former Chicago Police Cmdr. On Perjury, Obstruction of Justice Charges Related to Alleged Torture and Physical Abuse*, DEPARTMENT OF JUSTICE, (Oct. 28, 2008), <http://www.justice.gov/opa/pr/2008/October/08-crt-938.html>.

perjury charges.¹⁶⁷ Neither City of Chicago nor Burge have ever issued an apology for in the torture that took place in Burge's precinct.¹⁶⁸

5.B3 Undoubtedly, some progress has been made on this issue, but not enough to meet the standards of the ICCPR. Current Illinois Governor Pat Quinn created the Illinois Torture Inquiry and Relief Commission in 2010.¹⁶⁹ The State gave the commission the task of reviewing torture claims, with priority given to allegations by individuals who are currently incarcerated.¹⁷⁰ Commissioners can collect evidence of torture and recommend to trial court judges that the cases be reopened.¹⁷¹ Although this effort was commendable, the commission was defunded and disbanded in late summer 2012.¹⁷² Recently, the Illinois Supreme Court appointed counsel for torture victim Stanley Wrice in order for his appeal to continue.¹⁷³ This ruling may allow Wrice and other alleged victims to receive new trials.¹⁷⁴ Wrice, however, still faces vigorous objections from state special prosecutors set on keeping him imprisoned even after a tortured confession and after the "only living witness [against Wrice] recanted his testimony" and "two of the actual perpetrators said Wrice was not involved."¹⁷⁵

5.B4 In 2010, Governor Pat Quinn abolished the death penalty in the State of Illinois¹⁷⁶ and in 2011 the City of Chicago's Committee on Human Relations approved a resolution declaring Chicago a "torture-free zone" a purely symbolic measure.¹⁷⁷ But to date, there have only been 16 successful civil rights lawsuits brought in U.S. courts by the torture victims themselves, out of more than 100 of Burge's identified victims.¹⁷⁸ And while former Governor George Ryan pardoned four incarcerated torture victims awaiting state execution,¹⁷⁹ and altogether thirteen of the torture survivors have been exonerated, dozens of victims are still incarcerated based on tortured confessions,¹⁸⁰ and at least fifteen alleged torture victims are currently waiting in prison for their chance at new, fair trials.¹⁸¹

¹⁶⁷ *Report: Emmanuel Could Pay Alleged Torture Victims*, ABC LOCAL, (Aug. 16, 2011), available at <http://abclocal.go.com/wls/story?section=news/local&id=8309107>.

¹⁶⁸ Joey Mogul, *supra* note 133.

¹⁶⁹ Karen Hawkins, *State Torture Panel Strapped for Cash*, THE DAILY CHRONICLE, <http://www.daily-chronicle.com/2012/02/07/state-torture-panel-strapped-for-cash/ak0rcmd/>.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² G. Flint Taylor, *The Illinois Torture Inquiry and Relief Commission – Defunded but Not Forgotten*, (Sept. 25, 2012, 11:43 a.m.) http://www.huffingtonpost.com/g-flint-taylor/illinois-torture-inquiry-relief-commission_b_1911108.html.

¹⁷³ The Associated Press, *Ill. Supreme Court Allows Torture Case to Proceed*, THE DAILY CHRONICLE, <http://www.daily-chronicle.com/mobile/article.xml/articles/2012/02/02/36123299/index.xml>.

¹⁷⁴ *Id.*

¹⁷⁵ David Protes, *What Does Stuart Nudelman Have Against Police Torture Victims?*, HUFFINGTON POST (Oct. 22, 2012), http://www.huffingtonpost.com/david-protes/stanley-wrice-case_b_1992440.html.

¹⁷⁶ The Associated Press, *Ill. Supreme Court Allows Torture Case to Proceed*, THE DAILY CAMPUS, (Feb. 23, 2012), <http://www.daily-chronicle.com/2012/02/02/ill-supreme-court-allows-torture-case-to-proceed/a39k8lr/>.

¹⁷⁷ *Chicago City Council Committee Approves Anti-Torture Resolution*, THE HUFFINGTON POST, http://www.huffingtonpost.com/2012/01/13/chicago-city-council-comm_n_1204596.html.

¹⁷⁸ Ted Pearson, *Burge Sentence – Justice Still Delayed and Denied*, Chicago Alliance Against Racist and Political Repression, <http://www.naarpr.org/node/33>.

¹⁷⁹ *Alleged Burge Torture Victim Going Free After 25 Years*, CBS CHICAGO, (May 16, 2012) <http://chicago.cbslocal.com/2011/03/16/alleged-burge-torture-victim-going-free-after-25-years/>.

¹⁸⁰ Illinois Public Media, *Burge Torture Victims Still Behind Bars* (Oct. 17, 2012), <http://will.illinois.edu/news/spotstory/burge-torture-victims-still-behind-bars/>.

¹⁸¹ David Protes, *Guilty Until Proven Innocent*, HUFFINGTON POST (Oct. 17, 2011), http://www.huffingtonpost.com/david-protes/illinois-wrongful-conviction-restitution_b_1014368.html.

5.B5 The vast majority of the victims are unable to get any redress whatsoever because the statute of limitations has expired on any civil rights lawsuits they could have potentially brought. For example, the U.S. Government now accepts that Anthony Holmes was tortured by Burge as exemplified by its decision to call him to testify against Burge in their prosecution of him. However, Mr. Holmes has never received and financial compensation, psychological counseling or other redress to ameliorate the pain, mental distress, and on-going harm he continues to suffer from his tortured interrogation.

5.B6 The City of Chicago, the United States and the State of Illinois have not provided any rehabilitation or restitution to the Burge torture victims; reparation is a standard practice for other international regimes and a requirement under Article 2. From 1996 to 2008 the Chilean government established a specialized health care program for survivors of the Pinochet regime.¹⁸² The Philippines has had a standing Victims Compensation Board of Claims since 1992 for victims “unjustly accused[,] convicted and imprisoned.”¹⁸³ Morocco maintains a National Human Rights Council,¹⁸⁴ and although enforcement may be imperfect, Morocco has levied civil, criminal, and administrative penalties against state agents¹⁸⁵ accused of torture and provided restitution to hundreds of victims.¹⁸⁶ Not only has the United States failed its citizens in Chicago, but also it has further failed to appropriately redress the issue in a responsible way as practiced by the international community and as recognized by Article 2.

VI. Violation of ICCPR by Routine Police Officer Use of Electroshock

6.1 Article 16 of the Convention Against Torture requires that Party States “prevent in any territory under its jurisdictions acts of cruel, inhuman or degrading treatment or punishment . . . when such acts are committed by . . . a public official or other person acting in an official capacity.”¹⁸⁷ In a 2006 report, the Committee Against Torture expressed its concern that the United States is in violation of Article 16 because of the extensive use of electro-shock devices by law enforcement personnel in the United States.¹⁸⁸ The Committee recommended that the United States strictly regulate law enforcement use of electroshock devices.¹⁸⁹ Six years after the Committee’s recommendation, the United States is yet to enact any regulations that govern the use of electroshock devices.

A. Law Enforcement Policies Encourage Use of Electroshock Devices

6.A1 As of May 2011, more than 15,000 law enforcement and military agencies in the

¹⁸² *Reparations*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, <http://ictj.org/our-work/transitional-justice-issues/reparations> (last visited March 25, 2012).

¹⁸³ Republic of Philippines, Department of Justice, *Victims Compensation Board*, <http://www.doj.gov.ph/victims-compensation-program.html> (last accessed Nov. 12, 2012).

¹⁸⁴ <http://www.ccdh.org.ma/?lang=en>

¹⁸⁵ REDRESS, MOROCCO 11, <http://www.redress.org/downloads/country-reports/Morocco.pdf>

¹⁸⁶ *Id.* at 15.

¹⁸⁷ G.A. Res. 39/46, U.N. Doc. A/RES/39/46 (Dec. 10, 1984).

¹⁸⁸ Committee Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, United States of America*, CAT/C/USA/CO/2, ¶ 35 (2006), available at <http://www.state.gov/documents/organization/133838.pdf>.

¹⁸⁹ *Id.*

United States use electroshock devices.¹⁹⁰ The increase in the use of these devices directly coincides with the introduction of a new and more powerful generation of electroshock devices, commonly referred to as Tasers. A Taser is a handheld device that uses compressed nitrogen to fire two barbed darts up to a distance of ten meters at a speed of fifty meters per second.¹⁹¹ The barbed darts remain attached to the device by a set of insulated wires after the darts are fired.¹⁹² Once the darts make contact with an individual's body, "the Taser delivers an electrical impulse of 50,000 volts . . . resulting in immediate loss of the individual's neuromuscular control and ability to perform coordinated movements for the duration of the shock."¹⁹³ The electro-shock from a Taser causes severe pain to its victims, pain that rises to the level of torture. One law enforcement official described the feeling from a Taser shock as "the most excruciating pain anyone can feel."¹⁹⁴ Further, a reporter who volunteered to undergo a Taser shock stated that the shock felt "like someone reached into my body to rip my muscles apart with a fork."¹⁹⁵ It is important to note that these individuals were electro-shocked in a controlled setting. Therefore, for a person who is "unprepared for the unfamiliar sensation of being electrocuted and losing all motor control, the pain, fear, and emotional distress experienced is likely far greater than that experienced by researchers in a controlled setting."¹⁹⁶

6.A2 Human rights organizations claim that the mere possession of Tasers by police officers unnecessarily and disproportionately encourages their use. According to Amnesty International, from June 2001 to August 2008, more than 330 people in the United States died shortly after being electrocuted by police Tasers.¹⁹⁷ 299 of the 330 individuals were not armed when police shocked them with Tasers.¹⁹⁸ And while unarmed persons may under some circumstance present an immediate and serious physical threat to a police officer or other individuals, many of the 299 unarmed individuals who died as a result of being electro-shocked did not present such a threat.¹⁹⁹

6.A3 The number of fatalities is particularly troubling considering that Tasers were initially introduced as a nonlethal alternative to firearms. Advocates for the use of Tasers

¹⁹⁰ *Police Use of Force, Tasers and Other Less-Lethal Weapons*, U.S. DEP'T OF JUSTICE OFFICE OF JUSTICE PROGRAMS NAT'L INST. OF JUSTICE, 1 (May 2011), <https://www.ncjrs.gov/pdffiles1/nij/232215.pdf> [hereinafter *Police use of Force*].

¹⁹¹ Shaun H. Kedir, *Stunning Trends in Shocking Crimes: A Comprehensive Analysis of Taser Weapons*, 20 J.L. & Health 357, 361.

¹⁹² *Id.*

¹⁹³ *Id.* "It was . . . recently reported that nearly ten per cent of 41 Tasers tested in a study commissioned by the Canadian Broadcasting Corporation, delivered significantly more current than the manufacturer said was possible, underscoring the need for independent verification and testing of such devices." *Tasers—Potentially Lethal and Easy to Abuse*, Amnesty International (Dec. 16, 2008), <http://www.amnesty.org/en/news-and-updates/report/tasers-potentially-lethal-and-easy-abuse-20081216>.

¹⁹⁴ Bridgeport in Review, by Mayor John M. Fabrizi, 27 June 2007, referring to comments made by the Bridgeport Chief of Police Bryant T. Norwood, who had volunteered to be shocked the week before.

¹⁹⁵ 33 National Public Radio broadcast 1 April 2005, cited in *Stunning Trends in Shocking Crimes*, Journal of Law and Health, Cleveland State University. Vol 20:357, (2007).

¹⁹⁶ Aaron Sussman, *Shocking the Conscience: What Police Tasers and Weapon Technology Reveal About Excessive Force Law*, 59 UCLA L. Rev. 1342, 1354.

¹⁹⁷ *Id.* at 1. On February 13, 2012 the death toll from Tasers reached 500 in the United States. Suzanne Trimel, Amnesty International Urges Stricter Limits on Police Taser Use as U.S. Death Toll Reaches 500 (Feb. 15, 2012) <http://www.amnestyusa.org/news/press-releases/amnesty-international-urges-stricter-limits-on-police-taser-use-as-us-death-toll-reaches-500>

¹⁹⁸ *Id.* at 78.

¹⁹⁹ *Id.* at 23.

frequently argue that Tasers help defuse dangerous situations that might otherwise escalate to use of deadly force. In reality, however, this has not been the case. For instance, the Chicago Police Department experienced a 330 percent increase in Taser use from 2009 to 2011, using Tasers 195 times in 2009 and 840 times in 2011.²⁰⁰ During the same time period police shootings decreased by only 4.3 percent, with 114 police shootings in 2009 and 109 in 2011.²⁰¹

6.A4 Furthermore, Taser-related deaths increased during each year from 2002 to 2006: 12 people died as a result of being Taser-shocked in 2002, 16 people died in 2003, 48 people died in 2004, 66 people died in 2005, and 76 people died in 2006.²⁰² “In the large majority of cases, the deceased went into cardiac and/or respiratory arrest at the scene, shortly after being shocked, and could not be resuscitated although death was often pronounced later in [the] hospital.”²⁰³ Medical exams often conclude that Tasers are only a contributing factor in the victim’s death, and that death was caused by other factors such as drugs or heart disease.²⁰⁴ In the case of Ronald Hasse, however, the medical examiner concluded that the electro-shock was the primary cause of death after a police officer fatally Taser-shocked the victim for almost a full minute.²⁰⁵ According to the medical report, the fatal 57-second electroshock pushed the victim “over the edge.”²⁰⁶

6.A5 “The documented incidents of Taser use by police officers, even when death does not occur, [demonstrate] that Tasers are often used in situations that [do] not justify the use of these deadly devices.”²⁰⁷

- A police officer electrocuted Sandra Brown without warning after she refused to get off her telephone during a traffic stop.²⁰⁸ Brown did not pose a serious safety threat to the police officers and was not resisting arrest or attempting to flee.²⁰⁹
- A police officer in Mount Sterling, Ohio electroshocked a nine-year-old child after the child refused to go to school. The mayor of Mount Sterling suspended the entire police department after the mayor discovered that the police department tried to cover up the incident.²¹⁰
- A police officer repeatedly electrocuted Stan Kinder despite the fact that Kinder notified

²⁰⁰ Dan Hinkel & Alex Richards, Jolt of Reality: Shootings Persist as Chicago Police Taser use Skyrockets (July 20, 2012) http://articles.chicagotribune.com/2012-07-20/news/ct-met-chicago-tasers-20120720_1_tasers-man-claims-police-shootings

²⁰¹ *Id.*

²⁰² *List of Deaths Following use of Stun Weapons in US Law Enforcement June 2001 to 31 August 2008*, AMNESTY INTERNATIONAL, (2008), <http://www.amnesty.org/en/library/asset/AMR51/146/2008/en/a4e3aa10-cb62-11dd-9ec2-e57da9519f8c/amr511462008en.pdf>.

²⁰³ *Less than Lethal? The use of Stun Weapons in US Law Enforcement*, AMNESTY INTERNATIONAL, 8 (2008), <http://www.amnesty.org/en/library/asset/AMR51/010/2008/en/530be6d6-437e-4c77-851b-9e581197ccf6/amr510102008en.pdf> [hereinafter *Less than Lethal*].

²⁰⁴ *Id.*

²⁰⁵ Elizabeth Seals, *Police use of Tasers: The Truth is “Shocking”*, 38 Golden Gate U. L. Rev. 109, 115.

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 110.

²⁰⁸ *Brown v. City of Golden Valley*, 574 F.3d 491, 494 (8th Cir. 2009).

²⁰⁹ *Id.* 497.

²¹⁰ http://www.huffingtonpost.com/2012/03/11/mount-sterling-police-shut-down_n_1337953.html

the police officer that he had a heart condition.²¹¹ Kinder was not fleeing or resisting arrest at the time when the police officer electrocuted him.²¹²

- After a short foot pursuit, Nelson Roberts fell face-down into a snow bank and was restrained by a police officer. One of the police officers at the scene electroshocked Roberts repeatedly after Roberts was already restrained.²¹³

6.A6 Despite this trend in unnecessary and sometimes-fatal use of Tasers, the United States federal government has not enacted any regulations or standards that limit law enforcement usage of Tasers. Current federal law does not even restrict the sale, possession or use of Tasers by civilians.²¹⁴ Instead, the federal government defers the regulation of Tasers to state and local governments. Some Midwestern states limit the use, sale and possession of Tasers by civilians; however, with the exception of Minnesota, Midwestern states do not require law enforcement agencies to train police officers on how to use Tasers or regulate the circumstances in which officers may use Tasers.²¹⁵ This leaves many law enforcement agencies to regulate themselves—a problematic arrangement.

B. Individuals Are Routinely Shocked Whether or Not They Are a Threat

6.B1 According to the United States Department of Justice, Tasers are quickly surpassing other force alternatives.²¹⁶ For instance, “[Tasers] were used . . . four to five times more often than pepper spray among agencies that equipped officers with [Tasers] and were sometimes used at rates that exceeded empty-hand control.”²¹⁷ In other words, Tasers are often the preferred method of force for police officers. The popularity of Tasers among police officers and its ease of use, leads police officers to use Tasers unnecessarily and disproportionately.²¹⁸

6.B2 Since the United States has thus far not provided any standards or regulations that address the use of Tasers by law enforcement, police officers often have to rely on the use-of-force policies provided by their police departments. Use-of-force policies provide a set of guidelines regarding the amount of force police officers may use in a given situation.²¹⁹ A nationwide survey of approximately 500 law enforcement agencies in the United States indicates that under most use-of-force policies the threshold for Taser use by police officers is fairly minimal. Tasers are often used pre-emptively and under circumstances where other weapons such as firearms or chemical agents are not an option.²²⁰ Amnesty International reports that police officers have used Tasers against persons who are verbally disruptive or who tense or pull

²¹¹ Kinder v. Gas City Police Dep’t, No. 1:10cv457 JD., 2011 WL 781478, at *3(N.D. Ind. Feb. 28, 2011).

²¹² *Id.*

²¹³ Roberts v. Manigold, 240 Fed.Appx. 675, 676 (6th Cir. 2007).

²¹⁴ 18 U.S.C. § 44 (2006). The barbed darts are discharged by nitrogen instead of gunpowder. Therefore, the federal firearms laws do not apply to CEDs.

²¹⁵ See Minn. Stat. § 326.3361(2) (mandating that law enforcement agencies in Minnesota adopt model policy on use of force that is the same as or very similar to the model policy provided by the Minnesota Board of Peace Officer Standards).

²¹⁶ *Police use of Force*, *supra* note 190, at 15.

²¹⁷ *Id.*

²¹⁸ See *id.* (explaining that ease of use and popularity of Tasers may lead police officers to overuse Tasers).

²¹⁹ *Id.* at 5.

²²⁰ *Less than Lethal*, *supra* note 203, at 9.

away from police officers while being placed in handcuffs.²²¹ Using Tasers on individuals in such circumstances is clearly not in proportion to the threat posed by the subjects. This is contrary to international standards requiring law enforcement personnel to apply force in proportion to the threat posed by a person and amounts to cruel, inhuman or degrading treatment or torture.²²² Despite this, in many such cases police officers acted within their departments' policies.²²³

6.B3 What is perhaps even more troubling is the fact that most use-of-force policies do not adequately address the use of Tasers on vulnerable populations such as pregnant women, children and elderly people.²²⁴ With regard to using Tasers on pregnant women, it is not yet clear whether the actual Taser shock can cause injury or death to a fetus. What is clear, however, is that the electro-shock from the Taser may cause a pregnant woman to fall and subsequently lead to serious injuries or death to the fetus and woman. Despite the significant risks associated with using Tasers on pregnant women, only 31 percent of law enforcement agencies in the United States prohibit the use of Tasers on visibly pregnant women.²²⁵ Furthermore, only 23.3 percent of law enforcement agencies prohibit the use of Tasers against individuals that are restrained.²²⁶ Under these circumstances, it is clear that police officers use the Tasers as pain compliance tools or as torture instruments because restrained individuals are generally incapable of presenting an immediate or serious threat to police officers or other individuals. Moreover, only 10 percent of use-of-force policies prohibit Taser use against elderly persons.²²⁷ This is troubling because the effects of Taser use on individuals other than normal healthy adults are still relatively unknown.²²⁸ Therefore, it is unclear whether the electro-shock from a Taser presents a greater threat of injury or death when used on elderly persons or children.

6.B4 These statistics indicate that use-of-force policies often allow police officers to use Tasers under circumstances where the risks of using Tasers outweigh any potential benefits of their use. Since use-of-force policies are inadequate to properly protect individuals—particularly vulnerable populations—against the unjustified use of Tasers, the United States must enact strict federal regulations to govern police use of these dangerous devices.

C. *Victims of Unwarranted Electric Shocks Are Denied Redress*

6.C1 As illustrated in the foregoing section, law enforcement personnel in the United States often utilize Tasers under circumstances that warrant a much lower degree of force. A person that has been subjected to excessive force by a police officer may file a civil claim under federal law 42 U.S.C. § 1983.²²⁹ In 1989 the United States Supreme Court established in *Graham v. M.S. Connor* that excessive force claims must be reviewed under the Fourth Amendment objective reasonableness standard.²³⁰ The essential issue in determining whether the amount of force used by a police officer is excessive requires a court to balance a person's

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Police use of Force*, *supra* note 190, at 6.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Less than Lethal*, *supra* note 203, at 29.

²²⁹ 42 U.S.C. § 1983.

²³⁰ *Graham v. M.S. Connor* 109 S.Ct. 1865, 1867 (1989).

interests under the Fourth Amendment with the government interest that is at stake at the time when the arrest is made.²³¹ A court must consider all relevant facts in making such a determination.²³²

6.C2 Taser-victims often face numerous challenges in obtaining relief under an excessive force claim. First, “excessive force cases are often expensive, but cases involving Tasers . . . require significant expenditures on expert witnesses from various disciplines.”²³³ Therefore, even if a Taser-victim has clearly been subjected to excessive force by a police officer, the victim may not be able to obtain relief due to the financial burdens associated with litigation. Second, Taser-victims often face pro-police/anti-suspect biases in court in addition to other biases, which make it substantially more difficult for Taser-victims to succeed in their excessive force claims.

6.C3 Furthermore, the outcome of Taser-related cases vary widely because the case law addressing the use of Tasers is still developing and courts in different jurisdictions often come to different conclusions.²³⁴ For instance, some federal circuit courts and district courts in the Midwestern states have added an additional element to the analysis articulated by the Supreme Court in *Graham*,²³⁵ where the victim must establish that the person has sustained an injury as a result of the police officers excessive force.²³⁶ These courts have “determined that a de minimis injury is insufficient to state a cause of action for excessive force under the Fourth Amendment.”²³⁷ In other words, the injury element sometimes requires allegations of long-term or permanent injury. Aside from leaving small puncture wounds from the dart’s embedding into a person’s skin, Tasers often leave no permanent injuries on a person.²³⁸ Therefore, the de minimis injury requirement raises the concern that courts may disregard the physical as well as the emotional harm a person suffers from the electro-shock. Furthermore, the de minimis injury requirement can create the incentive for a “judge, overwhelmed by a busy docket, to dismiss a case or grant summary judgment by relying on the arrestee’s lack of injury.”²³⁹

6.C4 Currently, federal courts in seven of the twelve Midwestern states analyze excessive force actions with the additional de minimis element,²⁴⁰ while the remaining five Midwestern states follow the approach set forth by the Supreme Court.²⁴¹ This lack of uniformity further reiterates the importance of enacting strict federal regulations that govern law enforcement use of electroshock devices. Such regulations would not only provide law

²³¹ *Id.* at 1871.

²³² *Id.*

²³³ shockin conscience 1380

²³⁴ *2011 Electronic Control Weapons Guidelines*, Police Executive Research Forum & U.S. Dep’t of Justice, 32 (March 2011), <http://www.policeforum.org/library/use-of-force/ECWguidelines2011.pdf>.

²³⁵ Douglas B. McKechnie, *Don’t Daze, Phase, or Lase me, Bro! Fourth Amendment Excessive-force Claims, Future Nonlethal Weapons, and why Requiring an Injury Cannot Withstand a Constitutional or Practical Challenge*, 60 U. Kan. L. Rev. 139, 186 (discussing how police in United States used electric batons to disperse crowds).

²³⁶ *Id.* See also *Cook v. City of Bella Villa*, 582 F. 3d 840, 850 (8th Cir. 2009) (explaining that a claimant must show some minimum level of injury under an excessive force claim).

²³⁷ Douglas B. McKechnie, *supra* note 235, at 186.

²³⁸ *Id.* at 187.

²³⁹ *Id.* at 188.

²⁴⁰ See *id.* at 154-56 (discussing the de minimis injury requirement in the tenth and eight federal circuits). The following Midwestern states are in the tenth and eighth circuit: Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska and Kansas.

²⁴¹ See *id.* at 162-69 (discussing the approach utilized in the sixth and seventh federal circuits). The following Midwestern states are in the sixth and seventh circuit: Michigan, Indiana, Ohio, Illinois and Wisconsin.

enforcement personnel with clear guidelines as to when they can use their Taser, but would also provide a standard to help courts determine whether or not a police officer used excessive force in Taser-related cases.

VII. Conclusion

7.1 The United States has consistently ignored the Committee Against Torture and the United Nations' requests for prohibition of solitary confinement, reform of immigration detention practices, and prompt investigation of torture by the Chicago Police Department torture. Further, the United States has not attempted to prohibit or legislate regulation of officers' routine use of electroshock devices on unarmed citizens. Not only are torture and other abuses of civilians endemic in the U.S., but state and federal legal mechanisms to remedy harms are nonexistent, not enforced, or unable to grant any meaningful redress. In these respects, the U.S. is in violation of the ICCPR, including General Comment 20 and Articles 2 and 7.

Annex 1

Tamms Supermax Prison Exercise Yard



John Smierciak, Feb. 13, 2009, <http://www.chicagotribune.com/news/local/chi-090223-tamms-photogallery,0,1614579.photogallery> at no. 7.

Tamm Supermax Prison Outdoor Exercise Cages



John Smierciak, Feb. 13, 2009, <http://www.chicagotribune.com/news/local/chi-090223-tamms-photogallery,0,1614579.photogallery> at no. 14.