

Midwest Regional Report on Torture and Cruel, Inhuman and Degrading Treatment

COMMITTEE AGAINST TORTURE COUNTRY REPORT

United States

Independent Information for the 53rd Session of the Committee against Torture

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 (arts. 1, 2, 4, and 5).
- Continued use of prolonged solitary confinement, which causes permanent mental impairments and other mental and physical harm in otherwise healthy people (art. 16).
- Sexual abuse and denial of adequate medical care in immigration detention (arts. 12, 13, 14, and 16).
- Lack of redress for victims of police torture, including victims still incarcerated (arts. 12, 13, and 14).
- Unnecessary and sometimes fatal use of electroshock devices by law enforcement (art. 16).
- Failure to outlaw juvenile life without parole (art. 16).

PROPOSED QUESTIONS FOR THE GOVERNMENT OF THE UNITED STATES

Laws against Torture (arts. 1, 2, 4, and 5)

1. Please explain why crimes of torture committed by domestic law enforcement official within U.S. territories are not prosecuted as crimes of torture? Is there a problem with the statute of limitations for existing laws?
2. Please explain why the U.S. has not enacted the Law Enforcement Torture Prevention Act, which would make torture committed by law enforcement a federal crime and remove the statute of limitations for prosecuting police torture.

Solitary Confinement (art. 16)

3. 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.
4. Please describe how the U.S. will provide care for victims of solitary confinement who suffer from ongoing psychosis or depression.

Immigration Detention Facilities (arts. 12, 13, 14, and 16)

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 provide a detailed account of plans to fully implement the 2011 Performance-Based National Detention Standards (PBNDS) in all immigration detention facilities.
7. Please explain the measures in place to guarantee to immigration detainees an independent and impartial investigation of claims that their rights have been violated.
8. 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.
9. Please provide the Committee with a detailed plan for the closure of the Tri-County Detention Center in Ullin, Illinois.

Chicago Police Torture (arts. 12, 13, and 14)

10. As requested by the Committee in its previous concluding observations, please provide updated information on the investigations and prosecutions of all parties responsible for the alleged torture perpetrated by the Chicago Police Department.
11. Please explain whether the U.S. Government will support the passage of the pending Chicago City Council Ordinance entitled *Reparations for the Chicago Police Torture Survivors* that provides financial, psychological and other redress to the torture survivors and their family members?

Electroshock (art. 16)

12. Please describe measures to implement a federal law standardizing 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.

Juvenile Life without Parole (art. 16)

14. In light of the new ban on mandatory life without parole for juveniles, please describe the measures being taken to review the sentences of juveniles already serving sentences of life without parole.
15. Please describe the measures being taken to ban all sentences, without exception, of life without parole for juveniles.

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I. Overview

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

- a. State and federal laws do not provide appropriate punishment or accountability for perpetrators of torture when these acts occur domestically;
- b. Otherwise healthy inmates develop severe depression and clinical psychosis as a result of prolonged solitary confinement;
- c. Detained immigrants are routinely sexually abused and denied adequate medical care;
- d. Chicago police systematically tortured confessions from suspects, many of whom are innocent and still incarcerated—few of the officers involved have been prosecuted and few of the survivors have been able to obtain compensation;
- e. Law enforcement officers routinely and unnecessarily use electroshock devices on unarmed and even unresisting subjects, whether young, old, or pregnant; and
- f. Juvenile offenders may be sentenced to life without parole, without opportunities for rehabilitation.

1.2 In its General Comment 2, the Committee against Torture (“the Committee”) stressed that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT” or “the Convention”) obligates state parties both to prohibit torture and other ill-treatment and to “take positive effective measures to ensure that such conduct and any recurrences thereof are effectively prevented.”¹ In its prisons, detention facilities and in its training and supervision of its police forces the United States fails to uphold those obligations. Moreover, the United States has failed to heed the Committee’s recommendations and end its continuing violations of the Convention.

II. Inadequacy of United States Laws against Torture (arts. 1, 2, 4, and 5)

2.1 The CAT, Article 4 requires that each state party “ensure that all acts of torture are offenses under its criminal law.” The Committee has stated that “[s]tate parties are obligated to eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment” and that

¹ General Comment 2, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (2008), *available at* http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=11.

the obligations of the CAT are the measures “that are known to prevent or punish any [act] of torture.”² Despite assertions by the U.S. to the contrary³, significant gaps in federal and state laws effectively legalize torture and immunize law enforcement officials who engage in acts of torture within U.S. territory. The U.S. government has not made torture a distinct federal crime, except for acts committed outside U.S. territory.⁴

2.2 While there are federal laws that criminalize acts of torture that occur within U.S. territory, none of the statutes brands the criminal acts of torture as torture. Moreover, 18 U.S.C. § 242, the primary federal statute used to bring criminal charges against law enforcement officers, has an unnecessarily high mental state that often serves as an obstacle to obtaining convictions.⁵ The statute requires proof that a law enforcement agent specifically intended to violate an individual’s constitutional rights, rather than merely intend to commit the act(s) which results in rights violations. Thus, the mental standard is in contravention of the definition of torture included in Article 1 of the CAT.

2.3 Furthermore, the short statutes of limitations for criminal prosecutions for acts amounting to torture but qualifying as non-capital offenses⁶ under federal law, a mere five years, effectively prohibits bringing perpetrators of torture in the U.S. to justice.⁷ Law enforcement officials have the ability to cover up their misconduct for years and in some cases decades.

2.4 State laws cited to by the U.S. are also wholly insufficient at effectively holding law enforcement officials responsible for crimes of torture. As with federal law, state laws that criminalize acts of torture are subject to short statute of limitations that also allow law enforcement officials to escape liability. Moreover, as the U.S. acknowledges, states do not proscribe acts of torture as such, and instead, they fall under slew of laws that are used to criminalize acts committed by both state actors and civilians. Thus, there is a lack of recognition that law enforcement officials commit serious and egregious acts of torture condemned by the Convention.

2.5 The U.S. Government should heed the Committee’s recommendation, made twice in response to the U.S. Government’s periodic reviews with the Committee, to enact a federal crime of torture.⁸ In order to do so, and satisfy the requirements of the CAT, the U.S. Government should support and take active efforts to pass the “Law Enforcement Torture Prevention Act” (H.R. 5688) introduced in 2010.⁹ This legislation proscribes acts of torture committed by law enforcement officials within U.S. territory and it adopts the CAT’s definition of torture. It further provides that such crimes have no statute of limitations so that no law enforcement official is beyond the far reach of the law.

III. Prolonged Solitary Confinement as Torture (art. 16)

A. Background on Prolonged Solitary Confinement

² *Id.*

³ *United Nations Committee Against Torture: Convention Against Torture: Periodic Report of the United States of America* [hereinafter “*Periodic Report*”] 5, ¶9 (2013), available at <http://www.state.gov/documents/organization/213267.pdf>.

⁴ The statute criminalizing extra-territorial torture, 18 U.S.C. § 2340A, contrary to the U.S. Government (*Periodic Report*, supra note 3 at ¶10), may not be used to prosecute acts of torture committed by law enforcement officials within U.S. territory. See, e.g., Criminal Resource Manual 20: Torture (18 U.S.C. § 2340A), Offices of the United States Attorneys, available at http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00020.htm.

⁵ 18 U.S.C. § 242, available at <http://www.justice.gov/crt/about/crm/242fin.php>

⁶ A “capital” offense” is any crime which *may* be punishable by the death penalty, whether or not the death penalty is sought by the prosecution or actually imposed. 8 C.J.S. Bail § 27. Title 18, Chapter 228 of the U.S. Code explains what offenses are capital crimes, available at <http://www.gpo.gov/fdsys/pkg/USCODE-1994-title18/pdf/USCODE-1994-title18-partII-chap228.pdf>.

⁷ *United States v. Cote*, 544 F.3d 88, 92 (2d Cir. 2008) (explaining that a five-year statute of limitations applies to non-capital claims under 18 U.S.C. § 242).

⁸ CAT/C/USA/CO/2 (18 May 2006), para. 13.

⁹ H.R. 5688, available at <http://www.gpo.gov/fdsys/pkg/BILLS-111hr5688ih/pdf/BILLS-111hr5688ih.pdf>

3.A1 Solitary confinement, whether termed “segregation, isolation, separation, cellular, lockdown, supermax, the hole, [or a] Secure Housing Unit”¹⁰ constitutes torture when used excessively because it foreseeably induces temporary and/or permanent severe physical and psychological suffering in many of the prisoners who are so held.¹¹ The United Nations has continually rejected prolonged solitary confinement as an appropriate means of punishment, and the Committee has previously noted its concern about the practice as a violation of article 16 of the CAT.¹² Prolonged solitary confinement may also constitute a violation of customary international law.¹³ Despite this, the U.S. courts find that “as long as a prisoner receives adequate food and shelter, the extreme sensory deprivation that characterizes supermax confinement will, under current case law, almost always be considered within the bounds of permissible treatment.”¹⁴ However, as stated by a U.S. court, solitary confinement is a “virtual incubator of psychoses—seeding illness in otherwise healthy inmates and exacerbating illness in those already suffering from mental infirmities.”¹⁵ Researchers have found that inmates in solitary confinement develop psychopathologies at near double the rate of the general population.¹⁶

3.A2 While exact figures are unavailable due to differences in state reporting, it is estimated that there are over 80,000 prisoners in a form of solitary confinement in the United States, 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.¹⁷ 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 limited¹⁸; and prisoners may be prohibited from having basic personal hygiene items.¹⁹ The effect of prolonged solitary confinement is one of “almost complete isolation and sensory deprivation”

¹⁰ *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>.

¹¹ See, e.g., 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); 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> (“inmates...will likely suffer permanent harm as a result of such confinement”).

¹² Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Note by Secretary-General, A/66/268 (Aug. 5, 2011); Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: United States of America, CAT Committee, CAT/C/USA/CO/2 (Jul. 25, 2006). The Committee 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.

¹³ 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).

¹⁴ New York City Bar: Committee on International Human Rights, *Supermax Confinement in U.S. Prisons*, NEW YORK CITY BAR ASSOCIATION (Sept. 2011), <http://www2.nycbar.org/pdf/report/uploads/20072165-TheBrutalityofSupermaxConfinement.pdf>; see, e.g., *Beard v. Banks*, 548 U.S. 521, 554 (2006) (justifying prolonged solitary confinement in a long-term segregation unit as meeting legitimate prison goals of motivating better behavior, granting “substantial deference” to prison officials’ judgment).

¹⁵ *Ruiz v Johnson*, 154 F. Supp. 2d 975, 984 (S.D. Tex. 2001).

¹⁶ 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).

¹⁷ The Vera Institute of Justice estimated that there were 81,622 prisoners in some form of segregated confinement in 2005. Angela Browne, Allissa Cambier, & Suzanne Agha, *Prisons Within Prisons: The Use of Segregation in the United States*, Vera Institute of Justice (2011), available at <http://www.jstor.org/stable/pdfplus/10.1525/fsr.2011.24.1.46.pdf?acceptTC=true>; *FAQ*, SOLITARY WATCH, <http://solitarywatch.com/facts/faq/> (last visited Sep. 12, 2014).

¹⁸ *Supermax Confinement in U.S. Prisons*, *supra* note 14.

¹⁹ Vasiliades, *supra* note 13 (in one facility the only personal hygiene item was a “small box of baking soda” instead of toothpaste).

where “smear[ed] feces, self-mutilation, and incessant babbling and shrieking are almost everyday occurrences.”²⁰

3.A3 That serious and “irreversible psychological damage”²¹ 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.²² Half of inmates in solitary self-mutilate, a condition recognized as a “secondary effect of prison isolation and segregation.”²³ The Professors & Practitioners of Psychology & Psychiatry concluded in an Amici Curiae brief for *Wilkinson v. Austin*, a U.S. Supreme Court case on prolonged solitary confinement, that all studies on “the effects of solitary or supermax-like confinement . . . last[ing] longer than 60 days . . . [found] evidence of negative psychological effects.”²⁴ Similar conclusions have been “reached by different researchers examining different facilities, in different parts of the world, in different decades, using different research methods.”²⁵ In fact, doctors have recognized negative psychological outcomes of solitary confinement since at least 1983, and perhaps as early as the 19th century.²⁶ By one estimate, a third of prisoners in solitary confinement “develop acute psychosis with hallucinations.”²⁷ Indiana supermax prison officials admit that “well over half” of their inmates suffer from mental illness.²⁸ Staff at the Tamms supermax prison in Illinois, which closed in 2013 after an extensive campaign that raised awareness of the poor conditions that prisoners suffered, estimated that “probably 95 percent of the Tamms population suffers from a diagnosable psychiatric problem,” with schizophrenia and bipolar disorder the most common.²⁹

B. Prolonged Solitary Confinement at Prisons Throughout the Midwest Causes Severe Mental and Physical Suffering

3.B1 Menard Correctional Center is Illinois’s largest maximum security prison, located about six hours outside of Chicago near the border with Missouri. Conditions in “administrative detention” (Menard’s term for solitary confinement) are among the worst in the area. According to some of the inmates who are placed in administrative detention, they are often unclear as to why they are there and how they can be released back to the general population.³⁰ Illinois law requires that the prison review an inmate’s administrative detention status every ninety days, but inmates at Menard have stated that they do not receive notice of the decision or of their right to appeal.³¹ Prison officials report the average

²⁰ *Supermax Confinement in U.S. Prisons*, *supra* note 14.

²¹ Mike Corradini, *UN Advisor 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>.

²² *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Note by Secretary-General, Annex A/66/268 (Aug. 5, 2011).

²³ Haney & Lynch, *supra* note 11 (“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. . .”).

²⁴ Brief for Professors & Practitioners of Psychology & Psychiatry as Amici Curiae Supporting Respondent at 4, *Wilkinson v. Austin*, 545 U.S. 209 (2005).

²⁵ *Id.* At 22.

²⁶ Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 *Am. J. Psychiatry* 1450 (1983).

²⁷ Atul Gawande, *Hellhole*, *THE NEW YORKER* (Mar. 30, 2009), <http://www.newyorker.com/magazine/2009/03/30/hellhole>.

²⁸ Brief for the American Civil Liberties Union as Amici Curiae Supporting Appellant at 27, *Illinois v. Gay* (Ill. App. 2011), http://www.aclu.org/files/assets/anthony_gay_amicus.pdf.

²⁹ 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>.

³⁰ *Voices from Solitary: Hunger Strike in Menard Prison*, Solitary Watch (Feb. 6, 2014), <http://solitarywatch.com/2014/02/06/voices-solitary-hunger-strike-menard-prison/>; 2013 UPDATE MONITORING VISIT TO MENARD CORRECTIONAL CENTER, JOHN HOWARD ASSOCIATION OF ILLINOIS 12 (2013), *available at* <http://www.thejha.org/sites/default/files/Menard%202013%20Update.pdf>.

³¹ 2013 UPDATE MONITORING VISIT, *supra* note 30 at 10-12.

length of stay in administrative detention to be ten and a half months.³² Conditions for all inmates at Menard are severe; inmates at the facility routinely stage hunger strikes to protest the poor conditions.³³ One inmate in segregation writes:

We in HSU have planned a hunger strike on the 15th of January. We have put together a list of demands in individual grievances with the hope that it would shield us from administrative revenge. Our complaints are all pursuant to our constitutional rights & human dignity. Such as “implement uniform written policies that provide for constitutionally adequate ‘notice’ of why an inmate is being placed in Administrative Detention at the HSU, & reasonable, periodic review in the form of annual informal hearings that allow me to refute the alleged reasons why my placement in AD is being continued.”... No one here has been given ‘notice’ to why we’re here.³⁴

Once in administrative detention, inmates are placed in conditions which they describe as “inhumane” which include dirty and moldy cells with no ability to clean the cells, poor mental health care, a low calorie diet, and extremely limited exercise time—only being released for a short shower two days a week and frequently cancelled “yard time.”³⁵ One visitor observed bedsores on two inmates, one of whom was only thirty-three.³⁶

3.B2 Other maximum security prisons throughout the Midwest confine prisoners to their cells for more than twenty-three hours a day and restrict access to basic services. For example, in Hamilton County Jail in Noblesville, Indiana, inmates formally have an hour outside of their cell every day but in fact may only spend thirty minutes outside of their cells, during which time they are expected to shower, clean their cells, make phone calls, and make purchases from the commissary.³⁷ Inmates in solitary at Hamilton were also prevented from attending religious services, drug and alcohol treatment programs, and were denied access to the law library.³⁸ The law library is often the only way that prisoners may challenge their conviction once their direct appeals have been exhausted, as there is no right to counsel for these challenges and most inmates cannot afford to hire an attorney.³⁹

3.B3 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.⁴⁰ 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.⁴¹ 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.⁴²

IV. Sexual Abuse and Denial of Medical Care in Immigration Detention (arts. 12, 13, 14, and 16)

³² *Id.* at 11.

³³ *See, id.* at 12 (mentioning the end of a hunger strike in 2013); Voices from Solitary: Hunger Strike in Menard Prison, *supra* note 30.

³⁴ Voices from Solitary, Hunger Strike in Menard Prison *supra* note 30.

³⁵ *Id.*; Alan Mills, *Bedsores? A Visit to Illinois’ Menard Prison*, UPTOWN PEOPLE’S LAW CENTER (May 16, 2014), <http://uplcchicago.org/blog/2014/05/16/bedsores-a-visit-to-illinois-menard-prison/>.

³⁶ *Bedsores?*, *supra* note 35.

³⁷ Nathan Brewer, *Voices from Solitary: A Day in the Life, Part VI* (Sep. 2, 2014), <http://solitarywatch.com/2014/09/02/voices-from-solitary-a-day-in-the-life-part-vi/>.

³⁸ *Id.*

³⁹ Ty Evans, *Voices from Solitary: Testimony of a Jailhouse Lawyer* (Jul. 30, 2014), <http://solitarywatch.com/2014/07/30/voices-solitary-testimony-jailhouse-lawyer/>.

⁴⁰ Jason, Wendy. “Ohio Prisoners Begin Hunger Strike After 17 Years In Solitary Confinement,” (2011).

⁴¹ Lynd, Staughton. “The Lucasville Uprising: New Discoveries” (2006).

⁴² *Id.*

4.1 The United States has failed to properly manage immigration detainees and prevent sexual abuse in accord with the CAT. In addition, the United States has failed to investigate allegations of abuse in immigration detention in violation of Article 6 and to provide redress in violation of Article 14.

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

4.A1 Sexual abuse is endemic in immigration detention.⁴³ The U.S. Government Accountability Office, ("GAO") identified 215 sexual abuse and assault allegations from October 2009 through March 2013, though the number of unreported cases likely dwarfs the official statistics.⁴⁴ Sexual abuse—widely underreported outside prisons—is underreported to a larger degree in immigration detention facilities⁴⁵ where detainees may be unaware of their rights, unable to access an attorney, and easily intimidated because the perpetrators may adversely affect their immigration status.⁴⁶ As Human Rights Watch notes, throughout the country, “[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...”⁴⁷ Even if these detainees choose to speak out, the following = cases highlight how these voices had been mostly buried by the detention facility actively or passively. Even if these reports were accepted on the ground level, they were mostly blocked by layers of Immigration and Customs Enforcement's ("ICE") management.⁴⁸ And, even if these reports made their way to the ICE headquarters, "documents show... officials — some still in key positions — used their role as overseers to cover up evidence of mistreatment, deflect scrutiny by the news media or prepare exculpatory public statements after gathering facts that pointed to substandard care or abuse."⁴⁹ The following instances show the repeated failure to respond to complaints by victims of abuse:

- Audemio Orozco-Ramirez, a 40-year-old man was raped while in ICE custody, presumably after being drugged, in a county jail near Helena, Montana, on Oct. 5, 2013. In the complaint filed on his behalf by the National Immigrant Justice Center in Chicago, Orozco-Ramirez says that he wanted to report the assault in Montana but was unable to find anyone who spoke Spanish at the ICE facility. He was unable to get medical attention until two days after the attack. He was also unable to access a telephone to make a complaint. (*Jefferson County Jail, Montana*).⁵⁰

⁴³ 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>.

⁴⁴ GAO, *Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse* [Reissued on December 6, 2013] available at <http://www.gao.gov/products/gao-14-38>.

⁴⁵ Sexual Abuse in Immigration Detention Facilities, AM. CIVIL LIBERTIES UNION (last accessed Sep. 17, 2014), <https://www.aclu.org/maps/sexual-abuse-immigration-detention-facilities>.

⁴⁶ “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/>.

⁴⁷ *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>.

⁴⁸ *Id.* (“GAO was unable to locate an additional 28 allegations detainees reported to the 10 facilities GAO visited—or 40 percent of 70 total allegations at these 10 facilities— because ICE field office officials did not report them to ICE headquarters.”);

⁴⁹ NYTimes, Nina Bernstein, *Officials Hid Truth of Immigrant Deaths in Jail* <http://www.nytimes.com/2010/01/10/us/10detain.html>.

⁵⁰ CBS News, *Report ICE did not Report Allegations of Sexual Assaults in Immigration Detention Centers*, Laura Strickler & Patricia Alulema, available at <http://www.cbsnews.com/news/report-ice-did-not-report-allegations-of-sexual-assaults-in-immigration-detention-centers/>.

- Marichuy Leal Gamino, a transgender woman who has been detained by ICE for over a year at the for-profit private Eloy detention center in Arizona, has been imprisoned in Eloy with men and was raped by her cellmate. Immediately after the assault, Marichuy reported the abuse but the staff instead tried to cover up the attack by pressuring Marichuy to sign a statement that the rape was consensual. (*Eloy detention center, Arizona*).⁵¹

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, which is listed by ACLU as one of the “10 worst [ICE] facilities [in the U.S].”⁵².

- An 18-year-old high school student was detained by ICE in Sherburne County Jail, where he was repeatedly sexually assaulted by his cellmate who is a registered sex offender in Mar., 2014. This demonstrated the immigration authority (most of the times ICE) is ill prepared in protecting immigrants in their detention. In this case the young immigrant are not being charged with any crime and is sharing a room with a convicted felon of sexual abuse. (*Sherburne County Jail, Minnesota*).⁵³

- 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 spend additional months at the same detention center where the assault took place. (*Undisclosed Illinois Detention Center*).⁵⁴

- 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*).⁵⁵

- 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*).⁵⁶

4.A3 Only a small ratio of sexual assault claims are substantiated. In the seven prisons in Midwest between 2005 and 2006 it's only 14% for the inmate against inmate and 7% for staff against inmate sexual assault.⁵⁷ Considering these ratios are for reported prison sexual assault in prisons, the actual ratio of substantiated incidents in immigration detention facilities must be much lower. Yet still, between 2009 and 2013, there were at least fifteen substantiated allegations of sexual abuse in

⁵¹ Zack Ford, *Transgender Woman Says Immigration Detention Officials Told Her To Pretend Her Rape Was Consensual*, <http://thinkprogress.org/lgbt/2014/08/05/3467761/transgender-immigration-rape/>.

⁵² Tyler Ray, *President Obama: Close the 10 Worst Immigration Detention Facilities*, Nov. 29, 2012, <https://www.aclu.org/blog/immigrants-rights/president-obama-close-10-worst-immigration-detention-facilities>.

⁵³ Star Tribune, Mark Brunswick & Alejandra Matos, *Detained Immigrant Teen Assaulted by Registered Sex Offender in Sherburne County Jail*, Apr. 14, 2014, available at <http://www.startribune.com/local/255046481.html>

⁵⁴ National Public Radio, *Immigration Detainees Seek Prison-Rape Protection* (Dec. 13, 2011), available at <http://www.npr.org/2011/12/13/143638236/immigration-detainees-seek-prison-rape-protection>.

⁵⁵ *Tri-County Detention Center Illinois Expose & Close*, <http://www.immigrantjustice.org/sites/immigrantjustice.org/files/DWN%20Expose%20%20Close-%20Tri%20Co%20Report%20FINAL.pdf>.

⁵⁶ *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/>.

⁵⁷ Devon B. Adams, Allen J. Beck, *Paige M. Harrison Sexual Violence Reported by Correctional Authorities, 2006*. Bureau of Justice Statistics. August 16, 2007. available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1151>.

immigration detention, out of which four of these cases included situations where the detainee was alone with a guard . . . 3 cases involved transgender victims. In addition, four cases included a perpetrator who did not understand the zero-tolerance sexual abuse policy. In four of the fifteen substantiated cases, a guard sexually abused a detainee, whereas in the remaining eleven cases, a detainee sexually abused a detainee."⁵⁸

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

4.B1 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 ICE provide adequate medical care when a medical need has been “diagnosed by a physician as mandating treatment or that is so obvious that even a lay person could recognize the necessity for a doctor’s attention.”⁵⁹ The ICE policy requires that detainees have access to “appropriate and necessary medical, dental, and mental health care, including emergency services.”⁶⁰

4.B2 Despite federal law and ICE’s own policy, between 2003 and 2013, at least 141 detainees died in immigration detention,⁶¹ and out of the 83 who died between 2003 and 2008, improper medical decisions, or inaction, contributed to at least 30 of those deaths.⁶² Shortages of qualified personnel, lack of funding, delays in care, and neglect are commonplace.⁶³ During January 2008, the medical office of one detention center had a backlog of more than 2,000 appointments.⁶⁴ 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.’”⁶⁵

4.B3 The UN Human Rights Committee noted its concern about the frequent occurrence of seriously inadequate medical treatment in detention centers.⁶⁶ Sometimes, inadequate medical treatment is fatal for detainees. Francisco Castaneda noticed a painful, “irregular, raised lesion” growing on his penis while he was being detained by ICE.⁶⁷ He “promptly brought his condition to the attention of medical personnel,” noting that the lesion “frequently bled and emitted a discharge.” For ten months he “persistently sought treatment for his condition” as the lesion became increasingly painful and interfered with his urination, defecation, and sleep.” 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. Instead of the recommended biopsy, ICE treated him with ibuprofen. Eventually, “after a fourth [outside] specialist recommended a biopsy” the procedure was

⁵⁸ GAO, *Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse* [Reissued on December 6, 2013] available at <http://www.gao.gov/products/gao-14-38>.

⁵⁹ 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).

⁶⁰ *Performance-Based National Detention Standards 2011*, U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT 233 (2011).

⁶¹ List of Deaths in ICE Custody October 2003 - December 2, 2013, <http://www.ice.gov/doclib/foia/reports/detaineedeaths2003-present.pdf>.

⁶² Dana Priest & Amy Goldstein, “*System of Neglect*”, May 8, 2008, available at http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d1p1.html.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ 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>.

⁶⁷ *Hui v. Castaneda*, 130 S. Ct. 1845, 1849 (2010).

authorized. Unfortunately, the biopsy was positive for penile cancer and surgeons amputated Castaneda's penis but it was too late. A year later, Castaneda died on February 16, 2008, aged 36.⁶⁸ Mr. Castaneda should not have died because penile cancer "confined to the penis" has an 85% 5-year survival rate.⁶⁹ However, his cancer was left untreated and it metastasized in his groin, "lymph nodes and throughout his body."⁷⁰ In his case, penile cancer became devastating: the 5-year survival rate for penile cancer that has spread throughout is only about 11%.⁷¹ In 2011, after three years of litigation, the federal government agreed to pay Castaneda's family \$1.95 million, in addition to pending claims against two medical providers for the state of California.⁷²

4.B4 More recently, Francisco Dominguez Valivia, died of bronchopneumonia, which was developed during his stay in Adelanto Correctional Facility, CA. His father believed that "it was lack of medical attention. . . it's going to continue to happen to everybody who ends up there, that they don't give them the treatment they should."⁷³ Clemente Ntangola Mponda who is 27 year old was found irresponsive due to raptorial and cardiac arrest in Houston Contract Detention Facility in the morning, and later pronounced dead at the hospital.⁷⁴ Glaston Smith, who was stabbed multiple times by other inmates in Metropolitan Detention Center and pronounced dead later in Puerto Rico medical center.⁷⁵ Pablo Ortiz-Matamoros, 25 died due to lymphoma and related complications in Feb. 8, 2013.⁷⁶ There are also myriad detainees in ICE's custody who are asking for immediate remove from the detention facility because they desperately need the medical attention that ICE does not give: Adrian Siera Sigala needs a surgery to remove the kidney; Flavio Ramos Cruz needs need a surgery for a left-sided colon resection.⁷⁷ The list of these incidences goes on and on.

4.B5 Detention facility staff routinely delayed or denied medical care 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."⁷⁸ In another story from Otay Detention Facility, cellmate cried for help when Yusif 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 Yusif be brought to the clinic. It took guards 40-minutes to bring him a wheelchair. Soon after paramedics arrived Yusif Osman, a U.S. legal resident from Ghana, died on June 27, 2006 at the age of 34. The 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...? [The detention facility]'s medical director, Esther Hui,⁷⁹

⁶⁸ *Id.*

⁶⁹ *Survival Rates for Penile Cancer*, AMERICAN CANCER SOCIETY (Last Medical Review on May 2, 2012), available at <http://www.cancer.org/cancer/penilecancer/detailedguide/penile-cancer-survival-rates>.

⁷⁰ *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).

⁷¹ *Supra* note -2.

⁷² *Castaneda v. State of California* (last accessed Sep. 18, 2014), <http://publicjustice.net/content/castaneda-v-state-california>; 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>.

⁷³ New American Media, *Living in the Shadows: Detention Centers Deaths Raise Immigrant Rights Questions*, <http://newamericamedia.org/2014/02/living-in-the-shadows-detention-centers-deaths-raise-immigrant-rights-questions.php>.

⁷⁴ News Release, <http://www.ice.gov/news/releases/1309/130903houston3.htm>.

⁷⁵ News Release, <http://www.ice.gov/news/releases/1304/130408sanjuan2.htm>.

⁷⁶ News Release, <http://m.ice.gov/news/releases/1302/130208houston.htm?f=m>.

⁷⁷ See <http://action.dreamactivist.org/oklahoma/adrian/>; See also <http://action.dreamactivist.org/northcarolina/flavio/>.

⁷⁸ 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.

⁷⁹ Esther Hui is the same medical director who denied treatment to Francisco Castaneda.

checked ‘No.’”⁸⁰

1. Disparate Care for Women

4.A.1-1 Women in immigration detention 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.”⁸¹ The UN Human Rights Committee noted its concern about the frequent occurrence of seriously inadequate medical treatment in detention centers, including shackling pregnant women.⁸² One pregnant woman in detention had both of her hands shackled to the bed while she was giving birth. She begged the sheriff to no avail, “[p]lease let me free – at least one hand.”⁸³ Then, this same woman was denied her prescribed breast pump, which caused her “great pain.”⁸⁴ In another immigration detention facility, a nursing mother was allegedly prohibited from holding or nursing her baby for “almost seventy days.”⁸⁵ These are not isolated incidents.⁸⁶ Federal prisons and Immigration and Customs Enforcement (“ICE”) purportedly do not permit “shackling of pregnant inmates during the birthing process,” but these pregnant women are often placed on “detainer,” which puts them in the custody of state and local authorities.⁸⁷ State laws vary regarding shackling of pregnant women, and only a few specifically prohibit it.⁸⁸

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.⁸⁹ Several women have reported being told to drink water for a range of conditions, including intense menstrual cramping.⁹⁰

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.⁹¹ The ratio of staff to mentally ill detainees is approximately 1 to 1,142, as opposed to 1 to 400

⁸⁰ *Supra* note -18.

⁸¹ *Supra* note -3, Unless otherwise indicated, information in the following paragraphs is drawn from this report.

⁸² 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>.

⁸³ *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.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ 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>.

⁸⁷ *State Birth-Shackling Laws Cause Controversy*, IMMIGRATION DIRECT (Oct. 10, 2012), <http://www.immigrationdirect.com/immigration-news/immigration/state-birth-shackling-laws-cause-controversy/>.

⁸⁸ New America Media, *Nationwide, states move to ban Shackling*, available at <http://newamericamedia.org/2012/02/nationwide-states-move-to-ban-shackling.php>.

⁸⁹ 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.

⁹⁰ 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>.

⁹¹ *Supra* note -2.

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.⁹²

4.A.2-3 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 strangling herself with her socks.⁹³ 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.⁹⁴

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.”⁹⁵

4.A.2-4 Tiombe Kimana Carlos died of mental illness from which she committed suicide in York County Jail, PA, and died on Oct. 23, 2013. She was diagnosed with schizophrenia as a teen. It was not her first attempt of suicide in the detention and the family was never informed about the first attempt. Her lawyer spent two and a half years trying to move Carlos to a group home or a treatment center, stating that the facility lacked the “skills, competence, or resources” to care for her, only in vain.⁹⁶

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.”⁹⁷ 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.⁹⁸ This problem is exacerbated because a detainee invariably has an extremely limited resources available in obtaining a meaningful investigation.

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.⁹⁹ However, even if they could afford 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.¹⁰⁰ The

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Michael Matza, *Sad Tale of Mental Illness and U.S. Detention*, http://articles.philly.com/2013-11-15/news/44078208_1_immigration-detainees-detainee-deaths-u-s-immigration.

⁹⁷ Dana O’Day-Senior, *The Forgotten Frontier? Healthcare for Transgender Detainees in Immigration and Customs Enforcement Detention*, 60 HASTINGS L.J. 453, 456 (2008).

⁹⁸ 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>.

⁹⁹ 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/>.

¹⁰⁰ Transcript of Senate Judiciary Committee Hearing on Oversight of the Homeland Security Department, 40-41 (Sep. 18, 2014), available at http://www.micevhill.com/attachments/immigration_documents/hosted_documents/112th_congress/TranscriptOfSenateJudiciaryCommitteeHearingOnOversightOfDHS.pdf.

National Immigration Project recommends immigrants to “[m]emorize the telephone number of [their] attorney.”¹⁰¹ In addition, 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 call was not private and she feared retribution from her assaulters.¹⁰² At the Illinois detention facility in Boone County, detainees said it was “almost impossible to contact attorneys.”¹⁰³ 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.¹⁰⁴

4.C3 In 2011, ICE promulgated a new set of guidelines.¹⁰⁵ But “the 2011 standards are only slightly better.”¹⁰⁶ Furthermore, the guidelines remain non-binding, unenforceable in court, and unenforced in practice, where ICE itself may not “hold facilities accountable on it solely.”¹⁰⁷ In addition, despite ICE’s claim they have “begun implementing Performance Based National Detention Standards (“PBNDS”) 2011 across its detention facilities,”¹⁰⁸ at the time of this writing no facility had even agreed to the guidelines let alone implemented them. In fact, detention facilities are full of “shortcomings, abuses, and tragic consequences.”¹⁰⁹ The Jefferson County Jail in Mt. Vernon, Illinois (“JCJ”) is an example: 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 2009.¹¹⁰ Recently, ICE removed its detainees from JCJ following the resignation of its senior medical staff. ICE, however, did not terminate 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.””¹¹¹

4.C4 With regard to inmate/detainee complaints, the ICE guidelines prevent detainees from obtaining an independent investigation of rights violations.¹¹² 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

¹⁰¹ *I Am in Immigration Detention What are My Rights?*, <http://www.nationalimmigrationproject.org/community/Detention%20-%20Know%20Your%20Rights%20-%20English.pdf>.

¹⁰² National Immigration Justice Center, *Briefing Women in Detention*, Apr. 16, 2007, available at <http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Briefing%20Women%20in%20Detention.pdf>.

¹⁰³ *Problems Persist at Three Immigrant Jails in Ill.*, DAILY HERALD (Dec. 12, 2011), available at <http://www.dailyherald.com/article/20111212/news/712129875/print/>.

¹⁰⁴ See *supra* note -4.

¹⁰⁵ 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.

¹⁰⁶ Hearing Before The Subcommittee on Immigration Policy and Enforcement of The Committee on the Judiciary house of Representatives one Hundred Twelfth Congress Second Session, Mar. 28, 2012, <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg73543/html/CHRG-112hhrg73543.htm>.

¹⁰⁷ Testimony of the American Immigration Lawyers Association, March 28, 2012, available at <http://www.aila.org/content/default.aspx?docid=39077>.

¹⁰⁸ *Fact Sheet: ICE Detention Standards*, <http://www.ice.gov/news/library/factsheets/facilities-pbnds.htm>.

¹⁰⁹ *Supra* note -2.

¹¹⁰ *Not too Late for Reform*, National Immigrant Justice Center and the Midwest Coalition for Human Rights, December 2011, available at <http://goo.gl/nVILz>.

¹¹¹ Rorye O’Connor, *ICE Detainees Withdrawn from Jail*, (6 December 2012), available at http://www.register-news.com/news/local_news/article_0ad22ac2-7b96-57fe-b2f4-83ac24eb8e07.html.

¹¹² 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.

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. But when the regulations were finally promulgated, immigration detention centers were excluded.

V. Chicago Police Torture and U.S. Violation of CAT (arts. 12, 13, and 14)

A. *The City of Chicago Delays Removal and Prosecution of Torturers in Police Force*

5.A1 Former Police Commander Jon Burge, and the detectives under his command, systematically tortured at least 110 African American men and women from 1972 to 1991 at Area 2 and 3 Police Headquarters in Chicago.¹¹³ The torture practices included electrically shocking people on their genitalia with a homemade generator or cattle prod, suffocating people with plastic bags, and beating people with rubber like objects and telephone books.¹¹⁴

5.A2 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.¹¹⁵ Finally, in 1990, the Office of Professional Standards, an agency of the Chicago Police Department (CPD) 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."¹¹⁶ 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 aware of the systematic abuse and perpetuated it either by actively participating...or failing to take any action to . . . end [it]."¹¹⁷ Burge was subsequently fired from the CPD in 1993.

5.A3 Despite mountains of evidence and ample admissions made by the City of Chicago that this pattern and practice of torture was committed by CPD detectives, no one from the CPD, including Burge, was ever criminally charged for the nineteen years of systematic torture.¹¹⁸ Pressure from civil society led to the appointment of special prosecutors in 2002; however, the prosecutors determined that the statute of limitations on the claims of torture had expired and they claimed no one could or should be prosecuted.¹¹⁹

¹¹³ CHICAGO JUSTICE MEMORIALS, <http://chicagotorture.org/history/> (last visited May 1, 2012).

¹¹⁴ *Id.*; see also, e.g., Affidavit of Darrell Cannon, State of Illinois v. Darrell Cannon, No. 83-11830 (June 8, 1985), at 6-7, 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 . . ."); John Conroy, *The Mysterious Third Device*, CHICAGO READER (Feb. 4, 2005), available at <http://www.chicagoreader.com/chicago/tools-of-torture/Content?oid=917876>.

¹¹⁵ *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].

¹¹⁶ GOLDSTON-SANDERS REPORT 3 (1990), available at <http://humanrights.uchicago.edu/chicagotorture/torturebypolice/GoldstonSanders.pdf>.

¹¹⁷ *Id.*

¹¹⁸ Joey Mogul, *The Chicago Police Torture Cases: 1972 to 2011*, THE PEOPLE'S LAW OFFICE 3.

¹¹⁹ *Id.*; 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->

5.A4 It was only after the Committee called on the U.S. Government to bring the perpetrators to justice in 2006,¹²⁰ 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.¹²¹ As the U.S. notes in its report, Burge was convicted on all three counts and sentenced to four and half years in prison in June of 2010.¹²² At Burge’s sentencing hearing, torture survivors, family members, activists, attorneys and community members filled the courtroom. To date, only Burge has been incarcerated for his role in the systematic torture, and no other perpetrator has ever been charged with any crime. Furthermore, it was announced that Burge is to be released from prison to a half-way house on October 2; so come early October, absolutely no officials complicit in torture will be incarcerated. While the U.S. Government has claimed that they are investigating others, there have been no additional indictments despite having made this assertion for years.¹²³

B. The City of Chicago and the U.S. Government Have not Provided an Enforceable Right to Fair and Adequate Compensation or Rehabilitation for Survivors

5.B1 The City of Chicago and the U.S. Government have persistently failed to meet the requirements of Article 14, as set forth by General Comment No. 3, to take necessary and effective measures to ensure that the torture survivors and family members have access to medical care and rehabilitation; restitution; commemoration and tributes and other necessary steps to restore their dignity and reputation.¹²⁴ The Committee has recognized that the right to prompt, fair and adequate compensation for torture or ill-treatment under Article 14 is multi-layered and compensation awarded to a victim should be sufficient to compensate for any economically accessible damage resulting from torture or ill-treatment, whether pecuniary or non-pecuniary.¹²⁵ The UN Special Rapporteur On Torture has echoed General Comment 3 by describing adequate reparations as consisting of restitution, compensation, rehabilitation (including medical and psychological care as well as legal and social services), satisfaction, and guarantees of non-repetition.¹²⁶

5.B2 Despite the requirements of Article 14, scores of Chicago Police torture survivors have received no financial compensation whatsoever to ameliorate the torture they endured. The vast majority of the survivors are unable to get any redress because the statute of limitations has expired on any civil rights lawsuits they could have potentially brought. To date, only sixteen of the 110 torture survivors have received monetary awards from the City of Chicago due to civil suits. Moreover, the City of Chicago has never apologized for the torture that took place under Burge’s command.

5.B3 The City of Chicago and the U.S. government have also failed to provide any rehabilitation to the Burge torture survivors even though they continue to suffer from the psychological

report/s_report_section_a.pdf.

¹²⁰ COMMITTEE AGAINST TORTURE, REPORT OF THE COMMITTEE AGAINST TORTURE § 25, p. 71-72 (2006), A/61/44.

¹²¹ *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>.

¹²² See U.S. Report, para. 141-42; 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.

¹²³ *Feds Investigate Jon Burge’s detectives, Ex-Cook County Prosecutors, sources say: Former Police Commander is Imprisoned for Lying About Torture*, Chicago Tribune, Steve Mills and Todd Lightly, July 14, 2001, http://articles.chicagotribune.com/2011-07-14/news/ct-met-confession-investigation-20110714_1_jon-burge-chicago-police-cmdr-torture-allegations (last visited September 5, 2014).

¹²⁴ See United Nations Committee Against Torture, General Comment, No. 3, CAT/C/CG/3 (13 Dec. 2012) (“General Comment 3”), ¶¶ 3, 16. The Committee’s jurisprudence clearly notes that victims includes the “immediate family or dependents” of those tortured.

¹²⁵ General Comment 3, ¶ 10.

¹²⁶ General Recommendation of the UN Special Rapporteur on Torture, UN Document E/CN.4/2003/68, para. 26.

effects of the torture they endured in contravention with Article 14.¹²⁷ They have not been provided with any sort of psychological services and there are no centers that provide counseling, vocational or other therapeutic services to the torture survivors in Chicago or in the Chicago metropolitan area.

5.B4 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 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. To make matters worse, despite the requirements of Article 14, he can no longer sue to receive any redress because the statute of limitations on any claims he had expired decades ago.¹²⁸ Not only has the United States failed the people of Chicago, but it has also further failed to appropriately redress the issue in a sufficient way as practiced by the international community and as recognized by Article 14 and General Comment 3.

5.B5 There is an ordinance pending in Chicago's City Council that seeks to provide adequate redress to the torture survivors and their family members. The ordinance serves as a formal apology to the survivors; creates a Commission to administer financial compensation to the survivors; creates a medical and psychological center on the south side of Chicago for the torture survivors and their family members; provides education opportunities to the survivors and family members; requires the City to fund public memorials about the cases and sets aside \$20 million to finance this redress, the same amount of money the City has spent to defend Burge, other detectives and former Mayor Richard M. Daley in the Chicago Police torture cases.¹²⁹

5.B6 The Committee should urge the U.S. Government to seek support for the passage of the City Council Ordinance entitled Reparations for the Chicago Police Torture Survivors in order for the U.S. Government to comply with its obligations under Article 14 of the Convention.

VI. Violation of CAT by Routine Police Officer Use of Electroshock (art. 16)

A. Electroshock Devices, or TASERS, are Routinely Used by Police

6.A1 Electronic Control Devices ("ECDs")—commonly referred to as TASERS, the leading brand of ECDs—have become commonly carried police tools. The Thomas A. Swift Electric Rifle ("TASER") was developed in the 1960s as a non-lethal alternative to the handgun. Some courts have held that law enforcement officers should restrict their use of TASERS to subduing criminal suspects¹³⁰ "who are exhibiting active aggression or who are actively resisting in a manner . . . likely to result in injuries to themselves or others."¹³¹ However, that standard is far from universal and research shows that many law enforcement agencies have much lower standards on who is subjected to TASER use.¹³² Under the Committee's previous recommendations, TASER use should be exclusively restricted to "substitution for lethal weapons."¹³³ As the prevalence of TASERS increases, so does our understanding of the risks and problems associated with their use. Better understanding of the risks and problems, in turn, reveals the need for uniform and strict TASER regulation, which does not currently exist.

¹²⁷ General Comment 3, ¶¶ 12 and 13.

¹²⁸ General Comment 3, ¶ 40.

¹²⁹ *Sorry Not Good Enough for Chicago Torture Survivors, Rahm Emmanuel Needs to Put His Money Where His Mouth Is* In These Times, Joey Mogul and Flint Taylor, January 6, 2014, http://inthesetimes.com/article/16064/sorry_not_good_enough_for_torture_survivors_say_activists.

¹³⁰ Vidisha Barua Worley, Michael S. Vaughn, & Robert M. Worley, "Shocking" Consequences: Police Officer Liability for the Use of TASERS and Stun Guns, 48 CRIM. L. BULLETIN 4 (2012) [hereinafter *Shocking Consequences*].

¹³¹ Ian A. Mance, *Power Down: TASERS, the Fourth Amendment, and Police Accountability in the Fourth Circuit*, 91 N.C. L. REV. 606, 609 (2013) [hereinafter *Power Down*].

¹³² ACLU-MN TASER REPORT; ACLU-IA TASER REPORT.

¹³³ List of issues prior to the submission of the fifth periodic report of United States of America, Art. 16 § 36

6.A2 TASERS have two methods of use: “dart” or “probe” mode and “drive stun” mode. The Federal District Court of Minnesota offered this summary of TASERS:

[T]he Taser causes electrical muscular disruption and . . . a full Taser cycle lasts five seconds and delivers a 50,000 volt shock. The Taser's air cartridge contains two darts that can be deployed and will penetrate the skin, causing electrical muscular disruption between the two darts. . . . [I]f the air cartridge is removed, the Taser may be operated in drive stun mode and used as a pain compliance tool. In drive stun mode, the Taser's electrical probes are applied directly to the person and the electrical muscular disruption occurs between the two probes.¹³⁴

6.A3 Recent research shows “ECDs have caused serious injury and death in a number of cases...”¹³⁵ The research confirms that this is true even where TASERS were not misused.¹³⁶ This directly contradicts the claim that Taser International’s¹³⁷ products are “non-lethal” weapons that “safely . . . incapacitate subjects with little risk of injury to the subject.”¹³⁸ Amnesty International reports that, since 2001, more than 500 people have died after being tased.¹³⁹

B. Risks Associated with TASERS

6.B1 Additionally, there is a high risk of injury associated with TASER use.¹⁴⁰ TASER use can affect the skin, causing burns or puncture wounds. TASER use can also affect breathing and blood chemistry, or generate risks to the musculoskeletal system. Perhaps most concerning, TASER use can affect the heart, particularly the heart rhythm. TASER use can cause ventricular fibrillation. Several studies suggest that the TASER electrical current is strong enough to cause fatal heart arrhythmia, particularly for vulnerable groups including those with preexisting heart conditions, those whose hearts are already compromised by drug use, and thinner people who have a lower skin-to-heart distance.

6.B2 The frequency and severity of TASER use is a cause for concern. Law enforcement officers are using TASERS in a manner contrary to the Committee’s recommendation restricting use to substitution for lethal force. Because judicial redress is uncommon and difficult to obtain, and because of the lack of laws compelling transparent disclosure of TASER incidents, media stories are frequently the only access to police misconduct regarding TASER use. The following is a small sample of such:

Minnesota

- 2014: *Witnesses: Minneapolis police used Taser on pregnant woman*¹⁴¹
Police tased an unarmed pregnant woman trying to get away from women who were harassing her.

Indiana

- 2010: *Police Defend Use of Taser on 11-year-old*¹⁴²
A police officer tried to stop a fight between two boys. One boy swung out, hitting the officer, who then tased the boy.
- 2009: *Cop Taser Autistic Boy Unconscious*¹⁴³

¹³⁴ Orsack v. Metro. Airports Comm’n Airport Police Dep’t., 675 F. Supp. 2d 944, 957-58 (D. Minn. 2009)(citations and internal quote marks omitted).

¹³⁵ ACLU of Minnesota, *Shocking: The Lack of Responsible Taser Policy in Minnesota*, available at http://www.aclu-mn.org/index.php/download_file/view/93/46/.

¹³⁶ *Id.*

¹³⁷ Taser International manufactures the ECD that is most widely used. *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ <http://www.myfoxtwincities.com/story/25674828/witnesses-minneapolis-police-used-taser-on-pregnant-woman>

¹⁴² <http://www.theindychannel.com/news/police-defend-use-of-taser-on-11-year-old>

A 14-year-old autistic boy exhibited behavioral problems at school and administrators called 911. A police officer tased the 5-foot, 90-pound boy twice, leaving him unconscious.

Iowa

- 2013: *Register Investigation: Iowans sue, collect after Taser shocks*¹⁴⁴
Includes a woman who was tased 3 times; officers knew she was mentally ill and that she had received electroconvulsion therapy two days before. At least one of the tases came while she was in restraints in the back of a police car.

Ohio

- 2014: *Complaint says man shot in eye with Taser*¹⁴⁵
An officer tased a man for resisting; the prongs hit him in the eye causing near total vision loss.
- 2014: *Ohio man who suffered brain damage after Taser use settle lawsuit with police for \$2.25 million*¹⁴⁶
In 2010, police tased a man atop an 8-foot fence; the resulting fall caused permanent brain damage.

Nebraska

- *ACLU Report shows Nebraska agencies regularly use TASERs against vulnerable people*¹⁴⁷
Notable misuse includes TASER use against an elderly disabled man with dementia, a woman with mental illness, and a ten-year-old child.
<http://www.aclunebraska.org/index.php/police-conduct/208-dangerously-out-of-bounds-tasers-in-nebraska>

Wisconsin

- 2006: *ACLU of Wisconsin Says Taser Death Demonstrates Need to Restrict Police Use of Potentially Lethal Weapons*
An unarmed mentally ill man, known to police officers, was caught trespassing at a construction site. He was Tased at least six times, possibly more, and died as a result.
<http://www.livinglakecountry.com/mukwonagochief/policeandcourts/108422809.html>

Michigan

- 2009: *'No excuse' for teen's Taser death, mother says*
Police tased a 16-year-old, 5'2", 110-pound boy who died after the electric shock.¹⁴⁸

C. A Uniform TASER Policy is Needed to Help End Abusive Practices

6.C1 There is no uniform law regarding the use of TASERs. There are major discrepancies among different law enforcement agencies. According to a review of 99 TASER and use-of-force policies conducted by the University of Iowa Legal Clinic pursuant to open records requests, some law enforcement agencies are silent on whether TASER use is appropriate on pregnant women. Many do not provide guidance for TASER use on vulnerable groups such as the elderly, children, or the mentally ill.

¹⁴³ <http://www.wthr.com/story/9880453/parents-file-suit-against-school-police-over-taser-incident>

¹⁴⁴ <http://archive.desmoinesregister.com/article/20131222/NEWS14/312220062/Register-Investigation-Iowans-sue-collect-after-Taser-shocks>

¹⁴⁵ <http://www.dispatch.com/content/stories/local/2014/05/10/complaint-says-man-shot-in-eye-with-taser.html>

¹⁴⁶ <http://www.ohio.com/news/break-news/ohio-man-who-suffered-brain-damage-after-taser-use-settles-lawsuit-with-police-for-2-25-million-1.462674>

¹⁴⁷ <http://www.aclunebraska.org/index.php/police-conduct/208-dangerously-out-of-bounds-tasers-in-nebraska>

¹⁴⁸ <http://www.cnn.com/2009/CRIME/05/28/michigan.taser.death/>

Some law enforcement agencies allow TASER use on individuals who are already restrained, while others strictly prohibit this use. No policy specifically answers whether repeated TASER use is appropriate or not. Many policies use vague or ambiguous language to address appropriate TASER use. The original policies are on file with the Legal Clinic and available upon request.

6.C2 A TASER law explicitly framing a comprehensive, uniform TASER Policy in conjunction with a comprehensive, uniform Use of Force Policy, would promote transparency between private individuals and law enforcement agencies, as well as create strict parameters for TASER use. A suggested uniform policy would prohibit the use of drive stun mode, restrict multiple and extended charges on the same person, require law enforcement to verbally warn an individual before deploying a TASER, and would limit the use of TASERs on vulnerable individuals such as pregnant women; the elderly; juveniles; and persons who are restrained, unconscious, at risk for falling, suffering from heart or respiratory problems, mentally ill, or near flammable objects.¹⁴⁹

VII. Juvenile Life without Parole (art. 16)

7.1 The Committee is concerned with the large number of children sentenced to life imprisonment.¹⁵⁰ The continued use of juvenile life without the possibility of parole sentences (“JLWOP”) violates Article 16 of CAT. The United States, as state party has the obligation to prevent “acts of cruel, inhuman or degrading treatment or punishment” even if they do not amount to torture as defined in Article 1 of CAT, “when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”¹⁵¹ The Committee expressed its judgment that JLWOP “could constitute cruel, inhuman or degrading treatment or punishment” under CAT if allowed to continue.¹⁵²

A. The United States’ Supreme Court’s Recent Decisions Acknowledge the Inappropriate Nature of the Sentence but Fall Short of Banning the Sentence Entirely

7.A1 The Supreme Court held in *Graham v. Florida* that juveniles cannot be sentenced to life in prison without parole for a non-homicide offense, as the United States noted in its latest report.¹⁵³ In its decision, the Court was clear that juveniles are categorically less culpable than adults for a number of scientific, penological, and moral reasons. The Court confirmed that the practice amounted to “cruel and unusual punishment” in violation of the Eighth Amendment. Its decision rested in substantial part on the idea that JLWOP is a particularly severe sentence that shares several significant characteristics with the death penalty, especially when applied to juveniles.

7.A2 Building on the decision in *Graham*, the Supreme Court in *Miller v. Alabama* held that mandatory life without possibility of parole sentences for homicide offenses committed by children under the age of 18 are unconstitutional.¹⁵⁴ In so doing, the Court acknowledged that “[m]andatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features . . . [a]nd disregards the possibility of rehabilitation even when the circumstances most suggest it.”¹⁵⁵

¹⁴⁹ This includes individuals who are.

¹⁵⁰ U.N. Comm. Against Torture, Conclusions and Recommendations of the Committee Against Torture: United States of America, at 9, U.N. Doc. CAT/C/USA/CO/2 (May 18, 2006).

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Graham v. Florida*, 130 S.Ct. 2011 (2010).

¹⁵⁴ *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

¹⁵⁵ *Id.* at 2468.

7.A3 In *Graham* and *Miller*, the Court acknowledged that the penological justifications for imposing death-in-prison sentences—retribution, deterrence, incapacitation, and rehabilitation—were “diminished” with respect to children.¹⁵⁶ As a result of *Graham* and *Miller* together, the courts may sentence JLWOP in the United States only for homicide offenses and after an individual assessment of the juvenile’s characteristics and circumstances of the specific crime. However, as long as the juvenile committed a homicide crime and the court decides it is warranted after the *Miller* assessment, the court may impose life without parole sentences on children in most U.S. states, including all Midwest states.¹⁵⁷ Prior to the *Miller* decision, JLWOP was banned only in Alaska, Colorado, Kansas, Kentucky, Montana, New Mexico, , Oregon, and District of Columbia.¹⁵⁸ At this time, only California, Delaware, Illinois, Iowa, Massachusetts, Mississippi, Nebraska, New Hampshire, North Carolina, Texas, West Virginia, and Wyoming have applied *Miller* retroactively, as a result either from judicial or legislative action.¹⁵⁹ In all other states, children already serving the sentence are currently without any remedy, including the states with the highest JLWOP population such as Pennsylvania, with 444 juveniles serving JLWOP, and Louisiana, with 355, Michigan, with 346, Florida, with 266.¹⁶⁰

7.A4 JLWOP should be categorically banned for the United States to be in compliance with Art. 16 of CAT. Some state legislative authorities have attempted to revise their laws based on *Miller*, however, it is unclear whether they will take *Miller* and *Graham* to heart and provide youth with meaningful opportunities to earn their release. The political branches of the federal government have done next to nothing to ban JLWOP and move the United States closer to compliance.¹⁶¹ The Committee should apply pressure to the political branches of the federal government to further carry out the Supreme Court’s mandate.

B. JLWOP has been Inappropriately Imposed as a Mandatory Sentence in the United States

7.B1 The majority of JLWOP sentences were imposed in states with mandatory statutory schemes; that is, in states where judges were required to sentence children convicted of certain crimes to life in prison without the possibility of parole without any consideration of factors relating to the child’s age or life circumstances.¹⁶² As of the 2012 decision in the *Miller* case, thirty-nine states and the federal

¹⁵⁶ *Miller* at 2466; *Graham* at 2028.

¹⁵⁷ Although the definition of what states comprise the “Midwest” varies slightly, the Midwest Coalition for Human Rights considers Michigan, Illinois, Minnesota, Iowa, Wisconsin, North Dakota, Ohio, Indiana, and Nebraska within its focus as part of the “Midwest.” The complete list of states includes Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, , and Wisconsin. *State-By-State Legal Resource Guide*, USF SCHOOL OF LAW (Nov. 28, 2012), http://www.usfca.edu/law/jlwop/resource_guide/ (based on work by Michelle Leighton & Brian Foley, included in the Connie De La Vega & Michelle Leighton, *Sentencing Our Children to Die in*

Prison: Global Law and Practice, 42 U.S.F. L. Rev. 983, 1031-45 (2008)).

¹⁵⁸ *State-By-State Legal Resource Guide*, *supra* note 157.

¹⁵⁹ *Id.*; *People v. Davis*, 2014 IL 115595; *Diatchenko v. District Att’y for Suffolk Dist.*, 1 N.E.3d 270 (Mass. 2013); *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013); *Jones v. State*, 122 So.3d 698 (Miss. 2013); *State v. Mantich*, 842 N.W.2d 716 (Neb. 2014); *Petition of State of New Hampshire*, 2014 WL 4253359 (2014); *Ex Parte Maxwell*, 424 S.W.3d 66 (Tex. Crim. App. 2014).

¹⁶⁰ For a breakdown of the applicable statutes and number of JLWOP in each state see *State-By-State Legal Resource Guide*, *supra* note 157.

¹⁶¹ An important, but not adequate, step has been taken by the U.S. Attorney’s Office, which has taken the position that defendants make a prima facie showing that *Miller* is retroactive, and thus should be permitted to pursue their claims further in federal habeas proceedings. See, e.g., *In re Pendleton*, 732 F.3d 280, 282-83 (3d Cir. 2013).

¹⁶² ASHELY NELLIS, THE SENTENCING PROJECT, THE LIVES OF JUVENILE LIFERS; FINDINGS FROM A NATIONAL SURVEY 3 (2012).

government allowed for JLWOP in at least some circumstances.¹⁶³ *Graham* banned JLWOP for non-homicide crimes, and *Miller* banned mandatory JLWOP even for homicide crimes; but did not ban JLWOP itself. As explained in *Miller*, as long as there is an assessment of the juvenile’s “attendant” characteristics and specific conditions of the crime, the court may still impose JLWOP as punishment for homicide crimes committed by youth under the age of 18. Approximately 35% of those serving JLWOP were convicted of felony-murder¹⁶⁴—they did not intend to commit murder or were only minimally involved in the actual act of violence that led to a homicide.¹⁶⁵ More than half of the affected population received life sentences for their first criminal conviction.¹⁶⁶

7.B2 As of March 2012, approximately 2,300 juvenile offenders in the United States are serving a JLWOP.¹⁶⁷ In the Midwest¹⁶⁸ alone 540 juveniles are currently serving JLWOP.¹⁶⁹ Illinois and Michigan account for more than three-quarters of these sentences (346 juveniles in Michigan and approximately 100 juveniles in Illinois.)¹⁷⁰ Despite the Supreme Court’s decisions in *Graham* and *Miller*, JLWOP is still imposed in the United States, and as noted in 7.A3 *supra*, the *Miller* decision has not been fully implemented as several states have not applied *Miller* retroactively. Indeed, prosecutors in Nebraska and Illinois have begun seeking review of favorable state supreme court decisions applying *Miller* retroactively—thus, mandatory JLWOP sentences continue to persist.¹⁷¹

7.B3 In Illinois, children as young as 13 can be sentenced to JLWOP. In many cases this sentence was mandatory.¹⁷² Illinois law—which has not yet been revised post-*Miller*—dictates that a mandatory life sentence must be imposed on juveniles in, among others, instances of multiple murders, the murder of a police officer, or the murder of a child during the course of aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnapping.¹⁷³ A study of Illinois’ 103 JLWOP cases conducted in 2008 found that 95% of the children sentenced were transferred to adult court automatically, and 79% received mandatory life sentences upon conviction.¹⁷⁴ In nearly all of these cases, at no point did the judge or jury consider the child’s age, home environment, degree of involvement in the crime, rehabilitative potential, or the circumstances of the offense—the law simply states that if a child commits an offense listed in the statute, the child must be sentenced to life without parole.¹⁷⁵

7.B4 In Michigan, juveniles as young as 14 can be charged with first-degree murder, and they are automatically tried as adults in circuit court rather than the family division of circuit court for a

¹⁶³ Brief for Petitioner at App. A & B, *Jackson v. Hobbs*, 132 S.Ct. 548 (2011) (No. 10-9647).

¹⁶⁴ ILLINOIS COALITION FOR THE FAIR SENTENCING OF CHILDREN, CATEGORICALLY LESS CULPABLE 19 (2008) [hereinafter CATEGORICALLY LESS CULPABLE], available at http://www.law.northwestern.edu/cfjc/jlwop/JLWOP_Report.pdf.

¹⁶⁵ Brief of the Sentencing Project as Amicus Curiae in Support of Petitioners at 7–8, *Graham v. Florida*, 130 S.Ct. 2011 (Nos. 08-7412) (citing AMNESTY INT’L & HUMAN RIGHTS WATCH, THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR CHILD OFFENDERS IN THE UNITED STATES (2005) [hereinafter *HRW REPORT*]).

¹⁶⁶ Categorically less Culpable, *supra* note 164, at 20.

¹⁶⁷ Transcript of Oral Argument at 13, *Miller v. Alabama* 132 S.Ct. 548 (2011); *see also* NELLIS, *supra* note 162, at 7 (noting that 1,579, or 68.4%, of juveniles serving life without parole sentences responded to the Project’s survey).

¹⁶⁸ Although the definition of what states comprise the “Midwest” varies slightly, the Midwest Coalition for Human Rights considers Michigan, Illinois, Minnesota, Iowa, Wisconsin, North Dakota, Ohio, Indiana, and Nebraska within its focus as part of the “Midwest.”

¹⁶⁹ *Sentencing Juveniles*, N.Y. TIMES (Apr. 20, 2011).

¹⁷⁰ *Id.*

¹⁷¹ *State v. Mantich*, 842 N.W.2d 716 (Neb. 2014), *cert. pending*, 13-1348; *People v. Davis*, , 2014 IL 115595, *cert. pending*, 14-197.

¹⁷² 705 ILCS 405/5-130(4)(a) (providing for the mandatory transfer of children as young as thirteen to adult court when that child is charged with first degree murder committed during the course of either aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnapping).

¹⁷³ IL ST CH 730 § 5/5-8-1; 705 ILCS 405/5-130(1)(a); 705 ILCS 405/5-130(4)(a).

¹⁷⁴ CATEGORICALLY LESS CULPABLE, *supra* note 164, at 11.

¹⁷⁵ *Id.*

number of other crimes.¹⁷⁶ Michigan law requires that juveniles tried as adults in circuit court receive the same sentences as adult offenders for the most serious crimes.¹⁷⁷

7.B5 Iowa did not ban JLWOP itself, but it is one of seven state supreme courts in the country that found *Miller* is retroactive,¹⁷⁸ and banned any mandatory sentence to juveniles, regardless of whether they are for life or not.¹⁷⁹ In Iowa, the State Supreme Court held that a 75-year sentence, of which the juvenile would have to serve 52.5 years, was unconstitutional under *Miller*, *Graham*, and *Roper v. Simmons*,¹⁸⁰ as well as the Iowa constitution.¹⁸¹ It also concluded the governor's action of commuting all JLWOP sentences to 60 years was also unconstitutional and remanded the case for a new sentencing hearing with individualized consideration of the defendant.¹⁸² Most recently, the Iowa Supreme Court concluded that all mandatory minimum sentences of imprisonment for youthful offenders violate the Iowa Constitution's provision against cruel and unusual punishment because a judge must be allowed to consider youth and its attendant circumstances as a mitigating factor and to impose an appropriate sentence that could be lighter (i.e. less) than any mandatory statutory minimum.¹⁸³

C. *Children Sentenced to JLWOP are Particularly Likely to Become Victims of Sexual and/or Physical Violence in Prison*

7.C1 Juveniles who enter adult prison while they are still younger than 18 are 5 times more likely to be sexually assaulted, twice as likely to be beaten by staff, and 50% more likely to be attacked with a weapon than minors in juvenile facilities.¹⁸⁴ One study found that only 19.3% of children were held in juvenile placements before trial—over 56% were held in adult jails.¹⁸⁵ A corrections officer said that a young inmate's chances of avoiding rape were “almost zero. . . . He'll get raped within the first 24 to 48 hours. That's almost standard.”¹⁸⁶ The suicide rate for juveniles in adult prisons is 8 times higher than that of juveniles in age-appropriate detention facilities.¹⁸⁷

D. *Individual Case Studies*

- *Henry Hill, Michigan*¹⁸⁸

Henry Hill was 16 in 1980 when he and 2 friends got into an argument with an acquaintance at a park. Henry had already left the park when his 18-year-old friend shot and killed the acquaintance. Despite having the academic ability of a 3rd-grader, the mental maturity of a 9-year-old, and

¹⁷⁶ MCL 712A.2; MCL 600.606 (allowing the prosecuting attorney to file charges against a juvenile as a juvenile in the family division of circuit court or directly as an adult in the circuit court).

¹⁷⁷ MCL 769.1(1).

¹⁷⁸ See *supra* note 159 (listing the state court decisions that found *Miller* was retroactive).

¹⁷⁹ *State v. Lyle*, 11-1339, 2014 WL 3537026 (Iowa July 18, 2014).

¹⁸⁰ *Roper v. Simmons*, 543 U.S. 551 (2005).

¹⁸¹ *Iowa v. Null*, 836 N.W.2d 41 (Iowa 2013).

¹⁸² *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013).

¹⁸³ *Lyle*, 2014 WL 3537026.

¹⁸⁴ HRW REPORT, *supra* note 165, at 73 (citing Martin Forst et al., *Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy*, 4 JUVENILE & FAMILY COURT 9 (1989)); see also JASON ZIEDENBERG & VINCENT SCHIRALDI, JUSTICE POL'Y INST., THE RISKS JUVENILES FACE WHEN THEY ARE INCARCERATED WITH ADULTS (1997), available at <http://www.cjcj.org/jpi/risks.htm>.

¹⁸⁵ NELLIS, *supra* note 162, at 18.

¹⁸⁶ JASON ZEIDENBERG & VINCENT SCHIRALDI, JUSTICE POL'Y INST., THE RISKS JUVENILES FACE WHEN THEY ARE INCARCERATED WITH ADULTS 3 (1997), available at <http://www.cjcj.org/jpi/risks.html>.

¹⁸⁷ DEBORAH LABELLE ET AL., ACLU OF MICH., SECOND CHANCES: JUVENILES SERVING LIFE WITHOUT PAROLE IN MICHIGAN PRISONS 18 (2004), available at <http://www.aclumich.org/sites/default/files/file/Publications/Juv%20Lifers%20V8.pdf>.

¹⁸⁸ LABELLE, *supra* note 187, at 2.

recommendations from psychologists that he stay in the juvenile system, Henry was waived into adult court for his trial and convicted of aiding and abetting first-degree murder. He was then sentenced to life without parole pursuant to Michigan’s mandatory statutory scheme. This is the exact same sentence given to the actual shooter. Henry Hill is over 40 years-old and has been in prison for more than 25 years. He has a GED and vocational qualifications, and exhausted all programs and resources available to him.

- *Peter A., Illinois*¹⁸⁹

Peter A. was a 15-year-old sophomore in high school at the time of his crime. He lived with his mother in Chicago, but spent a lot of time with his older brother, who had his own apartment. Following a theft from his brother’s apartment, Peter, acting on his brother’s instructions, and an 18-year-old stole a van to help get the stolen goods back. Peter stayed in the van while 2 adults went inside of the home where the stolen goods were supposedly held. On the way back to his brother’s apartment he learned that 2 people had been shot to death. At trial, Peter was convicted of 2 counts of felony-murder because the state proved that he stole the van (which Peter had readily admitted to the police) and drove to the victims’ home. His conviction carried a mandatory sentence of life without parole in Illinois. Peter had no prior record of violent crime and no prior felony convictions. The judge in his case called him “a bright lad” with “rehabilitative potential.” In his decision, the judge wrote: “[T]hat is the sentence that I am mandated by law to impose. If I had my discretion, I would impose another sentence, but that is mandated by law.” Peter has already spent more than half of his life behind bars. In prison, he obtained a GED and a correspondence paralegal course. He works as a law clerk in the prison law library.

E. *Obligations to end JLWOP Under Related Treaties*

7.E1 The Human Rights Committee (“HRC”)—the Committee that oversees the implementation of rights and obligations under the International Covenant on Civil and Political Rights (“ICCPR”)¹⁹⁰—strongly condemned JLWOP sentences. It advised the United States that youth offenders should not—under any circumstances, not even exceptional ones—receive a sentence of life without possibility of parole.¹⁹¹ The HRC is of the view “that sentencing children to life sentence without parole is of itself not in compliance with article 24 (1) of the [ICCPR] (articles 7 and 24).”¹⁹² It urged the United States to swiftly review the situations of convicted youth currently serving such sentences in order to mitigate the consequences of the ongoing violation.¹⁹³

7.E2 The United States submitted its fourth and latest periodic report to the HRC more than 1 year overdue. The report simultaneously applauds positive developments restricting JLWOP—like *Graham v. Florida*¹⁹⁴—while refusing to back off the federal government’s official position that JLWOP is not incompatible with the United States’ obligations under the ICCPR.

7.E3 The United States signed, but did not ratify, the Convention on the Rights of the Child (“CRC”).¹⁹⁵ It must therefore “refrain from acts which would defeat the object and purpose of the treaty.”¹⁹⁶ Article 37(a) of the CRC prohibits the imposition of “life imprisonment without possibility of release . . . for offences committed by persons below 18 years of age.”¹⁹⁷ Article 40 of the CRC

¹⁸⁹ HRW REPORT, supra note 165, at 11–13.

¹⁹⁰ ICCPR, Dec. 16, 1966, 999 U.N.T.S. 171.

¹⁹¹ U.N. International Covenant on Civil and Political Rights, U.N. Human Rights Comm., *Concluding Observations of the Human Rights Committee on United States of America*, P 34, U.N. Doc. CCPR/C/USA/CO/3 ¶ 34 (Set. 15, 2006).

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ 130 S.Ct. 2011 (2010).

¹⁹⁵ The United States is only one of 2 countries—Somalia is the other—that has not ratified the United Nations Convention on the Rights of the Child.

¹⁹⁶ Vienna Convention on the Law of Treaties, art. 18, 1155 U.N.T.S. 331.

¹⁹⁷ *Id.* at art. 37(a).

recognizes the right of juvenile offenders “to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth . . . and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”¹⁹⁸ This Article makes clear that juvenile sentencing must take into account the ultimate goal of reintegrating youth offenders and helping them assume a constructive role in society.¹⁹⁹ It thus sets out an unambiguous obligation to treat children differently than adults.

VIII. Conclusion

The United States has consistently ignored the Committee’s 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 individuals. In addition, the United States allows its court system to sentence juveniles to life without parole. 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 CAT.

¹⁹⁸ *Id.* at art. 40.

¹⁹⁹ See TON LIEFAARD, DEPRIVATION OF LIBERTY OF CHILDREN IN LIGHT OF INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS 74–117 (2008).