

# United Nations Human Rights Committee

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## Suggestions for List of Issues Prior to Reporting Regarding the United States of America

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- (1) “Zero Tolerance” Policy of Separation of Immigrant Families and  
Indefinite Detention of Immigrant Children,  
&  
(2) Forced Labor and Inadequate Health Services in Private Immigration  
Detention Centers
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Submitted by:

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## **I. Reporting Organization**

The International Human Rights Clinic (IHRC) at Santa Clara University School of Law provides law students with unique, practical, and supervised real-life experiences in international human rights litigation and advocacy, and represents victims of human rights violations in partnership with regional and international human rights organizations.

## **II. Issue Summary**

The IHRC respectfully submits the following suggestions for the List of Issues Prior to Reporting to address the breaches of the International Covenant on Civil and Political Rights (“ICCPR”) committed by the United States of America with regard to (1) its “zero tolerance” policy of forced separation and prolonged detention of immigrant children detained at the southern border, and (2) forced labor and inadequate health services in private immigration detention centers.

First, the United States government’s “zero tolerance” policy consisting in separating immigrant families and detaining immigrant children at the southern border violates Articles 7, 10, 23, and 24 of the ICCPR. Specifically, the separation and prolonged detention of children amounts to torture and cruel, inhuman, or degrading treatment. Detention traumatizes vulnerable populations and threatens the basic health and safety of detainees.<sup>1</sup> Furthermore, children suffer irreparable harm from detention, no matter how long they are detained and regardless of whether they are detained alongside their families. The United States’ actions have resulted in the separation of more than 2,000 children from their families and the detention of almost 15,000 children.

Second, the United States’ lack of oversight of private immigrant detention centers with regard to forced labor conditions and the provision of subpar and substandard health care has resulted in violations of Articles 2, 6, 7, 8, and 10 of the ICCPR. Private immigration detention centers implement policies that force immigrant detainees to work in order to afford basic needs under the threat of solitary confinement, while substandard medical care has resulted in irreparable physical harm, particularly for pregnant women. Additionally, substandard medical care in private immigrant detention centers has resulted in more than 30 preventable deaths, as well as several miscarriages.

## **III. 2014 Concluding Observations and Applicable ICCPR Legal Framework**

The issues highlighted above should be analyzed in light of the rights recognized in the following articles of the ICCPR:

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<sup>1</sup> American Immigration Lawyers Association [hereinafter “AILA”], Lutheran Immigration and Refugee Service, National Immigrant Justice Center, and Women’s Refugee Commission, *The Real Alternatives to Detention, Immigration Justice Campaign*, (last visited October 24, 2018), <https://www.immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-06/The%20Real%20Alternatives%20to%20Detention%20FINAL%2006.17.pdf>.

- **Article 2:** Application to all persons in a state’s territory or under its jurisdiction without distinction as to race, color, sex, language, religion, political or other opinion, national or social origin, birth or other status
- **Article 6:** Right to life
- **Article 7:** Protection from torture or cruel, inhuman or degrading treatment or punishment
- **Article 8:** Prohibitions of slavery and servitude
- **Article 10:** Right of persons deprived of liberty to be treated with humanity and with respect for the inherent dignity of a human person
- **Article 23:** The family is the natural fundamental group unit of society and is entitled to protection by society and the State
- **Article 24:** Protection of children’s rights

In its [concluding observations](#) on the fourth periodic report of the United States in April 2014, the Human Rights Committee did not specifically address the issue of separation of immigrant families and indefinite detention of immigrant children or the issue of human rights violations in private immigrant detention centers. The Committee did express concern about prolonged periods of detention as well as mandatory deportation without due regard for mitigating factors. The Committee urged the United States to review its policies with respect to mandatory detention and deportation to “allow for individualized decisions,” ensure access to legal representation, and provide access to adequate health care, including reproductive health-care services, to undocumented immigrants, among others.

The United States made no specific response to the Committee’s concluding observations in either the government’s [April](#) or [October](#) 2015 follow-up report.

#### **IV. Current Policy and Practices**

##### **1. The United States’ “zero tolerance” policy**

The United States government’s policy of separating immigrant children from their families and detaining them for a prolonged length of time amounts to torture, as it has resulted in severe mental suffering among immigrant children, and was instigated by public officials to intentionally inflict (1) punishment for illegal migration into the United States and (2) intimidation or coercion towards those contemplating illegal migration.

The so-called “zero tolerance” policy sought to detain and prosecute every adult that crossed the border illegally,<sup>2</sup> placed parents in detention centers, and separated them from their children, who were placed in less-restrictive shelters.<sup>3</sup> The policy has led to a sharp increase in prosecution

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<sup>2</sup> *Office of the Attorney General, Memorandum For Federal Prosecutors Along The Southwest Border: Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a), (April 6, 2018), <https://www.justice.gov/opa/press-release/file/1049751/download>.*

<sup>3</sup> *Camila Domonoske & Richard Gonzales, What We Know: Family Separation And 'Zero Tolerance' At The Border, NPR, (June 19, 2018), <https://www.npr.org/2018/06/19/621065383/what-we-know-family-separation-and-zero-tolerance-at-the-border>.*

at the U.S.-Mexico border, which has resulted in forcibly separating more than 2,000 immigrant children from their parents.<sup>4</sup> Additionally, prosecutorial discretion in the immigration context was effectively substituted with new priorities that required the prosecution of anybody found to be in the country without proper authorization.<sup>5</sup> The policy leaves no room for prosecutors to consider the severity of the alleged crime or a the detained person’s circumstances.<sup>6</sup> Furthermore, the current administration reversed an Obama-era policy aimed at decreasing the amount of immigrants in detention. As a result, the number of immigrant detainees has increased drastically under the Trump administration.<sup>7</sup> The U.S. currently houses 44,000 immigrants in detention each day,<sup>8</sup> 10,000 more detainees than were housed during the Obama Administration.<sup>9</sup> Currently, there are almost 15,000 immigrant children in the custody of the federal government.<sup>10</sup> Many of these children are held in cages as soon as they come through the border.<sup>11</sup> The government has also created tent cities with prison-like conditions for kids 13 to 17 years of age.<sup>12</sup>

The effects of such traumatic childhood experiences have lifelong psychological and physiological consequences which constitute severe mental suffering.<sup>13</sup> Children who experience forced separation and detention exhibit symptoms of trauma and increased risk of health issues.<sup>14</sup> These adverse childhood experiences cause developmentally detrimental consequences. A child separated from his or her parents, who experiences a constant state of stress, may perceive acts of comfort or touch as a threat and may lash out.<sup>15</sup> This can ultimately create a “weak foundation for later learning, behavior, and health”.<sup>16</sup> Moreover, children who experience prolonged toxic stress levels without parental relief are not only in danger of experiencing the “risk-taking and generally unhealthy lifestyles”, but they are also at risk of “biological manifestations” of this

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<sup>4</sup> Dara Lind, *New statistics: the government is separating 65 children a day from parents at the border*, Vox (Jun. 19, 2018), <https://www.vox.com/2018/6/19/17479138/how-many-families-separated-border-immigration>.

<sup>5</sup> *Id.*

<sup>6</sup> Lazaro Zamora, *Comparing Trump and Obama’s Deportation Priorities*, Bipartisan Policy Center, Feb. 27, 2017.

<sup>7</sup> *The End of Immigration Enforcement Priorities Under the Trump Administration*, American Immigration Council (Mar. 7, 2018).

<sup>8</sup> Spencer Ackerman, *Ice is Imprisoning a Record 44,000 People*, *The Daily Beast* (Nov. 11, 2018).

<sup>9</sup> Department of Homeland Security, *Fact Sheet: DHS FY 2017 Budget*, 9 February 2016, <https://www.dhs.gov/news/2016/02/09/fact-sheet-dhs-fy-2017-budget>

<sup>10</sup> John Burnett, *Almost 15,000 Migrant Children Now Held At Nearly Full Shelters*, NPR, (Dec. 13, 2018), <https://www.npr.org/2018/12/13/676300525/almost-15-000-migrant-children-now-held-at-nearly-full-shelters>; see also Caitlin Dickerson, *Migrant Children Moved Under Cover of Darkness to a Texas Tent City*, NY Times (Sep. 30, 2018), <https://www.nytimes.com/2018/09/30/us/migrant-children-tent-city-texas.html>.

<sup>11</sup> Amanda Arnold, *What to Know About the Detention Centers for Immigrant Children Along the U.S.–Mexico Border*, *The Cut*, (Jun. 21, 2018), <https://www.thecut.com/2018/06/immigrant-children-detention-center-separated-parents.html>.

<sup>12</sup> Dominique Mosbergen, *Trump Administration Quietly Moves 1,600 Migrant Children To Texas Tent City: Report*, *Huffington Post*, (Oct. 1, 2018), [https://www.huffingtonpost.com/entry/tornillo-tent-city-migrant-children\\_us\\_5bb1fcc6e4b0c7575966ff2e](https://www.huffingtonpost.com/entry/tornillo-tent-city-migrant-children_us_5bb1fcc6e4b0c7575966ff2e).

<sup>13</sup> Karen Zwi & Sarah Mares, *Stories from unaccompanied children in immigration detention: A composite account*, *J. of Pediatrics Child Health*, (July 1, 2016), doi: 10.1111/jpc.12953.

<sup>14</sup> Center for Disease Control (“CDC”), *About the CDC-Kaiser ACE Study*, National Center for Injury Prevention and Control, (last updated June 14, 2016), <https://www.cdc.gov/violenceprevention/acestudy/about.html>.

<sup>15</sup> Laura Santhanam, *How the toxic stress of family separation can harm a child*, PBS, (June 18, 2018), <https://www.pbs.org/newshour/health/how-the-toxic-stress-of-family-separation-can-harm-a-child>.

<sup>16</sup> Jack P. Shonkoff & Andrew S. Garner, *Lifelong Effects of Early Childhood Adversity and Toxic Stress*, *J. of Amer. Academy of Pediatrics*, 129:1, (Jan. 2012), available at <http://pediatrics.aappublications.org/content/129/1/e232.long>.

stress, including, but not limited to: cardiovascular disease, viral hepatitis, liver cancer, chronic obstructive pulmonary disease, and autoimmune diseases.<sup>17</sup> The longer a child is separated from his or her parents, the greater the risk becomes.<sup>18</sup> Even when detained with their families, children suffer from PTSD, depression, and other cognitive disorders.

The journal of European Child & Adolescent Psychiatry published a study which found immigrant children “held in detention had significantly more social, emotional and behavioral difficulties than children living in the community.”<sup>19</sup> Similarly, a different pilot study produced similar results: detained children reported symptoms of depression, anxiety, sleep problems, somatic complaints, poor appetite, and emotional and behavioral difficulties.<sup>20</sup> Immigration detention compounds existing psychological traumas and can cause additional detrimental physical and mental health effects on immigrants -- particularly asylum seekers, who are often already traumatized by their experiences in their home countries.<sup>21</sup>

According to Jessica Delgado, a public defender in Santa Clara County who volunteered at Dilley Detention Center in July 2018, detainees (children and adults) endure what she describes as “condoned torture”<sup>22</sup> techniques. First, detainees spend several days in “La Perrera” (the Dog Pound). La Perrera is a facility with cages, where detainees are housed in alarming spaces under inhumane conditions.<sup>23</sup> The facilities are very hot, and there is no air conditioning. The bathroom facilities are not maintained. According to Ms. Delgado, “children are being asked to use the restroom on piles of feces. One woman . . . described her child who kept throwing up, and trying to use the restroom, and throwing up . . . it’s really horrifying.”<sup>24</sup> After being housed in La Perrera for several days, detainees are then transferred to the “Hielera” (the Icebox) for about 12-14 hours, with no blankets, before they are processed into detention centers. These conditions are kept intentionally very cold as a deterrent, similar to those used by law enforcement for purposes of interrogation.

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<sup>17</sup> *Id.*

<sup>18</sup> *Laura Santhanam, (see also United Nations General Assembly, Estimates in respect of special political missions, good offices and other political initiatives authorized by the General Assembly and/or the Security Council: United Nations Assistance Mission for Iraq, A/63/346/Add.5 (Oct. 10, 2008)).*

<sup>19</sup> *Karen Zwi, et al., The impact of detention on the social-emotional wellbeing of children seeking asylum: a comparison with community-based children; Eur. Child Adolesc. Psychiatry. 27: 4 (Apr. 2018), doi: 10.1007/s00787-017-1082-z.*

<sup>20</sup> *Ann Lorek, et al., The mental and physical health difficulties of children held within a british immigration detention center, Child Abuse and Neglect, 3: 9, (Sept. 2009), doi: 10.1016/j.chiabu.2008.10.005.*

<sup>21</sup> *AILA & American Immigration Council, Statement of the American Immigration Council and the American Immigration Lawyers Association, Submitted to the Senate Committee on Homeland Security & Governmental Affairs: Hearing on “The Implications of the Reinterpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives,” (Sept. 18, 2018), available at [https://americanimmigrationcouncil.org/sites/default/files/general\\_litigation/hsgac\\_hearing\\_on\\_flores\\_statement.pdf](https://americanimmigrationcouncil.org/sites/default/files/general_litigation/hsgac_hearing_on_flores_statement.pdf); see also *Melissa Sanchez, et al., As Months Pass in Chicago Shelters, Immigrant Children Contemplate Escape Even Suicide; ProPublica Illinois (Sept. 6, 2018), <https://www.propublica.org/article/chicago-immigrant-shelters-heartland-internal-documents>.**

<sup>22</sup> *IHRC Interview with Jessica Delgado, Attorney, IHRC, Santa Clara University School of Law, Santa Clara, California (Oct. 31, 2018).*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

The United States has explicitly stated that the goal of its “zero tolerance” immigration policy is deterrence. In an interview that aired on CNN in March 2017, prior to the enactment of the policy, then-Secretary of Homeland Security, John Kelly, stated: “Yes, I am considering -- in order to deter more movement along this terribly dangerous network -- I am considering exactly that [separating minors from their families].”<sup>25</sup> In an interview with National Public Radio in May 2018, following the enactment of the “zero tolerance” policy, then-White House Chief of Staff John Kelly again emphasized the deterrent purpose behind the legislation. Kelly stated, “[T]he laws are the laws. But a big name of the game is deterrence . . . It [family separation] could be a tough deterrent -- would be a tough deterrent. A much faster turnaround on asylum seekers.”<sup>26</sup> According to Kelly’s statement, the U.S. government purposefully created a policy of separating families at the border that inflicted severe emotional harm on children and families to dissuade or scare other potential immigrants from entering the United States without authorization. When a government actor utilizes the fear of potential immigrants of being forcefully separated from their families in a way that is coercive or intimidating, this act amounts to torture.

The government has violated the ICCPR by intentionally inflicting severe mental suffering upon immigrant children and their families for the purpose of deterring future illegal immigration and punishing current offenders. Children, no matter their country of origin, comprise a particularly vulnerable group which mandates protection by governments, not the infliction of torture and ill-treatment. This policy is not only an ineffective method for deterring illegal immigration, it amounts to torture.

## **2. Forced labor in private immigration detention centers**

The United States’ lack of oversight of private immigrant detention centers with regard to forced labor conditions and the provision of subpar and substandard health care has resulted in violations of Articles 2, 7, 8, and 10 of the ICCPR. The United States has violated the ICCPR by allowing private immigrant detention centers to subject detainees to slave labor by (a) subjecting detainees to conditions in which there is no real option but to participate in work programs, and (b) threatening detainees with solitary confinement if they do not work in these programs.

Private immigrant detention centers have been depriving detainees of basic necessities like healthy food, clean water, clothes, personal hygiene products, and toiletries so detainees are forced to work to pay for those items from the detention center’s commissary.<sup>27</sup> An expert in immigrant advocacy has stated that this process of deprivation of basic necessities is conducted “with a profit motive.”<sup>28</sup> She claims that “detainees are put in a vulnerable position” because the “food is so poor at the facilities that to have any semblance of a balanced diet, detainees must

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<sup>25</sup> CNN, *John Kelly, Homeland Security Secretary, interview with Wolf Blitzer, The Situation Room with Wolf Blitzer*, (Mar. 6, 2017) at 7min 28sec, <https://www.cnn.com/videos/politics/2017/03/06/john-kelly-dhs-trump-travel-ban-wiretap-tsr-intv-full.cnn>.

<sup>26</sup> NPR, *Transcript: White House Chief of Staff John Kelly’s Interview with NPR*, (May 11, 2018), <https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-of-staff-john-kellys-interview-with-npr>.

<sup>27</sup> Catherine E. Shiochet, *Lawsuit Alleges ‘Forced Labor’ in Immigrant Detention*, CNN, April 17, 2018.

<sup>28</sup> Telephone Interview with Azadeh Shashahani, *Legal and Advocacy Director, Project South* (Nov. 6, 2018).

purchase food at the detention center commissaries for an increased price.”<sup>29</sup> A detainee who is suing CoreCivic - one of the largest for-profit private detention corporations in the U.S. - under a forced labor class action suit stated: “When I arrived at Stewart, I was faced with the impossible choice – either work for a few cents an hour or live without basic things like soap, shampoo, deodorant, and food.”<sup>30</sup>

Detainees have no real choice but to volunteer for these programs, or risk rashes, infections, and other consequences of not being able to maintain one’s personal hygiene. Intentionally depriving detainees of adequate and healthy food makes their choice to work less of a choice and more of a necessity. Forcing immigrant detainees to work in order to afford adequate food, or hygienic products, and making work their only option other than staying in their cell all day is equates to involuntary labor. Thus, the conditions of immigrant detainees in private immigrant detention centers is tantamount to unlawful forced labor and violates Article 8 of the ICCPR.

Not only are immigrant detainees not given valid options other than to work, if they don’t work, they risk being threatened with solitary confinement. US courts have held that allegations of forced labor through “threats, physical beatings... and unlawful substandard working conditions are sufficient to state claims for forced labor.”<sup>31</sup> Although Work-For-Pay programs are supposed to give detainees a choice to work or not, those who have reported opting out of the program have been sent to isolation or solitary confinement. Project South reports that immigrant detainees in the Irwin detention centers in Georgia who are put in “segregation” spend 23 hours in their cells and spend the other hour away from everyone.<sup>32</sup> Freedom for Immigrants, an immigrant advocacy group reports that solitary confinement as a punishment for not working is “more than often the norm in private immigrant detention centers because they are run more like a company than government agencies.”<sup>33</sup> Work programs are not voluntary when detainees are coerced into volunteering through threats of solitary confinement. Coercing detainees to volunteer to work by force and threat violates Article 8 of the ICCPR.

### **3. Inadequate healthcare in private immigration detention centers**

The United States is also violating Article 6, the right to life, as well as Articles 2, 7, and 10 under the ICCPR by failing to adequately supervise private immigrant detention centers that do not provide adequate healthcare services to detained immigrants who have consequently died from preventable health problems.

There have been 173 deaths in immigrant detention since 2003 (the year of ICE’s inception).<sup>34</sup> In 2017, more people died in immigration detention than in any year since 2009.<sup>35</sup> Substandard

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<sup>29</sup> Telephone Interview with Azadeh Shashahani, Legal and Advocacy Director, Project South (Nov. 6, 2018).

<sup>30</sup> Catherine E. Shiochet, *Lawsuit Alleges ‘Forced Labor’ in Immigrant Detention*, CNN, April 17, 2018.

<sup>31</sup> *Jane Doe v. Reddy*, 2003 WL 23893010 (N.D.Cal. 2003)

<sup>32</sup> *Imprisoned Justice: Inside Two Georgia Immigrant Detention Centers*, Project South, at 49. May 2017.

<sup>33</sup> Telephone Interview with Freedom for Immigrants (Nov. 1, 2018).

<sup>34</sup> *Detention Watch Network, Third Death in Immigration Detention Makes the Adelanto Detention Center the Deadliest Facility in 2017*, available at <https://www.detentionwatchnetwork.org/pressroom/releases/2017/third-death-immigration-detention-center-deadliest>.

<sup>35</sup> *Human Rights Watch, Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention* (2018), p. 1.



medical care in private immigrant detention centers has resulted in more than 30 of these preventable deaths.<sup>36</sup> A report from Human Rights Watch has found that substandard healthcare in detention centers has led to 8 out of 15 reported deaths between 2015, and 2017.<sup>37</sup> Furthermore, there was evidence of subpar and dangerous practices in 14 of these cases, characterized by “unreasonable delays in providing care, poor practitioner and nursing care, and botched emergency responses.” After three reports reviewing medical care in immigrant detention from 2010-2017, Human Rights Watch found that ICE is “unable or unwilling to provide adequately for the health and safety” of detainees, the government’s “oversight and accountability mechanisms” or inefficient, and the “current administration’s proposal to weaken existing standards will further endanger lives.”<sup>38</sup>

Two of the deadliest detention facilities are located in California. Otay Mesa Detention Facility, run by CoreCivic in San Diego, has had 12 deaths since it opened in 2015 and Adelanto Detention Facility, run by GEO Group in San Bernardino County, has had more than 6 deaths.<sup>39</sup> The DHS Office of the Inspector General reported that 80 medical grievances were filed with Adelanto from November 2017 to April 2018 “for not receiving urgent care, not being seen for months for persistent health conditions and not receiving prescribed medication”, according to the report.<sup>40</sup> Mayra Gamez, an attorney who has represented detainees in Adelanto, stated that detainees sometimes agree to deportation “because they're afraid of just dying in a detention facility after multiple attempts at seeking help or getting care.”<sup>41</sup> Additionally, at Adelanto Detention Facility, shortly after a detained immigrant’s suicide, two other detainees at Adelanto attempted suicide by using bedsheets, prompting an investigation by the DHS Office of Inspector General.<sup>42</sup> This inspection uncovered “nooses made from bedsheets in 15 of 20 cells.”<sup>43</sup> Adelanto has had at least seven detainees attempt suicide from December 2016 to October 2017.<sup>44</sup>

The United States has violated the right to life because lack of oversight, which resulted in substandard and subpar medical treatment in immigrant detention centers, has led to: (1) death

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<sup>36</sup> *Human Rights Watch, Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention* (2018), p. 54.

<sup>37</sup> *Id.* at p. 15.

<sup>38</sup> *Id.* at p. 3.

<sup>39</sup> *California Immigrant Youth Justice Alliance, Detention Center Scorecards*, available at <https://ciyja.org/detention-center-scorecards/>.

<sup>40</sup> *Department of Homeland Security Office of Inspector General, Management Alert – Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California* (2018), available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>.

<sup>41</sup> Paloma Esquivel, *'We don't feel OK here': Detainee deaths, suicide attempts and hunger strikes plague California immigration facility* (2017), available at <https://www.latimes.com/local/lanow/la-me-ln-adelanto-detention-20170808-story.html>.

<sup>42</sup> *Department of Homeland Security Office of Inspector General, Management Alert – Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California* (2018), available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>.

<sup>43</sup> *Department of Homeland Security Office of Inspector General, Management Alert – Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California* (2018), available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>.

<sup>44</sup> *Department of Homeland Security Office of Inspector General, Management Alert – Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California* (2018), available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>.

from pre-existing conditions, (2) death from conditions that arise during detention, and (3) suicides as a result of inaccessible or substandard mental health care. Detained immigrants with preexisting conditions have received substandard medical care, characterized by delays in treatment, lack of emergency response when necessary, and poor communication, which resulted in preventable deaths.<sup>45</sup> Detained immigrants who developed health conditions during detention have died because they did not receive the required specialized treatment, did not have daily access to a physician or other healthcare professional, or were not transferred to a hospital.<sup>46</sup> Detained immigrants in private detention centers have also died by committing suicide when their mental health deteriorated while in detention and they did not receive adequate mental health care.<sup>47</sup>

Furthermore, substandard medical care in private immigrant detention centers has resulted in several miscarriages and irreparable harm of detainee's physical being. The Obama administration implemented a policy which restricted the detention of pregnant women "except in extreme circumstances or in relatively rare cases of expedited deportation."<sup>48</sup> This directive was overturned by the Trump administration on December 14, 2017, prior to the zero tolerance policy but was not revealed the public until March 29, 2018.<sup>49</sup> Consequently, immigrant women detained at private detention facilities have miscarried while in ICE detention after being

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<sup>45</sup> Human Rights Watch, *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention* (2018), pp. 25-27; Immigration and Customs Enforcement, "Detainee Death Review – Igor Zyazin, JICMS 201606226"; <https://www.ice.gov/doclib/foia/reports/ddr-Zyazin.pdf>; Immigration and Customs Enforcement, "ICE detainee passes away at Victorville medical center," <https://www.ice.gov/news/releases/ice-detainee-passes-away-victorville-medical-center-0>; and Human Rights Watch, *Systemic Indifference: Dangerous and Substandard Medical Care in US Immigration Detention*, May 8, 2017, p.35, [https://www.hrw.org/sites/default/files/report\\_pdf/usimmigration0517\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/usimmigration0517_web_0.pdf).

<sup>46</sup> Human Rights Watch, *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention* (2018), pp. 15, 46; Human Rights Watch, *Systemic Indifference: Dangerous and Substandard Medical Care in US Immigration Detention*, May 8, 2017, pp. 38-40.

<sup>47</sup> Department of Homeland Security Office of Inspector General, *Management Alert – Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California* (2018), available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>; Human Rights Watch, *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention* (2018), pp. 51-53;

<sup>48</sup> Ema O'Connor and Nidhi Prakash, *Pregnant Women Say They Miscarried In Immigration Detention And Didn't Get The Care They Needed*, available at <https://www.buzzfeednews.com/article/emaconnor/pregnant-migrant-women-miscarriage-cpb-ice-detention-trump#.ek0MJ07yY>.

<sup>49</sup> Immigration and Customs Enforcement, "Directive: Identification and Monitoring of Pregnant Detainees," December 14, 2017, <https://www.ice.gov/directive-identification-and-monitoring-pregnant-detainees>

shackled and denied prompt medical care.<sup>50</sup> Other detained immigrants who have received inadequate healthcare have survived, but have suffered nevertheless serious irreparable harm.<sup>51</sup>

Overall, the failure of the U.S. to ensure that private immigrant detention centers provide adequate access to health care to detained immigrants amounts to a violation of Articles 2, 6, 7, 8, and 10 of the ICCPR.

## V. Relevant Human Rights Committee General Comments

- In **General Comment 36** on Article 6 (Right to life) of the ICCPR, the Human Rights Committee stated: “The duty to protect the right to life requires States parties to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence. These include [...] children, especially [...] unaccompanied migrant children [...] [,] asylum seekers, [and] refugees”.<sup>52</sup>
- In **General Comment 36** on Article 6 (Right to life) of the ICCPR, the Human Rights Committee stated: “States parties also have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their life and bodily integrity, and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility. The same heightened duty of care attaches to individuals held in private incarceration facilities operating pursuant to an authorization by the State. The duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriately monitoring their health, shielding them from

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<sup>50</sup> *National Latina Institute, The case to abolish ICE: substandard conditions of detention puts immigrants’ lives at risk (2018)*, available at <https://medium.com/@NLIRH/the-case-to-abolish-ice-substandard-conditions-of-detention-puts-immigrants-lives-at-risk-fdc00dbc5faa>; *Kate Morrissey, Asylum seeker says Border Patrol assaulted her, then she miscarried*, available at <http://www.sandiegouniontribune.com/news/immigration/sd-me-border-miscarriage-20180119-story.htm>; *O’Conner and Prakash, Pregnant Women Say They Miscarried In Immigration Detention And Didn’t Get The Care They Needed (2018)*, available at <https://www.buzzfeednews.com/article/emaconnor/pregnant-migrant-women-miscarriage-cpb-ice-detention-trump#.nvN14I06A>; *Center for Gender and Refugee Studies, U.S. Immigration and Customs Enforcement’s Detention and Treatment of Pregnant Women (2017)*, available at [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/complaint\\_increasing\\_numbers\\_of\\_pregnant\\_women\\_facing\\_harm\\_in\\_detention.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_increasing_numbers_of_pregnant_women_facing_harm_in_detention.pdf).

<sup>51</sup> *Department of Homeland Security Office of Inspector General, Management Alert – Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California (2018)*, available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>; *Human Rights Watch, Systemic Indifference: Dangerous & Substandard Medical Care in US Immigration Detention (2017)*, available at <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention-page>;

<sup>52</sup> *General comment No. 36 (2018) on Article 6 (Right to life) of the International Covenant on Civil and Political Rights, on the right to life, Report of the Human Rights Committee, U.N. Doc. CCPR/C/GC/36, para. 23 (internal citations omitted)*.

inter-prisoner violence, preventing suicides and providing reasonable accommodation for persons with disabilities”.<sup>53</sup>

- In **General Comment 35** on Article 9 (Liberty and security of person) of the ICCPR, the Human Rights Committee stated: “Detention in the course of proceedings for the control of immigration is not per se arbitrary, but the detention must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time. Asylum seekers who unlawfully enter a State party’s territory may be detained for a brief initial period in order to document their entry, record their claims and determine their identity if it is in doubt. To detain them further while their claims are being resolved would be arbitrary in the absence of particular reasons specific to the individual, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security. The decision must consider relevant factors case by case and not be based on a mandatory rule for a broad category; must take into account less invasive means of achieving the same ends, such as reporting obligations, sureties or other conditions to prevent absconding; and must be subject to periodic re-evaluation and judicial review. Decisions regarding the detention of migrants must also take into account the effect of the detention on their physical or mental health. Any necessary detention should take place in appropriate, sanitary, non-punitive facilities and should not take place in prisons. [...] Children should not be deprived of liberty, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests as a primary consideration with regard to the duration and conditions of detention, and also taking into account the extreme vulnerability and need for care of unaccompanied minors.”<sup>54</sup>
- In **General Comment 21** on Article 10 (Humane treatment of persons deprived of their liberty) of the ICCPR, the Human Rights Committee stated: “Article 10, paragraph 1, of the International Covenant on Civil and Political Rights applies to any one deprived of liberty under the laws and authority of the State [...]. States parties should ensure that the principle stipulated therein is observed in all institutions and establishments within their jurisdiction where persons are being held.”<sup>55</sup> Furthermore the Committee stated: “Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7 [...], but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty

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<sup>53</sup> *Id.* at para. 25 (internal citations omitted).

<sup>54</sup> General comment No. 35 (2014) on Article 9 (Liberty and security of person) of the International Covenant on Civil and Political Rights, Report of the Human Rights Committee, U.N. Doc. CCPR/C/GC/35.

<sup>55</sup> General comment No. 21 (1992) on Article 10 (Humane treatment of persons deprived of their liberty) of the International Covenant on Civil and Political Rights, Report of the Human Rights Committee, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I), para. 2.

enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.”<sup>56</sup>

- In **General Comment 20** on Article 7 (prohibition of torture, or other cruel, inhuman or degrading treatment or punishment) of the ICCPR, the Committee state: “It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. ” Additionally, the Committee stated: “The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. [...] It is appropriate to emphasize in this regard that article 7 protects, in particular, children [...].”<sup>57</sup>

## VI. Other UN Body Recommendations

During the November 2010 session of the Universal Periodic Review, the United States [acknowledged](#) the need to improve conditions of confinement, medical care, and the ability of immigrant detainees to exercise their human rights. The Human Rights Council recommended the United States “[s]pare no efforts to constantly evaluate the enforcement of the immigration federal legislation, with a vision of promoting and protecting human rights”<sup>58</sup>

The Special Rapporteur on the human rights of migrants issued a [report](#) after his visit to the United States that expressed disappointment in the cancellation of several planned visits to immigrant detention centers, and recommended the State utilize effective alternatives to detention which use less restrictive, economical measures which comply with international human rights law. The Rapporteur also urged the State to remove all children from jail-like detention facilities, and, where possible, remove all migrant women who are suffering the effects of persecution or abuse or who are pregnant or nursing infants from detention. Finally, all efforts should be made by the State to release families with children from detention and place them in alternative accommodation more appropriate for families with children.

## VII. Recommended Questions

IHRC respectfully suggests that the Committee ask the following questions to the U.S. government in the upcoming review of U.S. compliance with the ICCPR:

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<sup>56</sup>General comment No. 21 (1992) on Article 10 (Humane treatment of persons deprived of their liberty) of the International Covenant on Civil and Political Rights, Report of the Human Rights Committee, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I), para. 3.

<sup>57</sup> General comment No. 20 (1992) on Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment) of the International Covenant on Civil and Political Rights, Report of the Human Rights Committee, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I), para. 2.

<sup>58</sup> Human Rights Council, 16th Sess., Rep. of the Working Group on the Universal Periodic Review: United States, ¶72, U.N. Doc A/HRC/16/11 (Jan. 4, 2011) [hereinafter “U.S. UPR Report 2011”] available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=A%2FHRC%2F16%2F11&Submit=Search&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A%2FHRC%2F16%2F11&Submit=Search&Lang=E).

1. What steps are the U.S. government taking to ensure that immigrant children are not deprived of liberty, except as a measure of last resort and for the shortest appropriate period of time?
2. What steps are the U.S. government taking to protect the lives of all detained immigrants, particularly those being held at private detention facilities, including providing them with the necessary physical and mental health care, appropriately monitoring their health, and preventing suicides?
3. What steps are the U.S. government taking to prevent and address forced labor in private immigrant detention centers?
4. What steps are the U.S. government taking to adopt effective alternatives to immigration detention, family detention, and child separation?

### **VIII. Suggested Recommendations**

IHRC respectfully suggests that the Committee make the following recommendations to the U.S. government in the upcoming review of U.S. compliance with the ICCPR:

The State party should:

1. Ensure that immigrant children are not deprived of liberty, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests as a primary consideration with regard to the duration and conditions of detention, and also taking into account the extreme vulnerability and need for care of unaccompanied minors;
2. Adopt effective alternatives to immigration detention, family detention, and child separation, inter alia, by reinstating a program like ICE's Family Case Management Program, a widely successful and highly endorsed program that provided support to families released from detention;<sup>59</sup>
3. Implement humane policies where parents and children are kept together and then released to community-based sponsors;<sup>60</sup>
4. Adopt effective and necessary measures to protect the lives of all detained immigrants, particularly those being held at private detention facilities, including providing them with the necessary physical and mental health care, appropriately monitoring their health, and preventing suicides;

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<sup>59</sup> Dept. of Homeland Security Advisory Committee on Family Residential Centers, *Report of the DHS Advisory Committee on Family Residential Centers*, (Sept. 30, 2016), available at <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>.

<sup>60</sup> Amnesty International, *Kids Deserve Safety and Freedom, Not Jail!*, (last visited Oct. 24, 2018), <https://act.amnestyusa.org/page/32656/action/1?locale=en-US>

5. Adopt effective and necessary measures to prevent and address forced labor in private immigrant detention centers, and
6. Conduct all custody and release decisions *after* assessing an individual's public safety and flight risk<sup>61</sup> and allow families to be released on their own recognizance and bonds where appropriate.<sup>62</sup>

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<sup>61</sup> AILA & American Immigration Council, *Statement of the American Immigration Council and the American Immigration Lawyers Association, Submitted to the Senate Committee on Homeland Security & Governmental Affairs: Hearing on "The Implications of the Reinterpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives,"* (Sept. 18, 2018).

<sup>62</sup> Eleanor Acer, *Studies: Mass Detention of Migrant Families is Unnecessary, Inefficient, Just Security*, (July 5, 2018), <https://www.justsecurity.org/58897/studies-show-mass-detention-family-migrants-unnecessary-inefficient>.