



UNITED STATES OF AMERICA

Submission to the United Nations Committee Against Torture for the 59th Session (Information For Adoption of the List of Issues Prior to Reporting)

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Submitted by The Advocates for Human Rights, a non-governmental organization in special consultative status with ECOSOC since 1996

I. REPORTING ORGANIZATION

1. **The Advocates for Human Rights** (“The Advocates”) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is committed to ensuring protection for refugees around the world and provides legal services to asylum seekers in the Upper Midwest region of the United States. Through the National Asylum Help Line, The Advocates has also provided referrals for legal services throughout the United States to more than 1000 Central American women upon their release from family detention.

II. INTRODUCTION AND ISSUE SUMMARY

2. The United States’ immigration system, while generous in many respects, is riddled with systemic failures to protect human rights and meet obligations under the Convention Against Torture (CAT) and other international human rights treaties. The United States regularly fails in its obligation under Article 3 of the CAT to respect the right to *nonrefoulement* in its immigration laws, policies and practices. Some violations result from the statutory framework itself, while others are a matter of administrative policy, agency practice or lack of accountability for individual bad actors.

3. The United States’ continued and growing reliance on expedited administrative removal procedures and streamlined criminal prosecution programs put individuals at risk of being returned to countries where they reasonably believe they will be in danger of torture or persecution. The United States fails to ensure that migrants in removal proceedings who fear torture upon return to their home countries have access to counsel, a fair trial and fully understand their rights. While federal regulations implementing Article 3 of the CAT allow

individuals to raise Article 3 claims for protection from *refoulement*, the U.S. has failed to create an adequate legal mechanism implementing fully the obligations of Article 3.

4. Immigration detention conditions in the U.S. result in cruel, inhuman, and degrading treatment or punishment for thousands of individuals held on allegations of civil immigration status violations, including asylum seekers, pregnant women, transgender persons, and children. Detention of arriving asylum seekers, particularly the imprisonment of asylum seeker mothers and children, continues to be a concern. The United States holds all detained migrants in facilities with no legally enforceable detention standards. Use of solitary confinement for people held in civil immigration detention is permitted and routine. Sexual abuse of migrants in detention is a problem of serious concern.

III. THE UNITED STATES FAILS TO FULLY IMPLEMENT ARTICLE 3 NONREFOULEMENT OBLIGATIONS

Concluding observations (para. 18): Asylum protection

5. The United States' continued and growing reliance on expedited administrative removal procedures and streamlined criminal prosecution programs put individuals at risk of being returned to countries where they reasonably believe they will be in danger of torture or persecution.

6. More than 70 percent of all people ICE deported in 2013 were subject to summary removal procedures.¹ These summary procedures bypass a hearing in front of an immigration judge, afford little opportunity to consult with legal counsel, and risk depriving individuals of notice of potential refugee or Article 3 protection. Summary removal procedures include expedited removal of “arriving aliens” including asylum seekers,² reinstatement of prior removal orders,³ expedited removal of persons convicted of aggravated felonies,⁴ and stipulated removal, which typically is negotiated between a detained individual and an ICE Enforcement and Removal Officer without affording access to counsel.⁵ Of particular concern is the United States’

¹ Immigration Policy Center, “Removal Without Recourse: The Growth of Summary Deportations in the United States” (April 28, 2014), available at <http://www.immigrationpolicy.org/just-facts/removal-without-recourse-growth-summary-deportations-united-states>.

² INA §235(b). In FY 2013, ICE deported about 101,000 people through the expedited removal process, according to the American Immigration Council at <http://immigrationpolicy.org/just-facts/removal-without-recourse-growth-summary-deportations-united-states>.

³ INA §241(a)(5). In FY 2013, ICE deported 159,634 individuals based on a reinstated removal order, according to the American Immigration Council, which describes reinstatement as applying to noncitizens who return illegally to the United States after having previously been deported, at <http://immigrationpolicy.org/just-facts/removal-without-recourse-growth-summary-deportations-united-states>.

⁴ INA §238(b) (permitting noncitizens who have not been admitted as lawful permanent residence to the United States and who have been convicted of any of a wide array of crimes defined by INA §101(a)(42) as “aggravated felonies” to be removed without a hearing).

⁵ INA §240(d). Persons who are formally charged and placed in removal proceedings before an immigration judge can give up their right to a hearing and agree to being deported by stipulating to the removal charges against them. These agreements are reviewed on paper by an immigration judge, but no hearing is held to determine eligibility for protection under the Refugee Convention or the Convention Against Torture. According to analysis by the American Immigration Council, the vast majority of stipulated removal orders are entered against noncitizens in detention who

continued use of expedited removal and fast-track removal dockets for unaccompanied children and families with children from Central America who are seeking asylum.

7. In addition, to summary removal procedures, the Streamline initiative (formerly Operation Streamline) which criminally prosecutes people who illegally enter the United States in certain geographic regions along the U.S.-Mexico border, allows for criminal prosecution, conviction, and sentencing prior to being afforded an opportunity to seek protection in violation of U.S. obligations under the Convention Against Torture. The United States estimates that between 2006 and 2011, approximately 168,000 individuals were referred for prosecution and that between 2012 and March 2014 more than 110,000 individuals were referred for prosecution.

8. Under Streamline, asylum-seekers may be criminally charged, convicted, and sentenced for illegal entry or illegal re-entry prior to being afforded the right to seek asylum or protection under Article 3, even though the illegal entry or re-entry is a direct result of their flight. In May 2016, the U.S. Department of Homeland Security, Office of Inspector General, reported concerns with inconsistent protection of Convention rights under the Streamline initiative.⁶ The OIG report noted:

“Border Patrol does not have guidance on whether to refer to Streamline prosecution aliens who express fear of persecution or fear of return to their home countries. As a result, Border Patrol agents sometimes use Streamline to refer aliens expressing such fear to DOJ for prosecution. Using Streamline to refer aliens expressing fear of persecution, prior to determining their refugee status, may violate U.S. obligations under the 1967 United Nations Protocol Relating to the Status of Refugees, which the United States ratified in 1967.”⁷

9. While Border Patrol’s agreement to develop and implement guidance, as of September 30, 2015, referral guidance for aliens who express fear of persecution or return is welcome, to date no guidance has been publically released. In addition, Border Patrol continues to assert that it may refer asylum-seekers for prosecution for illegal entry or re-entry prior to being afforded the opportunity to seek protection under Article 3 or the Refugee Conviction.⁸

10. The United States fails to ensure that migrants in removal proceedings who fear torture upon return to their home countries have access to counsel, a fair trial and fully understand their rights.

11. Migrants in detention, including children and families, lack access to counsel. U.S. law provides that migrants in removal proceedings have “the privilege of being represented,” but

have little access to legal counsel or information about their Convention rights and who are subject to inherently coercive conditions when agreeing to be deported without a hearing. See <http://immigrationpolicy.org/just-facts/removal-without-recourse-growth-summary-deportations-united-states>

⁶ The Advocates for Human Rights notes with approval the decision of the DHS Office of Inspector General to address Streamline’s failure to meet Convention obligations.

⁷ https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf at 16.

⁸ See https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf at 18.

representation must be “at no expense to the Government.”⁹ One report estimates that approximately 84% of immigration detainees nationwide were unrepresented in their removal proceedings.¹⁰ Representation of detained migrants in removal proceedings, insofar as it is available, is provided by NGOs.

12. The United States fails to provide consistent information about how to access free legal services to people in detention. For example, according to attorneys who have visited the Dilley family detention center, information about how to access pro bono legal services is spread through word of mouth.¹¹ Immigrants often are unable to understand what they are told about their right to legal counsel as a result of communication problems: many of these women and children are native speakers of an indigenous language, and the information can only be provided to them in English or Spanish.¹² The legal jargon used provides further challenges to comprehension.¹³ Additionally, while the facilities offer law libraries to the detainees, the resources in these libraries are primarily in English.¹⁴

13. “Evidence indicates federal employees are interfering with an attorney’s ability to represent clients.”¹⁵ Attorneys who have volunteered at the Dilley facility report that they are held to a set of seemingly arbitrary policies that are enforced sporadically, changing from officer to officer and from day to day: hand lotion and hotel soap have been confiscated, and open-toed shoes are sometimes banned.¹⁶ When attorneys have tried to obtain the list of policies, Dilley officials have refused to provide it.¹⁷ The USCCR reported similar practices at the Karnes facility, where attorneys were not allowed to bring office supplies into the facility.¹⁸

14. The rural location of detention centers also impedes detainees’ access to legal counsel. Any progress that has been made in ensuring access to legal representation has been the result of a concerted effort of pro bono attorneys around the country who travel to these facilities, often at personal expense to provide representation to families in detention.

15. **Provision of information about legal rights is limited and inadequate.** Currently formal Legal Orientation Programs (LOP) funded through the U.S. Department of Justice

⁹ INA § 292. See also, American Bar Association, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*, Feb. 2010, at 40, (noting that while courts may apply a case-by-case approach to determining whether the assistance of counsel would be necessary to provide fundamental fairness, under the United States Constitution’s Fifth Amendment due process guarantee, appointment of counsel has been denied in every published case).

¹⁰ American Bar Association, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*, Feb. 2010, at 40. Available at

¹¹ Interview 1, Oct. 20, 2015.

¹² *Id.*, at 83-84, 109-110.

¹³ *Id.* at 110.

¹⁴ U.S. Commission on Civil Rights, *With Liberty And Justice For All*, Sept. 2015, http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf, 102, last visited Sept. 30, 2015.; Inter-American Commission on Human Rights, *Refugees and Migrants in the United States: Families and Unaccompanied Children*, July 24, 2015, Organization of American States, <http://www.oas.org/en/iachr/reports/pdfs/Refugees-Migrants-US.pdf>, last visited Nov. 3, 2015, ¶ 148.

¹⁵ U.S. Commission on Civil Rights.

¹⁶ Interview 1, Oct. 20, 2015.

¹⁷ *Ibid.*

¹⁸ U.S. Commission on Civil Rights, *supra* note 42, at 114.

Executive Office for Immigration Review (EOIR) operate at 25 detention centers.¹⁹ While EOIR should be commended for developing the LOP program and continuing to include the program in its budget, the program does not ensure that all detained migrants in the United States receive information about their legal rights. The LOP program is not adequately funded to provide information at all detention centers and, because it operates under the authority of EOIR, focuses on providing legal information only to those detained migrants who appear before the immigration courts. Detained migrants subject to summary expulsion proceedings and all migrants detained by Customs and Border Protection fall outside the scope of this effective but limited program.

16. While federal regulations implementing Article 3 of the CAT allow individuals to raise Article 3 claims for protection from *refoulement*, the U.S. has failed to create an adequate legal mechanism implementing fully the obligations of Article 3.

17. The U.S. evidentiary standard is inconsistent with Article 3, which requires protection “where there are substantial grounds for believing that he would be in danger of being subjected to torture.” Pursuant to U.S. implementing regulations, the claimant must show that “it is more likely than not that he would be tortured” in order to be granted CAT relief.²⁰ The U.S. standard raises the evidentiary bar for protection claims under the Convention both by requiring a showing of “more likely than not” rather than “substantial grounds for believing” and by requiring the claimant to demonstrate likelihood that he or she “*will be* tortured,” rather than belief that he or she “*will be in danger of* being tortured.”

18. The U.S. standard regarding non-state actors is also inconsistent with Article 3. The United States applies a higher standard regarding government acquiescence in the torture that fails to protect some persons from torture by non-state actors. “Acquiescence” has been narrowly defined to require a showing that a government is *willfully accepting* of the torture by a third party,²¹ although some U.S. courts have held that Article 3 prohibits return when the government in the receiving country is aware of a private entity’s behavior and does nothing to stop it²² or when a government is “willfully blind” to torture by a non-state actor.²³

19. The United States has implemented Article 3 as an extraordinary protection against deportation for individuals who are not eligible for asylum or other discretionary forms of relief because of criminal or other bars. It is a limited form of protection that does not allow for permanent residence or family reunification and permits removal to a third country without adequate guarantees of protection from return to the country where they fear torture.

¹⁹ See Vera Institute of Justice, Legal Orientation Program available at <http://www.vera.org/project/legal-orientation-program>

²⁰ 8 C.F.R. § 208.16(c)(2) (2016)

²¹ See *Matter of S-V-*, 22 I&N Dec. 1306 (BIA 2000).

²² See *Zheng v. Ashcroft*, 332 F.3d 1186 (9th Cir. Jun 18, 2003); *Ochoa v. Gonzales*, 406 F.3d 1166 (9th Cir. May 16, 2005); and *Perez v. Loy*, 356 F.Supp.2d 172 (D.Conn. Feb 17, 2005).

²³ *Ontunez-Turcios v. Ashcroft*, 303 F.3d 341, 354-55 (5th Cir. 2002); *Ali v. Reno*, 237 F.3d 591, 597 (6th Cir. 2001); *Zheng v. INS*, 332 F.3d 1186 (9th Cir. 2003); *Khousam v. Ashcroft*, 361 F.3d 161 (2nd Cir. 2004); *Azanor v. Ashcroft*, 364 F.3d 1013 (9th Cir. 2004); *Lopez-Soto v. Ashcroft*, 383 F.3d 228, 240 (4th Cir. 2004)

IV. THE UNITED STATES FAILS IN ITS ARTICLE 16 OBLIGATIONS TO PREVENT ACTS OF CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Concluding Observations (para. 19): Immigration Detention

20. **Immigration detention conditions in the U.S. result in cruel, inhuman, and degrading treatment or punishment for thousands of individuals held on allegations of civil immigration status violations, including asylum seekers, pregnant women, transgender persons, and children.** The Detention Watch Network reported in 2013 that “the current state of the immigration detention system continues to be plagued by deaths and suicides, subpar medical and mental health care, inedible food, and arbitrary restrictions on visitation and access to legal resources.”²⁴

21. Conditions of detention for migrants, including children, detained by U.S. Customs and Border Protection (CBP) in short-term custody facilities (which hold people for up to 72 hours) are of urgent concern. CBP apprehension and detention policies and practices lack transparency and accountability. Of particular concern is the practice reported since 2013 of holding detained immigrants in refrigerated or very cold cells.²⁵

22. ICE detains migrants in detention centers, jails, and prisons using a penal model inappropriate for individuals detained on allegations of civil status violations. Detained migrants routinely are subject to degrading conditions:²⁶ including prison uniforms and shackling during transport and in their hearings.²⁷ People may be confined alone in tiny cells for up to twenty-three hours a day²⁸ and held for prolonged periods of time without access to the outdoors.²⁹

²⁴ Detention Watch Network, *Expose & Close: One Year Later*, November 2013, at 2, available at www.detentionwatchnetwork.org/ExposeandClose2013.

²⁵ See “Immigrants Held in Border Deep Freezers,” at <http://www.thedailybeast.com/articles/2013/11/19/immigrants-held-in-border-deep-freezers.html>.

²⁶ See, e.g., Letter from American Civil Liberties Union of Georgia (USA) to the Inter-Am. Commission on Human Rights, *Submission re. Racial Profiling in Gwinnett and Cobb Counties, Georgia, and Conditions of Detention at Stewart and Irwin County Detention Center 5* (Mar. 24, 2011), available at https://www.aclu.org/files/assets/ACLU_of_Georgia-submission_to_IACHR.pdf (reporting that detainees were given dirty underwear at the Irwin County Detention Center).

²⁷ The Advocates for Human Rights regularly represents people detained in Minnesota and has observed that people routinely remained shackled when appearing before the Immigration Judge.

²⁸ Immigration Equality, *Conditions of Detention*, <http://immigrationequality.org/issues/detention/conditions-of-detention/> (last visited Aug. 28, 2013).

²⁹ County jails, designed for short periods of detention, do not necessarily have outdoor recreation facilities. The Ramsey County Adult Detention Center in St. Paul, Minnesota, for example, has no outdoor recreation access. People in detention have very limited access to a small room with window near the high ceilings which can be opened to let fresh air into the room. Notes on file with the author.

23. Phone privileges, access to legal counsel, and recreational time are often restricted or completely denied.³⁰ Depending upon where they are detained, they may not be permitted contact visits with family.³¹ Inadequate food quantity³² and poor food quality including maggots- and worm-infested food, water that tastes like urine, and expired food and drink,³³ have been reported. Moreover, religious and medical dietary restriction are inconsistently followed, leading individuals with the option of eating what is served – which either violates their faith or aggravates their health – or going without food.³⁴

24. The Women’s Refugee Commission has documented many instances of delayed or denied medical care. Women in one Arizona facility reported “that medical treatment was often degrading: they are frequently told by medical staff that they are criminals who are not entitled to care; other detainees are used as interpreters, including during mental health consultations; medical staff deny their complaints of depression or anxiety and refuse them medication for these conditions, even when they had been receiving treatment at a previous facility.”³⁵

25. Medical and mental health issues are exacerbated by the lengthy and indefinite detention endemic in the immigration detention system. Many people in ICE custody are held in county jails or other facilities designed for short-term stays by people in pre-trial criminal custody. These facilities lack the screening, protocols, personnel, and facilities to deal with people detained by ICE whose average length of stay is over 30 days.³⁶

26. The most basic needs of transgender detainees are rarely met. Transgender immigrants in detention are routinely denied gender-appropriate undergarments and are often denied any privacy in communal showers and toilet facilities.³⁷ Low-cost solutions like shower curtains are rarely implemented. Medically-necessary hormone therapy is dramatically reduced or eliminated, resulting in rapid body changes.

27. Detention of arriving asylum seekers continues to be a concern.³⁸ Despite revised parole guidelines effective January 2010,³⁹ arriving asylum seekers remain subject to mandatory

³⁰ Clement Lee, Legal Fellow, Immigration Equality, Address at the New York City Council Hearing (Dec. 13, 2011) (transcript available at <http://www.scribd.com/doc/75669146/Testimony-on-LGBT-Detention-Issues>).

³¹ County jails holding immigrant detainees in Minnesota have “video visits” with family members, where detainees see and speak with their family members via closed circuit television. Notes on file with the author.

³² See, e.g., Georgia Detention Watch, *Report on the December 2008 Humanitarian Visit to the Stewart Detention Center*, at 5-6. Available at http://www.acluga.org/Georgia_Detention_Watch_Report_on_Stewart.pdf; letter from IRATE & First Friends to the author summarizing key complaints received by volunteers during their visits with people detained in New Jersey, Jan. 26, 2012, on file with author.

³³ Detention Watch Network, *Expose & Close: One Year Later*, at 8.

³⁴ Detention Watch Network, *Expose & Close: One Year Later*, at 8.

³⁵ Women’s Refugee Commission, *Migrant Women and Children at Risk: In Custody in Arizona*, Oct. 2010, at 5.

³⁶ See Detention Watch Network, “Tracking ICE Enforcement,” at <http://www.detentionwatchnetwork.org/node/2382>.

³⁷ Immigration Equality, Conditions of Detention, <http://www.immigrationequality.org/issues/detention/conditions-of-detention/> (last visited Jan. 27, 2012).

³⁸ INA § 235(b)(1)(B)(iii)(IV).

detention laws while awaiting a “credible fear” determination and authority to release asylum seekers remains in the discretion of U.S. Immigration and Customs Enforcement (ICE).

28. Of particular concern is the United States’ continued effort to deter adults and children from Honduras, Guatemala, and El Salvador from seeking asylum. Mothers travelling with young children routinely are detained in prison facilities in Texas operated by the Corrections Corporation of America and the GEO Group.⁴⁰ In addition to detention, the United States has aggressively used other means including repeated messaging by high-level U.S. officials that “if you come, we will deport you,” funding of regional neighbors’ deportation efforts, litigation, and raids to arrest, detain, and deport children and families who have fled to the United States from Central America and who have missed their removal hearings to deter asylum seekers from seeking protection in direct contravention of international obligations.⁴¹

29. The United States continues to detain asylum seeker mothers and children in secure, prison-like facilities, violating international and federal laws for the detention of children.⁴² The United States is vigorously contesting a U.S. federal court decision⁴³ finding that imprisoning children who are travelling with their parents violates the 1997 *Flores* settlement.⁴⁴

30. Children were reported to have received adult doses of vaccines in the Dilley detention center.⁴⁵ An attorney who visited the Dilley facility described how mothers are not given sufficient information about the vaccines their children are receiving but feel as if they cannot complain without fear of retaliation.⁴⁶ She also described how mothers with sick children were forced to wait for hours before being able to take their child’s temperature and were denied medicine if their child’s temperature was not high enough.⁴⁷

³⁹ U.S. Dept. of Homeland Security, Immigration and Customs Enforcement, “News Release: ICE issues new procedures for asylum seekers as part of ongoing detention reform initiatives,” (Dec. 16, 2009), available at <http://www.ice.gov/pi/nr/0912/091216washington.htm>.

⁴⁰ See, e.g. Grassroots Leadership, Inc., “Facts About Family Detention,” <http://grassrootsleadership.org/facts-about-family-detention>. The Obama administration has requested funds to expand family detention from under 100 beds to over 6,300 beds.

<http://www.appropriations.senate.gov/sites/default/files/hearings/SAC%20Hearing%20S1%20Testimony%207-10-14.pdf>.

⁴¹ Statement by Secretary Jeh C. Johnson on Southwest Border Security, Jan. 4, 2016, available at <https://www.dhs.gov/news/2016/01/04/statement-secretary-jeh-c-johnson-southwest-border-security>.

⁴² U.S. Commission on Civil Rights, *With Liberty And Justice For All*, Sept. 2015, [http://www.usccr.gov/pubs/Statutory Enforcement Report2015.pdf](http://www.usccr.gov/pubs/Statutory%20Enforcement%20Report2015.pdf), 96-98, last visited Sept. 30, 2015.

⁴³ In *Jenny L. Flores, et al. v. Jeh Johnson, et al.* Judge Gee ruled that Border Patrol facilities “have materially breached” terms in the 1997 *Flores* settlement that requires “that Defendants provide “safe and sanitary” holding cells for class members while they are in temporary custody” and that “children who are not released be housed in non-secure, licensed facilities” pg. 12, 18, 16.

⁴⁴ Statement of DHS Secretary Jeh C. Johnson, Jan. 4, 2016, <https://www.dhs.gov/news/2016/01/04/statement-secretary-jeh-c-johnson-southwest-border-security>.

⁴⁵ Seth Robbins, “Immigrant children given adult dose of Hepatitis A vaccine”, Associated Press, Jul. 4, 2015, <http://bigstory.ap.org/article/624dc4122cf34d9e82a1f2d195e86845/feds-immigrant-kids-given-adult-dose-hepatitis-vaccine>, last visited Oct. 1, 2015.

⁴⁶ Interview 1, Oct. 20, 2015.

⁴⁷ *Ibid.*

31. Many women and children in detention centers have experienced severe trauma and suffer from symptoms of PTSD, depression, and anxiety.⁴⁸ The lack of control that mothers experience in these facilities exacerbates their own trauma, and the constant fear of deportation evokes heightened levels of anxiety. Attorneys and mothers report that many children stop eating in response to the stress of detention.

32. Recently, the United States has begun offering to release detained women at family detention facilities on the condition that they wear electronic ankle monitors with GPS monitors. While alternatives to detention for asylum seekers are preferred, the requirement that they wear ankle monitors 24 hours a day unfairly stigmatizes asylum seekers. Ankle monitors are also burdensome and need to be charged frequently, a process that takes two hours to complete.⁴⁹ The ankle monitors are manufactured by a company that is a subsidiary of the private prison company in charge of the Karnes facility.⁵⁰

33. The United States holds all detained migrants in facilities with no legally enforceable detention standards. Non-binding detention standards are in force only in those facilities operated by U.S. Immigration and Customs Enforcement (ICE), and provide no private right of action for violations of the standards to any detained migrant. The facilities are not subject to sufficient independent monitoring and oversight and appear to face no penalties for violating standards.⁵¹

Concluding Observations (para. 20): Solitary Confinement

34. Use of solitary confinement for people held in civil immigration detention is permitted and routine. In 2012, 300 people on average were held in solitary confinement in detention, 11 percent of whom had mental health issues.⁵² The United Nations Special Rapporteur on Torture has stated that solitary confinement of 15 days or more constitutes torture, due to the risk of permanent psychological damage from such extended periods of isolation.⁵³

35. On September 4, 2013, ICE issued policy guidelines regarding its use of solitary confinement, promising more oversight. The new policy is not in line with UN guidance. It

⁴⁸ American Immigration Lawyers Association (AILA), “Traumatizing impact of family detention on mental health of children and mothers,” June 30, 2015, <http://www.aila.org/advo-media/press-releases/2015/impact-family-detention-mental-health>, last visited Oct. 13, 2015. See affidavits for specific cases.

⁴⁹ Molly Hennessy-Fiske, “Immigrants object to growing use of ankle monitors after detention,” Los Angeles Times, Aug. 2, 2015, <http://www.latimes.com/nation/immigration/la-na-immigrant-ankle-monitors-20150802-story.html>, last visited Nov. 3, 2015.

⁵⁰ According to its website, the company that manufactures the ankle monitors is a subsidiary of GEO. <http://bi.com/immigration-services/>.

⁵¹ Brittney Nystrom, National Immigration Forum, Written Testimony before U.S. House of Representatives, House Homeland Security Committee, Border, Maritime, and Global Counterterrorism Subcommittee, Moving Toward More Effective Immigration Detention Management, Dec. 10, 2009, <http://chsdemocrats.house.gov/SiteDocuments/20091210105703-50708.PDF>.

⁵² Urbina, Ian and Catherine Rentz, “Immigrants Held In Solitary Confinement,” *New York Times*, 23 March 2013, available at <http://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html>.

⁵³ See Juan E. Méndez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, available at <http://www.ohchr.org/Documents/Issues/SRTorture/A-HRC-19-61.pdf>.

does not prohibit the use of the practice nor set specific limits on the length of solitary confinement, even for immigrants with mental illnesses, who are the most impacted by long periods of segregation. The new guidelines also continue to allow the alarming use of solitary confinement as “protective custody” for vulnerable individuals, such as victims of sexual assault, gay, lesbian or transgender immigrants, elderly individuals, pregnant or nursing women, and individuals with mental illness or those at risk of suicide. Finally, and perhaps most significant, the guidelines are not legally enforceable and do not provide for effective remedial action against facilities or officers that violate them.

36. Of particular concern is the practice of placing transgender immigrants in solitary confinement.⁵⁴ Transgender individuals may be placed into “administrative segregation” without any individualized assessment⁵⁵ or may face administrative segregation after being attacked or expressing fear for personal safety.⁵⁶ One transgender woman, Ana Luisa,⁵⁷ was placed in administrative segregation after being assaulted by a male detainee in a bias attack. Ana Luisa, rather than her assailant, was placed in solitary confinement after this attack, further victimizing her.

Concluding Observations (para. 21): Protection of prisoners against violence, including sexual assault

37. **Sexual abuse of migrants in detention is a problem of serious concern.**⁵⁸ Over 200 reported complaints of sexual abuse have been filed by immigrant detainees in the past five years,⁵⁹ which advocates believe reflect a fraction of the problem.⁶⁰ Lack of governmental transparency⁶¹ as well as obstacles and disincentives to victim reporting, make it difficult to accurately assess the magnitude of this problem, but human rights organizations have

⁵⁴ 2008 Operations Manual ICE Performance Based National Detention Standards, (PBND), available at http://www.ice.gov/doclib/dro/detention-standards/pdf/special_management_units.pdf. (last visited Jan. 27, 2012).

⁵⁵ IMMIGRATION LAW & THE TRANSGENDER CLIENT 90 (Victoria Neilson ed., 2008).

⁵⁶ IMMIGRATION LAW & THE TRANSGENDER CLIENT 90 (Victoria Neilson ed., 2008).

⁵⁷ Information from Immigration Equality, a national organization that advocates for the rights of gay, lesbian, bisexual, transgender, and HIV positive immigrants, about individuals that they have either conducted an intake with or directly represented in their immigration cases.

⁵⁸ See American Civil Liberties Union, *Sexual Abuse in Immigration Detention Facilities*, <http://www.aclu.org/maps/sexual-abuse-immigration-detention-facilities> (last visited Aug. 28, 2013) (detailing findings of a Freedom of Information Act request relating to complaints of sexual abuse); see also Carrie Johnson, “All Things Considered: Immigration Detainees Seek Prison-Rape Protection” (Nat’l Public Radio broadcast Dec. 13, 2011), available at <http://www.npr.org/2011/12/13/143638236/immigration-detainees-seek-prison-rape-protection>.

⁵⁹ See American Civil Liberties Union website <http://www.aclu.org/maps/sexual-abuse-immigration-detention-facilities> (detailing findings of a Freedom of Information Act request relating to complaints of sexual abuse). See also, Carrie Johnson, “Immigration Detainees Seek Prison-Rape Protection,” Nat’l Public Radio, Dec. 13, 2011. Available at <http://www.npr.org/2011/12/13/143638236/immigration-detainees-seek-prison-rape-protection>.

⁶⁰ See, e.g., Carrie Johnson, “Immigration Detainees Seek Prison-Rape Protection,” Nat’l Public Radio, Dec. 13, 2011. Available at <http://www.npr.org/2011/12/13/143638236/immigration-detainees-seek-prison-rape-protection>.

⁶¹ The Department of Homeland Security is not mandated under law to publish data on sexual violence, and has not done so. Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, August 2010, at 4. Available at <http://www.hrw.org/node/92630>

documented incidents of sexual assault, abuse, and harassment from across the ICE detention system.⁶² Detention standards that are not legally enforceable and frequent transfers of people between detention centers increase the likelihood that sexual abuse will remain unaddressed.⁶³

38. Allegations of sexual abuse of women detained at the Karnes County Residential Center, a privately operated jail which currently holds over 500 immigrant women and children, have emerged. According to the complaint filed September 30, 2014, guards and other personnel have removed women from their cells in the late evening and early morning hours for the purpose of engaging in sexual acts in other parts of the facility; guards and other personnel have referred to detained women as their “novias” and used their positions of power to request sexual favors in exchange for money, promises of assistance with their immigration cases, and promises of shelter if the women are released; and guards have kissed, fondled, and groped detained women in front of children who are also detained.⁶⁴ Detained women may be victims of trafficking, survivors of sexual assault and domestic violence, pregnant women, and nursing mothers.⁶⁵ Detained LGBTI migrants face particular vulnerability.

39. While United States’ federal law, known as the Prison Rape Elimination Act (PREA), is in effect, recently proposed rules which would exempt immigration detention facilities from PREA have raised serious concerns. Despite Congressional intent of the 2003 Prison Rape Elimination Act to apply to all types of confinement, including confinement of immigrants in immigration detention, the rules proposed by Attorney General Eric Holder in June 2011 explicitly stated that they would not be applied to immigration detention. Justifications for this exclusion included that the U.S. Department of Justice cannot create rules for the U.S. Department of Homeland Security (the federal department with jurisdiction over immigration detention) and the Department of Health and Human Services (which has jurisdiction over the custody of unaccompanied alien children), as well as that the Department of Homeland Security already has its own policies to prevent sexual assault in detention. Ongoing advocacy around this issue has pushed for inclusion of all immigration detention in the Department of Justice’s final rules, which have been finalized but not yet released.⁶⁶

⁶² Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, August 2010, at 3. Available at <http://www.hrw.org/node/92630>

⁶³ Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, August 2010, at 19. Available at <http://www.hrw.org/node/92630>

⁶⁴ MALDEF (Mexican American Legal Defense and Educational Fund), Letter Regarding Complaints of Sexual Abuse at Karnes County Residential Center, September 30, 2014, available at http://www.maldef.org/assets/pdf/2014-09-30_Karnes_PREA_Letter_Complaint.pdf

⁶⁵ Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, August 2010, at 3. Available at <http://www.hrw.org/node/92630>

⁶⁶ See, e.g., Women’s Refugee Commission, “Docket No. OAG-131; AG Order No. 3244-2011 National Standards to Prevent, Detect, and Respond to Prison Rape,” Apr. 4, 2011, (commenting on proposed regulations on implementation of the Prison Rape Elimination Act which would exclude immigrant detention facilities), available at <http://womensrefugeecommission.org/programs/detention/1142-national-standards-to-prevent-detect-and-respond-to-prison-rape>. See also Carrie Johnson, “Immigration Detainees Seek Prison-Rape Protection,” Nat’l Public Radio, Dec. 13, 2011, available at

V. SUGGESTED QUESTIONS

40. What specific steps has the United States taken to ensure that protection claims under Article 3 of the Convention Against Torture and Article 33 of the Refugee Convention can be raised for individuals facing (1) expedited removal at arrival; (2) reinstatement of prior removal orders; (3) expedited removal of persons convicted of aggravated felonies; (4) and stipulated removal?

41. Please provide specific information about the training received by Border Patrol, Customs and Border Protection, and Immigration and Customs Enforcement officers regarding obligations to ensure access to Article 3 and Article 33 protection.

42. When will Border Patrol guidance relating to individuals who express fear of persecution or return be developed and implemented? What steps will the United States take to ensure that all Border Patrol officers have received training on this guidance? Please provide specific information about how the U.S. Attorney's Offices in jurisdictions which continue to utilize the Streamline prosecution initiative will ensure that no individual is criminally prosecuted for illegal entry or re-entry which has resulted from their flight from persecution as provided by Refugee Convention Article 31?

43. Please provide specific information about how access to counsel is provided to all persons detained on civil immigration charges, including persons detained by Customs and Border Protection in short-term detention facilities and by Immigration and Customs Enforcement. What specific measures does the United States take to ensure that private prison companies do not interfere with the right to counsel for persons held in their custody?

44. Please provide specific information about Refugee Convention Article 33 and Convention Against Torture Article 3 protection is provided to all persons detained by U.S. immigration authorities, including persons detained by Customs and Border Protection in short-term detention facilities and by Immigration and Customs Enforcement in any ICE-operated, ISGA, or contract facility. Please provide specific information about how the United States ensures that everyone in short-term detention facilities is afforded information about how to seek protection from persecution and return.

45. Please provide specific information about how children are informed about their rights under the Refugee Convention and the Convention Against Torture. How is age-appropriate information conveyed to ensure children understand how they can seek protection in the United States? What specific assistance is provided to children?

<http://www.npr.org/2011/12/13/143638236/immigration-detainees-seek-prison-rape-protection>, Michelle Brane, "It's Time to Protect Women and Children in Immigration Detention From Rape," *available at* http://www.huffingtonpost.com/michelle-bran/women-ice-rape_b_1130756.html.

45. Please provide specific information on how the United States ensures that facilities which hold people in immigration custody meet standards outlined in the 2011 Operations Manual on ICE Performance-Based National Standards? Please include information about detention facilities operated by, operated under inter-governmental service agreement with, or operated under any other contract with the U.S. Department of Homeland Security (including both ICE and CBP facilities and contract facilities). Provide information about how many contracts for facilities which fail to meet standards have been terminated.

46. Please provide the number of persons held in solitary confinement while detained in immigration custody, including the average number of days people were held in solitary confinement. Please include information about persons held under “administrative segregation,” “disciplinary segregation,” or other similar status.

47. Please provide information about the number of reports of sexual violence which have been received from persons held in immigration custody. How many complaints have resulted in investigation, discipline, or criminal charges? Please describe the steps taken by the United States to ensure that victims provided with appropriate services for survivors of sexual assault, including certification as crime victims for purposes of U-nonimmigrant status in the United States.