

# REPORT TO THE UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

## DETENTION OF MIGRANTS IN THE UNITED STATES

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## I. EXECUTIVE SUMMARY

1. International law recognizes that while the United States has the power to control immigration, that authority is limited by its obligations to respect the fundamental human rights of all persons. In designing and in enforcing its immigration laws, the rights to due process and fair deportation procedures, seek and enjoy asylum from persecution, freedom from discrimination based on race, religion, or national origin, freedom from arbitrary detention, freedom from inhumane conditions of detention, and other fundamental human rights must be protected.
2. International law also recognizes the fundamental principle that the United States is in the position of guarantor when it comes to persons deprived of liberty, assuming specific duty to respect and guarantee the fundamental rights of detained persons.<sup>1</sup>
3. The United States' immigration detention system is riddled with systemic failures to protect human rights. The system has evolved with no regard to international human rights standards and is based on a penal model of corrections which fails to address the needs of a population detained for civil status violations. The reliance on detention reflects broader trends in the United States relating to racial discrimination, mass incarceration, and the criminalization of migration.
4. We welcome and recognize efforts of the United States to begin to acknowledge some of the concerns with human rights violations resulting from the immigration detention system. Nonetheless, serious human rights violations continue and progress toward reform has been slow, still failing to address the need to reduce the numbers of detained migrants, end the government's reliance on detention, and halt the dramatic expansion of detention facilities around the country.

## II. RECOMMENDATIONS ON NATIONAL POLICY

5. The U.S. government should decrease the overall number of detention beds, eliminate the arbitrary detention bed quota requiring the detention of 34,000 immigrants each day, and significantly reduce reliance on detention of migrants.
6. The United States should repeal mandatory detention laws, which prohibit individual assessment and review of the need for detention, and engage in a serious

consideration and commitment to the expansion of community-based alternatives to detention, including for those individuals currently subject to mandatory detention.

7. The United States must take concrete steps to bring the U.S. into compliance with its obligations under international human rights law, which prohibits arbitrary detention by ensuring that all persons deprived of their liberty, including all persons detained under immigration laws, have prompt access to review of their custody status by an independent judicial authority.
8. The U.S. government must allow for independent oversight of detention facilities and immigration enforcement practices and institute enforceable mechanisms for accountability.
9. The United States must end its use of solitary confinement.

### III. INSTITUTIONAL AND LEGAL FRAMEWORK

#### A. UNITED STATES IMMIGRATION LAW AND POLICY

10. In the United States, Congress holds the authority to make the laws that govern admission, protection, and removal of non-citizens. Federal immigration law, however, must be understood in its context within the U.S. tripartite system of government. The Executive branch agencies, including the Department of Homeland Security, the Department of Justice, and the Department of State, promulgate regulations that directly govern the application of U.S. immigration law. Myriad public and internal policy guidance spells out how the U.S. immigration system operates in practice. Federal courts also play a role in providing a final review of individual decisions made in removal proceedings in administrative courts.
11. Federal immigration law in the U.S. continues to be based on the Immigration and Nationality Act of 1952 (INA)<sup>2</sup>. Reforms to the INA were made in 1965, which amended the INA to set a permanent annual worldwide level of immigration divided into categories for family-related immigrants, employment-based immigrants, and diversity immigrants. Refugees are excluded from these numerical limits; the Refugee Act of 1980 defines the U.S. laws relating to refugees.<sup>3</sup>

12. In 1986, Congress enacted the Immigration Reform and Control Act (IRCA) to toughen sanctions against employers who hired undocumented persons and limit access to federally funded welfare benefits.
13. In 1988, Congress created the “aggravated felony” category of deportable crimes which it dramatically expanded in 1990.<sup>4</sup> Immigrants who were convicted of one of the newly defined “aggravated felony” crimes were subject to mandatory detention.<sup>5</sup> In 1996, the Antiterrorism and Effective Death Penalty Act (AEDPA)<sup>6</sup> and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)<sup>7</sup> added additional crimes to the aggravated felony ground for deportation and reduced the term of imprisonment threshold requirement to one year.<sup>8</sup>
14. IIRIRA also expanded statutory authority for mandatory detention without an individualized custody determination by a judicial authority in a broad category of cases, including arriving asylum seekers,<sup>9</sup> non-citizens convicted of certain crimes,<sup>10</sup> and certain refugees awaiting adjudication of their applications for permanent residence.<sup>11</sup> These categorical detention determinations violate norms of proportionality and non-discrimination.<sup>12</sup>
15. The 1996 IIRIRA also created the “expedited removal” system for arriving aliens without proper documentation for admission<sup>13</sup> which has resulted in the routine detention of arriving asylum seekers and the summary expulsion of 111,000 people in 2010 alone.<sup>14</sup>
16. The USA PATRIOT Act of 2001,<sup>15</sup> passed just weeks after the 9/11 terrorist attacks, and the REAL ID Act of 2005<sup>16</sup> expanded the class of individuals who are inadmissible to the U.S. for having provided “material support” to terrorism.
17. The Department of Homeland Security (DHS) was created in 2003 as part of federal agency reform following the 9/11 terrorist attacks, shifting immigration enforcement into the arena of anti-terrorism policy. The Immigration and Naturalization Service (INS) was replaced with three different agencies within DHS: U.S. Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), and U.S. Immigration and Customs Enforcement (ICE). The Executive Office of Immigration Review (EOIR), which has jurisdiction over the immigration courts, is left within the Department of Justice (DOJ). In other words, two federal agencies in the U.S. – DHS and DOJ – are responsible for immigration enforcement and the adjudication of immigration cases.
18. Federal law gives the Department of Homeland Security, which includes both ICE and CBP, the authority to apprehend and detain aliens under the Immigration and

Nationality Act (INA) §232 (Detention of Aliens for Physical and Mental Examination), §235 (Inspection by Immigration Officers; Expedited Removal of Inadmissible Arriving Aliens; Referral for Hearing); §236 (Apprehension and Detention of Aliens; §236A (Mandatory Detention of Suspected Terrorists; Habeas Corpus; Judicial Review), and §241 (Detention of Aliens Ordered Removed) and by corresponding federal regulations.

19. Because immigration is a matter of federal law, state and local governments in the U.S. have historically played a very limited role in immigration enforcement. Recent policies, however, expanded responsibility for enforcing civil immigration laws to state and local police through formal DHS programs such as the 287(g) program, the Criminal Alien Program (CAP), and Secure Communities<sup>17</sup> and informal cooperation between immigration authorities and public safety officials.

## B. SCOPE OF INTERNATIONAL OBLIGATIONS

20. International law recognizes the fundamental principle that the United States is in the position of guarantor when it comes to persons deprived of liberty, assuming specific duty to respect and guarantee the fundamental rights of detained persons.<sup>18</sup>
21. Both the Universal Declaration of Human Rights and the ICCPR guarantee the right to **liberty and security of person**,<sup>19</sup> freedom from **arbitrary arrest or detention**,<sup>20</sup> and are entitled to **prompt review of their detention by an independent court**.<sup>21</sup>
22. Non-citizens who are detained have a right to **humane conditions of detention**.<sup>22</sup>
23. **Detention of refugees and asylum seekers** should be avoided when possible; if refugees and asylum seekers must be detained, adequate safeguards should be in place to avoid arbitrary detention.<sup>23</sup> The United Nations High Commissioner for Refugees has made clear that asylum seekers should be detained only as a last resort and with guarantees against arbitrary detention.<sup>24</sup>
24. Pursuant to the International Covenant on Civil and Political Rights (ICCPR), non-citizens in the U.S. have a right to **due process and fair deportation procedures**,<sup>25</sup> including international standards on proportionality.<sup>26</sup>

25. Non-citizens also enjoy the right to **freedom from discrimination** under article 2 of the ICCPR and the obligations imposed by the Convention on the Elimination of all forms of Racial Discrimination (ICERD).<sup>27</sup>
26. Regardless of immigration status, individuals in the U.S. have a right to **family unity**.<sup>28</sup> In interpreting the obligations of the ICCPR, the Human Rights Committee has explicitly stated that family unity imposes limits on the power of States to deport.<sup>29</sup>

## IV. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

### A. SCOPE OF MIGRANT DETENTION IN THE UNITED STATES

27. The Working Group on Arbitrary Detention consistently recognizes that deprivation of liberty must be used against a person as a measure of last resort and only in exceptional cases and for the shortest possible time. Nonetheless, deprivation of liberty has become a cornerstone of enforcement of enforcement of civil (non-criminal) immigration laws.
28. The U.S. immigration detention system is an enormous operation. The Department of Homeland Security reports that in 2011, 642,000 foreign nationals were apprehended; approximately 429,000 foreign nationals were detained by ICE (an all-time high); 392,000 foreign nationals were removed from the United States; and 324,000 foreign nationals were returned to their home countries without a removal order.<sup>30</sup> It should be noted that advocates repeatedly have requested updated information relating to fiscal year 2012, but to date the United States has been unresponsive.<sup>31</sup>
29. Detention is widely used by Immigration and Customs Enforcement (ICE) for people apprehended on suspicion of civil immigration status violations in the U.S. interior<sup>32</sup> and by Customs and Border Protection (CBP) for people apprehended at or within 100 miles of the United States' borders with Mexico or Canada or at ports of entry.<sup>33</sup>
30. While both ICE and CBP operate within the Department of Homeland Security, they have separate command structures. CBP has remained largely impervious to the limited progress made toward securing oversight of conditions for people in ICE custody. There is limited transparency and understanding of the numbers of people

detained under CBP authority and the conditions under which they are apprehended and detained.

31. CBP is a large and growing security apparatus. The Department notes that: “[o]ver the past two years, CBP has dedicated unprecedented manpower, technology and infrastructure to the Southwest border. Border states have been effectively militarized, CBP employing the largest U.S. drone fleet of its kind outside of the U.S. Department of Defense.<sup>34</sup> The Border Patrol is better staffed now than at any time in its 86-year history having doubled the number of agents from 10,000 in FY 2004 to more than 20,500 in FY 2010. In addition to the Border Patrol, CBP’s workforce of more than 58,000 employees also includes more than 2,300 agriculture specialists and 20,600 CBP officers at ports of entry.”<sup>35</sup> CBP has requested over \$11.8 billion for the upcoming fiscal year, an increase of over \$300 million from the previous year.<sup>36</sup>
32. CBP reports that on a typical day, 1,903 people were apprehended at and in between the ports of entry for illegal entry.<sup>37</sup> CBP coordinates border security operations closely with the U.S. Department of Defense and other federal agencies, using myriad defense technologies and strategies that have resulted in a militarized U.S.-Mexico border.<sup>38</sup> According to the Department of Homeland Security, “[t]he number of Border Patrol apprehensions declined 61 percent from 1,189,000 in 2005 to 463,000 in 2010. The decrease in apprehensions between 2005 and 2010 may be due to a number of factors including changes in U.S. economic conditions and border enforcement efforts. Border apprehensions in 2010 were at their lowest level since 1972.”<sup>39</sup>
33. U.S. National Guard troops have been deployed to the Southwest border during much of 2010 and 2011.<sup>40</sup> Their mission clearly focuses on monitoring the border for illegal crossings.<sup>41</sup>
34. The number of beds available for detention in Immigration and Customs Enforcement (ICE) custody has nearly doubled in the past seven years, from 18,000 beds in 2004 to 34,000 for Fiscal Year 2014.<sup>42</sup> The number of people who pass through the ICE detention system nearly has doubled from 209,000 in 2001 to 392,000 in 2010.<sup>43</sup>
35. In January 2014, Congress reached a \$1.1 trillion spending deal, known as the omnibus. The bill provides over \$5 billion in funding for ICE and nearly \$2.8 billion for ICE detention and removal operations. The bill includes a mandate that ICE fulfill an arbitrary quota and detain a minimum of 34,000 migrants each day.<sup>44</sup>

36. At the same time, the United States has failed to adequately fund or use alternatives to detention, despite findings that alternatives to detention cost significantly less<sup>45</sup> and “yield 93 percent to 99 percent appearance rates before the immigration courts.”<sup>46</sup>
37. Federal expenditures on ICE detention have grown 134% in the past seven years, from \$864 million to \$2.02 billion.<sup>47</sup> The Obama Administration’s FY2012 request would amount to expenditure of \$5.5 million per day on ICE detention.<sup>48</sup>
38. The private prison industry has played a significant role in the growth of these budgets by advocating for the expansion of immigration detention and enforcement policies at the federal and state levels. A 2011 report by Detention Watch Network notes that “[a]lthough private corporations have long exercised influence over detention policy in a variety of contexts, a recent accumulation of evidence indicates that the main contractors involved in the explosive growth of the immigration detention system have been involved in heavy lobbying at the federal level.” The report finds that [i]n 2009 ICE had an adult average daily population (ADP) of 32,606 in a total of 178 facilities. Of these, 15,942 detainees – or 49% – were housed in 30 privately-operated detention centers.”<sup>49</sup>
39. The drastic expansion of mandatory detention laws in 1996 contributed to the skyrocketing growth of detention as an immigration enforcement tool. As of 2009 – the most recent year for which ICE has provided information - approximately sixty-six percent of the immigrants detained were subject to mandatory detention.<sup>50</sup>
40. At the same time, ICE fails to exercise discretion to release those people not subject to mandatory detention laws.<sup>51</sup> Indeed, ICE increasingly relies on detention as the only way to guarantee appearance for hearings despite the availability of alternatives to detention.
41. This failure to exercise discretion may be related to federal appropriations laws that have been interpreted to mandate that 34,000 immigration detention beds be filled each day, regardless of whether each particular alien is either detained subject to the mandatory detention provisions of INA § 236(c) or whether they have been found to be a risk of flight or a danger to the community.<sup>52</sup>
42. In addition to people detained by immigration authorities, state and local law enforcement agencies detain thousands of individuals each year under ICE “detainers.” Detainers are requests by ICE to a law enforcement agency to detain the named individual for up to 48 hours (excluding Saturdays, Sundays, and holidays) in order to provide ICE an opportunity to determine the person’s immigration status.



While law enforcement agencies are under no obligation to honor these requests, detainers routinely result in extended detention of people suspected of being noncitizens in the United States.<sup>53</sup>

43. Although there is a 48-hour limit on the detainer, there is increasing evidence that state and local law enforcement officials often detain immigrants – who may not be aware of their right to release – longer than the legal limit. Additionally, there are numerous reports that detainer policies lead to racial profiling and discrimination by state and local enforcement officials who apprehend and detain migrants in order to check their immigration status.<sup>54</sup>
44. With over 16 million individuals in the United States living in mixed status families<sup>55</sup> – at least one undocumented immigrant and one U.S. citizen – the impact of ICE detention, detainer policies, and draconian immigration enforcement laws have devastating impacts by breaking apart families and instilling widespread fear in immigrant communities. For example, children can be separated from one or both parents for months, or even years, while their parents are held in detention.<sup>56</sup>
45. Increasing numbers of people are imprisoned following convictions for criminal charges relating to immigration. Federal prosecution of immigration-related crimes, including illegal reentry into the United States following deportation, has skyrocketed in recent years. Border enforcement programs such as *Operation Streamline* deepen the crisis of criminalization by subjecting migrants apprehended at the U.S.-Mexico border to criminal prosecution and sentencing *en masse* through a fast-track process, which undermines due process rights at every step.<sup>57</sup> Under this program, migrants who have been deported and get caught re-entering the country are prosecuted with felony charges with a maximum sentence of 20 years. According to the Transactional Records Access Clearinghouse, “the data show that prosecutions of this type are up 135 percent from levels reported in 2006,” and “reentry of deported alien” (Title 8 U.S.C. §1326), was the lead charge recorded in the prosecutions of 1,844 immigration matters filed in U.S. District Court during September 2011 alone.<sup>58</sup> A report by the U.S. Sentencing Commission revealed that over half of all people sent to federal prison for committing felony crimes in 2011 were Hispanic.<sup>59</sup> The report attributed the increase of Hispanics in prison to an increase in prosecution for immigration-related crimes.<sup>60</sup>
46. Similar trends can be observed at the state level, where immigration-related crimes such as identity theft or failure to carry immigration documents are frequently prosecuted. While the migrants in custody following these criminal convictions are not

in ICE or CBP custody, the increase in prosecutions reflect a growing trend toward the criminalization of migration itself by the United States.<sup>61</sup>

## B. RIGHT TO LIBERTY AND SECURITY OF THE PERSON AND TO FREEDOM FROM ARBITRARY DETENTION

47. The United States' detention system lacks three critical elements which are necessary to meeting its obligations under international human rights law: an individualized assessment and process to challenge all custody decisions, robust case management tailored to individual needs, and access to legal and support services. This failure has resulted in the arbitrary detention of thousands of migrants in violation of ICCPR articles 9(1) and 9(4).
48. U.S. law imposes mandatory detention without an individualized custody determination by a court in a broad category of cases, including arriving asylum seekers<sup>62</sup> and non-citizens convicted of certain crimes,<sup>63</sup> and certain refugees awaiting adjudication of their applications for permanent residence.<sup>64</sup> These categorical detention determinations violate norms of proportionality and non-discrimination.<sup>65</sup>
49. Individuals subject to mandatory detention in the United States are not entitled to a bond hearing before an immigration judge<sup>66</sup> or to independent review of their custody determination by a court.
50. There are documented cases of individuals held in detention for years because an immigration judge does not have the authority to order release. For example, Muhammed Azam Hussain was held pursuant to mandatory detention laws for three years.<sup>67</sup> During that time, he lost three teeth due to gum disease linked to the poor nutrition and lack of real toothbrushes in the detention facility.<sup>68</sup> The Division of Immigrant Health Services would not pay for the dentist-recommended periodontal surgery to address his underlying gum disease.<sup>69</sup> Instead, the agency continued to order repeated extraction of Mr. Hussain's teeth as a short-term measure.<sup>70</sup>
51. While immigrants such as Mr. Hussain are losing teeth, others subject to mandatory detention are dying in custody, often attributed to a lack of adequate mental health and medical care. Tiombe Carlos, a 35-year-old mentally ill immigrant, committed suicide in October 2013 after she was in detention for nearly three years.<sup>71</sup>

52. All migrants in detention in the U.S. are detained without an individualized assessment as to the need to detain. Rather than making informed decisions for each and every individual the government intends to restrict liberty, the burden usually falls to the individual migrant to make the case as to why he is eligible for release.
53. The U.S. is bound by human rights law to demonstrate by clearly articulable facts why it is necessary to restrict any person's liberty. In making these individualized determinations, the U.S. is bound by the principles of necessity and proportionality and must show why any less restrictive means of control migration will not suffice in the particular individual's situation before it can resort to detention. The guarantee of this fundamental process before a person is denied liberty does not exist in the U.S. rendering all detention, including mandatory detention, arbitrary.
54. Arriving asylum seekers in expedited removal proceedings are subject to mandatory detention and may not be released while awaiting their initial "credible fear" review to determine whether they may apply for asylum before an immigration judge.<sup>72</sup> Following determination of credible fear, asylum seekers may be released on parole pending their asylum hearings before an immigration judge or while on appeal, but if the detaining authority (ICE) denies parole, the asylum seeker is prevented under regulations from having an immigration court assess the need for his continued custody.<sup>73</sup> ICE revised its parole guidelines effective January 2010.<sup>74</sup>
55. Individuals in ICE detention can be transferred arbitrarily to detention facilities that are far from their homes, communities, and loved ones; the disconnect from this support system, combined with the lack of access to counsel in remote locations, makes it significantly more difficult for detained migrants to gather evidence to fight their deportation and win their immigration cases. In one instance, Dave Pierre, an Antiguan immigrant, was held in ICE detention for over 3 years and transferred to 7 different immigration detention facilities across the United States in 25 days.<sup>75</sup>
56. The U.S. lacks robust alternatives to detention.<sup>76</sup> The existing alternatives to detention program has an overreliance on detention as an approach to immigration enforcement, lacks of individualized risk assessments to determine who needs to be detained or otherwise supervised to ensure appearance and removal, fails to collect and report on necessary data indicators to evaluate the use of detention and alternatives, lacks a robust case management system with referrals to appropriate social services, and has insufficient access to legal and social services.<sup>77</sup>
57. While the United States Supreme Court has imposed some limit on the duration of immigration detention, that limit applies only to a very limited class of individuals in

immigration custody: those who have final orders of removal. The Court's ruling in *Zadvydas v. Davis*<sup>78</sup> has been important to avoid indefinite detention of non-citizens with final removal orders who could not be deported to their country of origin. However, this limitation on the length of detention applies only to detention *after* there has been a final order of removal. There is no limit to the duration of immigration detention before and during immigration removal proceedings. Many non-citizens languish in detention for months or years.<sup>79</sup>

### C. RIGHT TO HUMANE CONDITIONS OF DETENTION

58. People detained on civil immigration status violations are held in over 250 jails, prisons, and secure detention centers around the United States,<sup>80</sup> operated variously by ICE, state and local governments, and private prison corporations.<sup>81</sup> People apprehended by CBP often are detained in short-term custody facilities which hold people for less than 72 hours.
59. Immigration detention uses a penal model inappropriate for people detained on allegations of civil status violations. Virtually all people detained by ICE are held in correctional facilities or prison- or jail-like settings,<sup>82</sup> which fail to adhere to guarantees in ICCPR articles 10(1) and 10(2)(a).<sup>83</sup> In 2009, ICE announced plans to reform the immigrant detention system, but thus far there has been extremely limited progress toward a shift to non-penal facilities.<sup>84</sup>
60. People detained by ICE wear prison uniforms, are regularly shackled during transport and in their hearings,<sup>85</sup> are held behind barbed wire,<sup>86</sup> and may be locked in their cells up to 18 hours each day.<sup>87</sup>
61. Although the United States has adopted detention standards, the standards are not legally enforceable. In addition, they are based on a penal correctional model inappropriate for civil detention and have significant deficiencies in monitoring and oversight, little transparency, and no consequences for non-compliance with standards.<sup>88</sup> Contracted facilities are rated on the standards, but failure to meet standards carries no penalty. Moreover, the standards are not consistent across different facilities; some facilities continue to follow outdated detention standards from 2008 and 2000, while others that have agreed to abide by newer standards claim to still be in the process of implementation. Consequently, many facilities have not instituted the 2011 standards – the most current – which added regulations

regarding sexual assault prevention and intervention and the treatment of lesbian, gay, and transgender detained immigrants.

62. Most significantly, ICE detention standards are not subject to independent oversight, making them all but useless. ICE is responsible for overseeing its own facilities, ensuring regular monitoring and compliance, and providing appropriate sanctions for noncompliant facilities. Unfortunately, regular review of compliance and penalties for violations are rarely, if ever, carried out.
63. The lack of adherence to ICE detention standards is striking. Human rights advocates and visitors to detention facilities continue to uncover neglect and abuse inside detention facilities, even after ICE has been alerted to substandard and even dangerous conditions.
64. In 2012, Detention Watch Network (DWN) issued reports of the ten worst detention facilities in the country.<sup>89</sup> The organization and human rights advocates met with ICE to explain their serious concerns regarding human rights violations in ICE detention facilities.<sup>90</sup> ICE promised to send in “special assessment teams” to review the documented instances of abuse and neglect.<sup>91</sup> In a subsequent letter, ICE claimed that each of the ten facilities were in compliance with detention standards.<sup>92</sup> There was never any evidence that the “special assessment teams” were sent into the facilities.<sup>93</sup>
65. In 2013, DWN reassessed the original ten facilities and a number of additional detention centers, through its own teams, letters from and interviews with detained individuals, and with information from legal service providers and advocates working inside detention facilities.<sup>94</sup> DWN issued an updated report, finding 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.”<sup>95</sup> DWN contacted ICE regarding its findings; ICE has yet to respond.
66. Since 2003, 141 immigrants have died in detention.<sup>96</sup> In 2013 alone, 9 individuals died in immigration detention; three of the deaths were suicides.<sup>97</sup>
67. Highly publicized and tragic cases illustrate a systemic disregard for the rights to necessary medical care in detention, humane conditions of detention, and treatment respecting basic human dignity. Shocking reports of the United States’ failure to screen for illness and failure to provide care to ill or injured persons in its custody abound.<sup>98</sup> For example, the serious lack of mental health care in detention

has led to suicide, such as in the case of Tiombe Carlos. Ms. Carlos was diagnosed with paranoid schizophrenia at the age of 15. In 2011, Physicians for Human Rights confirmed the diagnosis while Ms. Carlos was in detention and recommended intense medical treatment and that she be released into the care of her family.<sup>99</sup> In 2012, she underwent a psychological evaluation that would have determined her continued detention.<sup>100</sup> The findings of that evaluation were not received until 11 months after it was conducted.<sup>101</sup> Her attorney and family persistently called on ICE to release her, yet ICE kept Ms. Carlos in detention, which her attorney described as “horrific, punitive, and inhumane.”<sup>102</sup> ICE was well aware of her medical needs as documented in letters of appeal from her attorney and had ample authority to exercise discretion to release her.<sup>103</sup> In October 2013, Ms. Carlos committed suicide after nearly three years in detention. She was 35 years old.<sup>104</sup> Since Ms. Carlos's death in October 2013, Detention Watch Network, the National Immigrant Justice Center, and Families for Freedom, a New York-based organization that has been working with Ms. Carlos's family, have repeatedly requested information from ICE regarding the circumstances of Ms. Carlos's suicide, her mental health treatment, and why she was not released into the care of her family.<sup>105</sup> They have yet to receive responses that adequately address these questions.

68. Because of the penal nature of the facilities, detained immigrants are subject to degrading conditions.<sup>106</sup> Immigrants in detention are denied basic needs, such as contact with lawyers and their families, adequate food and hygiene, and access to fresh air and sunlight.<sup>107</sup> They endure racial slurs and discriminatory treatment by prison staff.<sup>108</sup> Immigrants in detention are subjected to sub-standard medical care, and in some circumstances, no medical care at all, resulting in prolonged injury, sickness and/or death.<sup>109</sup>
69. 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.<sup>110</sup> Low-cost solutions like shower curtains are rarely implemented. Medically-necessary hormone therapy is dramatically reduced or eliminated, resulting in rapid body changes.
70. People in detention often face barriers to communicating with their family, counsel, or other support systems.<sup>111</sup> Depending upon where they are detained, they may not be permitted contact visits with family.<sup>112</sup> ICE continues to expand “video visitation,” which only allows families to visit with loved ones via video. Families often travel long distances and at significant expense to reach detention facilities, many of which are

in remote locations. Detention Watch Network continues to learn of loved ones and families turned away after their arrival. For example, one man's wife traveled a considerable distance, only to learn that the facility only offered video visitation.<sup>113</sup> On the day of her visit, the video was not working, so she left without seeing her husband.<sup>114</sup>

71. ICE also conveys inconsistent visiting schedules and fails to abide by its own policies for visitation. For example, families have reported driving for over three hours for a visit, only to be turned away for a dress code violation – such as wearing a tank top – when there is no information regarding the dress code on the website.<sup>115</sup> ICE has also denied entire groups of community members from visiting and providing support to detained immigrants, even when the groups have followed ICE visitation policies.<sup>116</sup>
72. Immigrants in detention may be held for prolonged periods of time without access to the outdoors.<sup>117</sup> Immigrants at a number of facilities have reported absolutely no access to the outdoors or access to small concrete openings or “open-air” recreation rooms for extremely limited times – one hour a day only three or four times a week.<sup>118</sup> At other facilities, detained immigrants may be allowed severely limited recreation time. ICE has promised outdoor recreation space at multiple facilities, with no signs of progress toward building such spaces.<sup>119</sup>
73. People detained because of civil immigration status violations routinely are commingled with convicted persons in violation of international standards requiring the separation of convicted and non-convicted persons. While this is a violation of international detention standards, it should be understood in the greater context of incarceration in the United States. The United States incarcerates a greater proportion of its population - over 700 per 100,000 people – than any other country in the world. Incarceration rates are dramatically higher amongst racial minorities in the United States, suggesting violations of the right to freedom from discrimination, due process of law, and equal protection of the laws. Disparities in criminal sentencing in particular raises concerns that many convicted persons are subject to arbitrary detention. Severe overcrowding in U.S. prisons means that many convicted persons live under inhumane conditions. The detention of non-citizens on immigration violations is one part of this overall situation, which has been characterized as a mass incarceration crisis.
74. Reports of poor food quality and limited amount of food are common.<sup>120</sup> Detention Watch Network received reports of maggot- and worm-infested food, water that tastes like urine, small portions and lengthy times between meals, and expired food

and drink.<sup>121</sup> Moreover, religious and medical dietary restriction are not frequently followed, leading individuals with the option of eating what is served – which either violates their faith or aggravates their health – or going without food.<sup>122</sup>

75. Both state-run and private detention centers often rely on income from commissary charges including additional food, additional clothing, stationery, toiletries, and telephone cards.<sup>123</sup>
76. Use of solitary confinement is, sometimes for prolonged periods of time, 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.<sup>124</sup>
77. Administrative and disciplinary segregation, both used in ICE detention facilities, mirror punitive forms of solitary confinement imposed in the penal context.<sup>125</sup> Detained people are confined alone in tiny cells for up to twenty-three hours a day.<sup>126</sup> Phone privileges, access to legal counsel, and recreational time are often restricted or completely denied.<sup>127</sup> Freedom of movement can be so severely limited that even trips to the bathroom may require shackles and a staff escort. Making matters worse, when such detainees express depression or hopelessness from this extreme isolation, they are often placed on suicide watch, which can mean further limitations on their privacy and freedom of movement.<sup>128</sup> Once in administrative segregation, it becomes extremely difficult to get out.<sup>129</sup>
78. A father of three told Detention Watch Network that he was put into solitary confinement after he went on hunger strike to protest the injustice of his incarceration.<sup>130</sup> After he developed gastrointestinal bleeding the jail staff told him he would not be released from solitary and that he would be denied medical care unless he agreed to end his hunger strike.<sup>131</sup>
79. Of particular concern is the practice of placing transgender immigrants in solitary confinement.<sup>132</sup> Transgender individuals may be placed into “administrative segregation” without any individualized assessment<sup>133</sup> or may face administrative segregation after being attacked or expressing fear for personal safety.<sup>134</sup> One transgender woman, Ana Luisa,<sup>135</sup> 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.
80. 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.<sup>136</sup> 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 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.

81. Access to medical and mental health care is a serious – even life-threatening – concern at a number of detention facilities. There continue to be well-documented delays in accessing necessary specialty medical care, due to a lack of resources and delays in ICE approval of referrals to specialists.<sup>137</sup> Many immigrants have suffered severe health consequences as a result of these practices.
82. Appropriate psychological and medical services for torture survivors are universally unavailable.<sup>138</sup>
83. Medical and mental health issues are exacerbated by the lengthy and indefinite periods of 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.<sup>139</sup>
84. Detention Watch Network members have received numerous letters from immigrants detained with serious lack of immediate and basic medical care. One immigrant complained of worsening health with no assistance: “In July 2012, I fell off the bunk bed where I sleep here in the detention center, since then I have been very ill. I have a lump in my throat that is affecting different parts of my body... everyday my health worsens, and the pain is expanding to the rest of my body, I ask for medicine in my medical requests and they don't assist me.” Another individual complained of not getting proper care due to punitive treatment and policies: “I got so alarmingly sick that I was transferred to a hospital with shackles on my hands and ankles. They even pulled my hair when I was taken to the hospital... The doctor asked ICE to take off my shackles so the doctor could check me better, but they refused to take them off.”<sup>140</sup>

85. An immigrant detained at the Irwin County Detention Facility told Detention Watch Network: "The entire month of March 2013 I have been very ill. I have sent numerous requests to be seen by a doctor and have not been seen. On March 15, 2013 I got paralysis on half of my face, on my neck and one of my arms. I also got a lump on my neck, and again I asked to be seen by a doctor and nothing. One morning I woke up with my face and arm swollen, and again the staff ignored my medical request."
86. Many detained immigrants interviewed by Detention Watch Network indicated that they must repeatedly demand health services before they are seen. Immigrants in detention have waited anywhere from three days to five months after putting in a request for an appointment with medical staff. As one detained immigrant put it, "people have to be very sick or almost to the point of passing out to get prompt attention."
87. Immigrants have been provided with Gatorade or common painkillers, such as aspirin or Tylenol, to allegedly treat many health issues. For example, one immigrant with a protruding bump on his finger and a laceration stretching along his entire arm was provided only with Tylenol by the medical staff. Another detained immigrant was provided with common allergy medication after complaining of a throat ache, but was told to consider removing his tonsils when he left the detention center. The allergy medicine did not relieve his throat pain.
88. 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."<sup>141</sup>
89. The Florida Immigrant Advocacy Center reported that, "Conditions of medical care have been deteriorating, funding is inadequate, detention is not cost effective, ICE oversight of detention facilities is lacking, detention facility staff often treats detainees cruelly, detainees are transferred in retaliation, and essential healthcare is often delayed or denied."<sup>142</sup>
90. A March 2011 report by the Department of Homeland Security's Office of Inspector General reports that while the ICE Health Services Corps serves as medical authority

for ICE, deficiencies call into question the effectiveness of care, particularly regarding provision of mental health care. The OIG reports that IHSC staffs only 18 of the approximately 250 facilities holding people in ICE custody, resulting in limited oversight and monitoring, and that even in those facilities which they staff, effectiveness is limited by persistent staff vacancy rates. The report finds that facilities were not always capable of providing adequate mental health care to ICE detainees.<sup>143</sup> Detention facilities lack the capacity to provide adequate care for the increasing number of people in detention and struggle to fill open medical positions.<sup>144</sup>

91. Sexual abuse of migrants in detention is a problem of serious concern. Over 200 reported complaints of sexual abuse have been filed by immigrant detainees in the past five years,<sup>145</sup> which advocates believe reflect a fraction of the problem.<sup>146</sup>

92. 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.<sup>147</sup> Conditions of detention of migrants by Customs and Border Protection, particularly near the U.S.-Mexico border, are of urgent concern. Of particular concern is the practice of holding detained immigrants in very cold cells.<sup>148</sup> CBP apprehension and detention policies and practices lack transparency and accountability at both the local and federal levels.

93. Migrants, including minor children, apprehended by CBP often are detained in short-term custody facilities which hold people for less than 72 hours.<sup>149</sup> There is little access into these short-term detention facilities operated under Customs and Border Protection authority. The GEO Group, and other privately contracted transportation buses are utilized as virtual detention centers where individuals are held until the bus departs.<sup>150</sup>

#### D. RIGHT TO DUE PROCESS AND FAIR DEPORTATION PROCEDURES

94. While U.S. law provides that aliens in removal proceedings have “the privilege of being represented,” legal representation must be “at no expense to the Government.”<sup>151</sup> The United States’ failure to ensure that all non-citizens have access to legal representation during their expulsion hearings, and by extension, to fair proceedings, violates ICCPR article 13.

95. Nationwide, Approximately 84% of detained cases were unrepresented.<sup>152</sup> According to a report of the American Bar Association, there is “strong evidence that representation affects the *outcome* of immigration proceedings.”<sup>153</sup> The findings of the New York Immigrant Representation Study echo the ABA’s observation:

- Represented and released or never detained: 74% have successful outcomes.
- Represented but detained: 18% have successful outcomes.
- Unrepresented but released or never detained: 13% have successful outcomes.
- Unrepresented and detained: 3% have successful outcomes.<sup>154</sup>

96. The New York Immigrant Representation Study made the following finding: “By every measure, the number of deportations and removal proceedings has skyrocketed over the last decade. Between 2000 and 2010, the number of removal proceedings initiated per year in our nation’s immigration courts increased nearly fifty percent, totally over 300,000 last year. During that period, the representation rate of respondents in removal proceedings has remained relatively constant and abysmally low. Correspondingly, the actual number of unrepresented respondents has virtually doubled.”<sup>155</sup> The study notes that lack of representation is particularly acute for detained people: “A striking percentage of detained and nondetained immigrants appearing before the New York Immigration Courts do not have representation. The greatest area of need for indigent removal defense is, however, for detained individuals. In New York City: Sixty percent of detained immigrants do not have counsel by the time their cases are completed.”<sup>156</sup>

97. Geographic isolation compounds the inability of people in detention to access legal assistance. Human Rights First has noted that “as DHS and ICE expanded immigration detention, they repeatedly chose to detain asylum seekers and other immigrants in

areas that are not near pro bono legal resources, the immigration courts, or U.S. asylum offices.<sup>157</sup>

98. Approximately 28 percent of detainees are held at facilities where there is no free legal service provider.<sup>158</sup> Even the provision of information about legal rights is limited; nearly 25 percent of all detainees are held at facilities where they receive no information about their legal rights from attorneys or legal services providers.<sup>159</sup> The staff time and travel costs for legal service providers provide a significant barrier to reaching and representing individuals held in geographically remote areas.<sup>160</sup> Further compounding these issues is limited access to phone calls to attorneys. Seventy-eight percent of the facilities holding immigrants prohibit private calls between attorneys and clients.<sup>161</sup> Many facilities require legal aid organizations to register in order to receive calls from detainees, as well as maintaining an account with funds to cover the cost of the calls.<sup>162</sup> When individuals are transferred between facilities, they may end up at a facility where the legal aid organization they worked with is not listed to receive calls and the individual may not have funds to pay for a call.<sup>163</sup>
99. Frequent transfers between detention centers further undermine access to counsel and to fair deportation proceedings. According to the New York Immigrant Representation Study, “ICE transfers almost two-thirds (64%) of those detained in New York to far-off detention centers (most frequently to Louisiana, Pennsylvania, and Texas), where they face the greatest obstacles to obtaining counsel. Individuals who are transferred elsewhere and who remain detained outside of New York are unrepresented 79% of the time.”<sup>164</sup>
100. The immigration justice system lacks procedural safeguards for detained people with mental disabilities who face the possibility of deportation.<sup>165</sup> Approximately fifteen percent of the total immigrant population in detention is comprised of individuals with mental disabilities.<sup>166</sup> “[I]mmigration courts have no substantive or operative guidance for how they should achieve fair hearings for people with mental disabilities.”<sup>167</sup> “[I]n many cases the ICE attorney prosecuting the case did not inform the judge when a non-citizen facing deportation had a diagnosed or suspected mental disability—even when one had been previously adjudged by a criminal court—which clearly compromised the non-citizen’s ability to understand proceedings.”<sup>168</sup> “In other cases, ICE attorneys refused or neglected to perform competency evaluations and to supply information from evaluations to the court—even when the court ordered them to do so.”<sup>169</sup> As a result, “legal permanent residents (LPRs) and asylum seekers with a lawful basis for remaining in the United States may have been unfairly deported from the country because their mental

disabilities made it impossible for them to effectively present their claims in court. Some US citizens with mental disabilities may have been deported to countries they do not know, and some of these people have not been or cannot be found.”<sup>170</sup>

101. Detention undermines individuals’ ability to raise defenses to deportation that may be available. Detention also undermines individuals’ will and ability to pursue appeal.<sup>171</sup> Faced with the prospect of indefinite detention pending the outcome of removal hearings, detainees often agree to “stipulated removal orders” in which they accept an order of deportation without access to an attorney or an appearance before an immigration judge.

102. A September 2011 report found that over 160,000 people have been deported under these stipulated removal orders over the past decade.<sup>172</sup> The interplay between detention, stipulated removal, and the deliberate attempt to forestall applications for relief from removal is illustrated by the following e-mail from an ICE official obtained through the researchers’ Freedom of Information Act request:

“Please, please, please . . . encourage the agents to work harder on the stipulated orders of removal. . . . It is really important for the agents to push for stipulated orders of removal. . . . Most of the [lawful permanent residents] who get out of jail are willing to take an order just to get out of jail sooner (that is until the judge encourages them to get a lawyer).” —Email message from M. Meymarian to various recipients.<sup>173</sup>

103. Unrepresented people in detention face serious barriers to presenting a defense to their removal. Law library access often is minimal or restricted.<sup>174</sup>

## E. RIGHT TO SEEK ASYLUM FROM PERSECUTION

104. Inconsistent with the United States’ obligation under the Convention relating to the Status of Refugees, article 31, paragraph 1, detention of asylum seekers penalizes asylum seekers and deters them from seeking asylum in the United States.<sup>175</sup> Immigration regulations require that ICE detain individuals requesting asylum at a port of entry until an initial screening of their asylum claim, called a credible fear review, is conducted. While ICE claims these screenings are conducted within 2 weeks, some individuals have had to wait several weeks or even months for a screening.<sup>176</sup>

105. Detention of asylum seekers “risks re-traumatizing those who are already in a psychologically frail state,”<sup>177</sup> creates barriers to establishing eligibility for asylum by limiting access to counsel and to evidence in support of their applications,<sup>178</sup> and can serve as a deterrent to pursuing a claim.

## F. RIGHT TO FAMILY UNITY

106. In violation of ICCPR article 23 and article 17, the U.S. immigrant detention system contravenes the United States’ obligations to protection family unity. Family unity cannot be considered in mandatory detention cases, and the United States routinely fails to consider family unity when making discretionary detention decisions. Transfer of people to facilities far from family members has increased sharply in the last decade.<sup>179</sup>

107. According to the Applied Research Center’s 2011 report *Shattered Families*: “In fiscal year 2011, the United States deported a record-breaking 397,000 people and detained nearly that many. According to federal data released to ARC through a Freedom of Information Act request, a growing number and proportion of deportees are parents. In the first six months of 2011, the federal government removed more than 46,000 mothers and fathers of U.S.-citizen children. These deportations shatter families and endanger the children left behind.”<sup>180</sup>

108. “ICE does not protect families at the time of apprehension. ICE and arresting police officers too often refuse to allow parents to make arrangements for their children. Existing ICE guidelines are largely outdated and insufficient for the current immigration enforcement context in which ICE has shifted from high-profile raids to more-hidden and devolved forms of enforcement that operate through local police and jails and smaller-scale ICE enforcement actions.”<sup>181</sup>

109. “ICE detention obstructs participation in CPS plans for family unity. ICE consistently detains parents when they could be released on their own recognizance or expand the use of community-based supervisory programs. Once detained, ICE denies parents access to programs required to complete CPS case plans. Due to the isolation of detention centers and ICE’s refusal to transport detainees to hearings, parents can neither communicate with/visit their children nor participate in juvenile court proceedings. Child welfare caseworkers and attorneys struggle to locate and maintain contact with detained parents.”<sup>182</sup>

110. Parents detained in ICE facilities may sometimes be involved in complicated child custody disputes. These parents, however, are unable to participate—either telephonically, by video, or in person—in family court hearings and therefore are unable to fight for their parental rights.<sup>183</sup> “In some cases this was because child welfare workers or their public defenders were not communicating information about custody proceedings to them in time for them to participate. In other cases, women knew about family court dates but did not know they could ask to participate from detention or had requested access by video or telephone but had been denied.”<sup>184</sup>
111. In addition to obstructing participation in ongoing child protection or custody cases, the ICE detention itself too often forms the basis of child protection claims, resulting in placement of children in foster care and even termination of parental rights. “Whether children enter foster care as a direct result of their parents’ detention or deportation, or they were already in the child welfare system, immigration enforcement systems erect often-insurmountable barriers to family unity.”<sup>185</sup>
112. The Applied Research Center found that: “[i]n practice, however, when mothers and fathers are detained and deported and their children are relegated to foster care, family separation can last for extended periods. Too often, these children lose the opportunity to ever see their parents again when a juvenile dependency court terminates parental rights.”<sup>186</sup>

I have a Mexican immigrant client detained by ICE for a year. She was a [domestic violence] victim and the police got involved and that’s when they found out that she was undocumented and so they had to go ahead and detain her. Eventually, they released her and permitted her to stay here in the U.S. based on a Violence Against Women Act visa. But the fact that she was detained by ICE was enough to push the kids into foster care.<sup>187</sup>

113. ICE enforcement practices resulting in detention, particularly cooperation with local law enforcement, have undermined family unity:

A 34-year-old Ecuadoran woman named Maria who has lived in Minneapolis, Minnesota, for almost a decade was pulled over by a state police officer as she drove her daughter to school one morning. The Minnesota Department of Public Safety has signed a 287(g) agreement with ICE, and when Maria rolled down her window, the officer asked her for her papers. Because she is undocumented, she had no driver’s license, so the officer arrested her. Before taking her to the station, the police officer said that she could call someone to pick up the girl, but Maria told the officer that she had no family in the area. When the officer told



her that the only other option was to call CPS, Maria called her elderly landlady who agreed to take the girl. Maria was soon detained by ICE and moved over 1000 miles away to the Hutto women's detention center in Texas. A few days later, Maria's former boyfriend, who was the girl's father and who had abused Maria for years, arrived at the caregiver's house and took his daughter away.<sup>188</sup>

114. Mandatory detention laws have also been found to undermine family unity. Again, the Applied Research Center:

While our research did uncover instances in which ICE agents used their discretion to release parents with children in foster care, most were among the shockingly low 16% of detainees with legal representation or were among a very small number of parents whose caseworker actively contacted ICE to ask for their release.

Without a broader basis for relief, many families will continue to be separated by detention and deportation. For some parents, ICE discretion offers little hope because their detention and deportation is mandatory based on federal law. Mandatory detention and deportation means that even immigration judges are denied the prerogative to release detainees or cancel an order of removal. Immigrants convicted of a broad category of charges are subject to mandatory detention and deportation. Others are detained for extended periods because ICE officers believe that if they were released while waiting for the decision of an immigration judge, they would flee. However, immigration attorneys as well as parents interviewed for this report made it very clear that parents with children in foster care are categorically a low flight risk because their primary concern is almost always to regain custody of their children. Few parents would leave town without their sons and daughters.<sup>189</sup>

115. Customs and Border Protection practices also violate obligations to ensure family unity. According to research conducted by the organization No More Deaths, which conducted interviews from Fall 2008 to Spring 2011 with 12,895 individuals who were in Border Patrol custody, "Border Patrol deported 869 family members separately, including 17 children and 41 teens."<sup>190</sup>

116. Visits by non-detained family members are limited by facility rules. In one survey of attorneys, 81% reported that clients expressed difficulty in calling or visiting with family. Facilities often restrict visits to video only and limit the time of visits to 10 minutes.<sup>191</sup>

## G. RIGHT TO FREEDOM FROM DISCRIMINATION BASED ON RACE, RELIGION, OR NATIONAL ORIGIN

117. While detention interferes with individuals' rights to freedom from arbitrary detention and freedom from inhumane detention conditions and their right to fair deportation procedures, family unity, and the ability to seek and enjoy asylum from persecution, detention is fueled by the violation of the right to freedom from discrimination based on race, religion, or national origin.
118. Racial discrimination in law enforcement and the administration of justice continues to be a significant problem in the United States. As the Committee on the Elimination of all forms of Racial Discrimination stated in its concluding observations to the United States' most recent report on compliance with the Convention: "[t]he Committee reiterates its concern with regard to the persistent racial disparities in the criminal justice system of the [United States], including the disproportionate number of persons belonging to racial, ethnic and national minorities in the prison population, allegedly due to the harsher treatment that defendants belonging to these minorities, especially African American persons, receive at various stages of criminal proceedings (art.5 (a))."<sup>192</sup> As the U.S. government continues to expand the role of local law enforcement agencies in the enforcement of immigration laws and policies, these formal and informal partnerships incentivize racial profiling by using the state criminal justice system to target perceived foreigners and to channel them into the immigration enforcement system.<sup>193</sup>
119. U.S. detention law patently discriminates against immigrants and undermines fundamental prohibitions on discrimination as well as well-founded due process principles under the Constitution and the U.S. international legal obligations.<sup>194</sup> In 2003 the court heard *Demore v. Kim*, which challenged the constitutionality of the INA provision that permits the mandatory detention of certain ex-offenders. The majority of the justices ignored jurisprudence related to freedom from bodily restraint and instead focused on prior immigration-related precedent and said, "In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." This discriminates against all non-citizens in the U.S. and is thus prohibited discrimination based on national origin.
120. Immigration enforcement programs known collectively as ICE ACCESS provide an "umbrella of services" for state and local law enforcement agencies to cooperate with federal immigration authorities.<sup>195</sup> These programs, including the 287(g) program,

the Criminal Alien Program, and the Secure Communities program, all have drawn substantial criticism for engendering racial profiling practices.<sup>196</sup>

121. In some cases state and local authorities enforce immigration law without any formal training or agreement, relying on informal processes for reporting anyone suspected of being non-citizens over to the Department of Homeland Security. For example, some local law enforcement agencies are reported to call ICE or CBP officers to interpret in routine traffic stops.<sup>197</sup>
122. During the booking process, Secure Communities, an immigration enforcement initiative launched by ICE in March 2008, allows the fingerprints of arrestees to be automatically checked against DHS' civil immigration databases in addition to the Federal Bureau of Investigation's (FBI's) criminal databases. Secure Communities and related programs incentivize racial profiling and pre-textual arrests by state and local police—agents know that when they arrest individuals, those individuals' immigration status will be checked when they are fingerprinted.<sup>198</sup> This is supported by data analyses done by researchers at the University of California, Berkeley which demonstrate that Latinos are disproportionately targeted by the program and that approximately 3,600 U.S. citizens have been arrested by ICE through Secure Communities.<sup>199</sup> ICE's own data demonstrate that, for example between the program's inception and June 2010, 79% of the people deported due to Secure Communities are non-criminals or were picked up for lower level offenses, such as traffic violations.<sup>200</sup> Recently, through FOIA litigation, it has been uncovered that DHS acted improperly in presenting the Secure Communities program to local communities, Congress, and the public—particularly those communities that expressed a desire to opt out of the program.<sup>201</sup> This has resulted in reviews of Secure Communities by the DHS Office of the Inspector General as well as the Government Accountability Office.<sup>202</sup>
123. The United States does attempt to investigate allegations of local law enforcement practices targeting migrants,<sup>203</sup> including an investigation by the U.S. Department of Justice Civil Rights Division into allegations of racial discrimination by the Maricopa County, Arizona, Sheriff's Office.<sup>204</sup> Such oversight should be encouraged and expanded.

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<sup>1</sup> Inter-American Commission on Human Rights, Report on the Human Rights of Persons Deprived of Liberty in the Americas, ¶ 8, OEA/Ser.L/V/II. Doc. 64, (Dec. 31, 2011).

<sup>2</sup> The INA of 1952 also created the Immigration and Naturalization Service (INS), the federal agency responsible for administering immigration law and policy until the creation of the Department of Homeland Security in 2003. See Immigration and Nationality Act, 8 U.S.C. § 1187 (2006).

<sup>3</sup> The term “refugee” means “any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” INA § 101(a)(42).

<sup>4</sup> See INA § 101(a)(43). See also The Anti-Drug Abuse Act of 1988, Pub. L. 100-690, subtitle J, 102 Stat. 4181 (Nov. 18, 1988) (creating a separate ground of deportation for serious crimes such as murder, drug trafficking or illegal trafficking of firearms or destructive devices), Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1999) (substantially expanding the category of aggravated felony).

<sup>5</sup> See Anti-Drug Abuse Act of 1988; see also Geoffrey Heeren, *Pulling Teeth: The State of Mandatory Immigration Detention*, 45 HARV. C.R.-C.L. L. REV. 601, 610-11 (2010), available at <http://harvardcrcl.org/wp-content/uploads/2009/06/601-6341.pdf> (describing enactment of mandatory detention into U.S. law in 1988 and the dramatic expansion of the class of migrants subject to detention).

<sup>6</sup> Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996).

<sup>7</sup> Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996).

<sup>8</sup> See INA § 101(a)(43).

<sup>9</sup> INA § 235(b)(1)(B)(iii)(IV).

<sup>10</sup> Section 236(c) of the INA mandates detention of any alien who is inadmissible by reason of having committed any offense covered in § 212(a)(2); is deportable by reason of having committed any offense covered in INA § 273(a)(2)(A)(ii), (A)(iii), (B), (C), or (D); is deportable

under INA § 237(a)(2)(A)(i) on the basis of an offense for which the alien has been sentenced to a term of imprisonment of at least 1 year; or is inadmissible under INA § 212(a)(3)(B) or deportable under INA § 237(a)(4)(B) when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

<sup>11</sup> Human Rights Watch, *Costly and Unfair: Flaws in US Immigration Detention Policy*, May 2010, at 8-9.

<sup>12</sup> See, e.g., Barbara A. Frey and X. Kevin Zhao, "The Criminalization of Immigration and the International Norm of Non-Discrimination: Deportation and Detention in U.S. Immigration Law," *XXIX Law and Inequality: A Journal of Theory and Practice* 2, Summer 2011, at 310-11.

<sup>13</sup> INA § 235.

U.S. Dept. of Homeland Security, Office of Immigration Statistics, Policy Directorate, "Annual Report," June 2011, available at <http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement-ar-2010.pdf>.

<sup>15</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

<sup>16</sup> Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Div. B, Pub. L. No. 109-13 (2005).

<sup>17</sup> Local enforcement of immigration laws has resulted in problems with racial discrimination and profiling. See generally U.S. DEPT. OF HOMELAND SECURITY, OFFICE OF INSPECTOR GENERAL, THE PERFORMANCE OF 287(G) AGREEMENTS (Mar. 2010); ACLU OF N.C. LEGAL FOUND. AND IMMIGR. AND HUM. RIGHTS POL'Y CLINIC AT THE U. OF N.C. AT CHAPEL HILL, THE POLICIES AND POLITICS OF LOCAL IMMIGRATION ENFORCEMENT LAWS, 287(G) PROGRAM IN NORTH CAROLINA, (Feb. 2009), available at <http://www.law.unc.edu/documents/clinicalprograms/287gpolicyreview.pdf>; GOV'T ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, IMMIGRATION ENFORCEMENT: BETTER CONTROLS NEEDED OVER PROGRAM AUTHORIZING STATE AND LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS (Jan. 2009), available at <http://www.gao.gov/new.items/d09109.pdf>; TREVOR GARDNER II & AARTI KOHLI, THE CHIEF JUSTICE EARL WARREN INST. ON RACE, ETHNICITY & DIVERSITY AT THE U.C. BERKELEY L. SCH., THE C.A.P. EFFECT: RACIAL PROFILING IN THE ICE CRIMINAL ALIEN PROGRAM, (Sept. 2009), available at [http://www.law.berkeley.edu/files/policybrief\\_irving\\_FINAL.pdf](http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf).

<sup>18</sup> Inter-American Commission on Human Rights, Report on the Human Rights of Persons Deprived of Liberty in the Americas, ¶ 8, OEA/Ser.L/V/II. Doc. 64, (Dec. 31, 2011).

<sup>19</sup> Universal Declaration of Human Rights (UDHR), art. 3, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948); ICCPR, *supra* note 3, art. 9.

<sup>20</sup> UDHR, *supra* note 19, art. 9; ICCPR, *supra* note 25, art. 9(1) (stating no one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law); *id.* art. 9(2) (guaranteeing that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him); *id.* art. 9(4) (requiring that anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful). See also UNHRC, Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, ¶ 67, U.N. Doc. A/HRC/10/21 (Feb. 16, 2009) (reminding states that the legality of detention must be open for challenge before a court and 2); UNHRC, Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, ¶ 52, U.N. Doc. A/HRC/7/4 (Jan. 10, 2008) (reminding states of the right of the detained to a prompt review).

<sup>21</sup> ICCPR, *supra* note 3, at art. 9(4).

<sup>22</sup> ICCPR, *supra* note 25, art. 7 (stating that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment); ICCPR art. 10(1) (requiring that all persons deprived of their liberty be treated with humanity and with respect for the inherent dignity of the human person); *id.* art. 10(2) (requiring that accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons).

<sup>23</sup> UNHCR, Exec. Comm., *Detention of Refugees and Asylum Seekers, Conclusion No. 44 (XXXVII)* UN Doc. A/41/12/Add.1 (Oct. 13, 1986) (stating that “in view of the hardship which it involves, detention should normally be avoided” and sets out the limited accepted bases on which the detention of refugees or asylum-seekers may be justified, namely: to verify identity; to determine the elements of the claim; to deal with cases where refugees have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order. Those detained must have access to either an administrative or judicial review, an essential safeguard against arbitrary detention). See also, UNHCR, *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, Feb. 26, 1999.

<sup>24</sup> See, e.g., Alice Edwards, “Back to Basics: The Right to Liberty and Security of the Person and ‘Alternatives to Detention’ of Refugees, Asylum-Seekers, Stateless Persons, and Other Migrants,” Apr. 2011,

PPLA/2011/01.Rev.1, available at <http://www.unhcr.org/4dc949c49.html>.

<sup>25</sup> International Covenant on Civil and Political Rights (ICCPR), art. 13, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976). See also UNHRC, *Report of the Special Rapporteur on the Human Rights of Migrants*, ¶ 12, U.N. Doc. A/HRC/7/12/Add.2, (Mar. 5,

2008) (prepared by Jorge Bustamante, Mission to the United States of America) (noting that the Human Rights Committee has interpreted the phrase "lawfully in the territory" to include non-citizens who wish to challenge the validity of the deportation order against them. The Committee has clarified: ". . . if the legality of an alien's entry or stay is in dispute, any decision on this point leading to his expulsion or deportation ought to be taken in accordance with article 13." and further: "An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one").

<sup>26</sup> *Report of the Special Rapporteur on the Human Rights of Migrants*, *supra* note 25, ¶ 10.

<sup>27</sup> ICERD, art. 1, ¶ 2 (providing for the possibility of differentiating between citizens and non-citizens); *but see* CERD, Gen. Rec. 11 (noting regarding the rights of non-citizens, art. 1, ¶ 2, must not detract from the rights and freedoms recognized and enunciated in other human rights instruments and "must be construed so as to avoid undermining the basic prohibition of discrimination"); Gen. Rec. 30, at ¶ 2 (noting that "Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim").

<sup>28</sup> UDHR, *supra* note 19, art.16 (3); ICCPR, *supra* note 25, art. 23 (1), (3) (stating that the right of men and women to marry and found a family shall be recognized and that this right includes the right to live together); *id.* art. 17(1) (stating that "No one shall be subjected to arbitrary or unlawful interference with his privacy, family or correspondence . . .").

<sup>29</sup> UNHRC, 7th Session, *Report of the Special Rapporteur on the Human Rights of Migrants*, ¶ 17, A/HRC/7/12/Add.2 (Mar. 5, 2008) (prepared by Jorge Bustamante).

<sup>30</sup> U.S. Dept. of Homeland Security, Office of Immigration Statistics, Policy Directorate, "Annual Report, Immigration Enforcement Actions: 2011," September 2012, available at [http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement\\_ar\\_2011.pdf](http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf).

<sup>31</sup> Correspondence between the Detention Watch Network and Immigration and Customs Enforcement is on file with the author.

<sup>32</sup> This detention is authorized by INA §§236, 236A, and 241.

<sup>33</sup> Detention at ports of entry or within 100 miles of the borders is authorized by INA §235 and 8 CFR §235.3.

<sup>34</sup> Whitlock, Craig and Craig Timberg. "Border-patrol drones being borrowed by other agencies more often than previously known." *Washington Post*, 14 Jan. 2014 ([http://www.washingtonpost.com/world/national-security/border-patrol-drones-being-borrowed-by-other-agencies-more-often-than-previously-known/2014/01/14/5f987af0-7d49-11e3-9556-4a4bf7bcdb84\\_story.html](http://www.washingtonpost.com/world/national-security/border-patrol-drones-being-borrowed-by-other-agencies-more-often-than-previously-known/2014/01/14/5f987af0-7d49-11e3-9556-4a4bf7bcdb84_story.html)).

<sup>35</sup> U.S. Dept. of Homeland Security, "FY2012 Budget in Brief," at 66. Available at <http://www.dhs.gov/xlibrary/assets/budget-bib-fy2012.pdf>.

<sup>36</sup> Nat'l Immigration Forum, National Guard Deployments to the Southwest Border, Dec. 2011. Available at [http://www.immigrationforum.org/images/uploads/2011/National\\_Guard-Border\\_Fact\\_Sheet-2011.pdf](http://www.immigrationforum.org/images/uploads/2011/National_Guard-Border_Fact_Sheet-2011.pdf) (citing U.S. Dept. of Homeland Security, "FY2012 Budget in Brief," available at <http://www.dhs.gov/xlibrary/assets/budget-bib-fy2012.pdf>).

<sup>37</sup> Customs and Border Protection, "On a Typical Day in Fiscal Year 2010..." available at [http://www.cbp.gov/xp/cgov/about/accomplish/typical\\_day\\_fy2010.xml](http://www.cbp.gov/xp/cgov/about/accomplish/typical_day_fy2010.xml).

<sup>38</sup> See Testimony of Mark S. Borkowski, Ass't Com'r, Office of Technology Innovation and Acquisition, U.S. Customs and Border Protection, and Paul Benda, Chief of Staff and Director Homeland Security Advanced Research Projects Agency, Science & Technology Directorate, and Michael Tangora Deputy Assistant Commandant for Acquisition, U.S. Coast Guard, before the House Committee on Homeland Security Subcommittee on Border and Maritime Security; release date: Nov. 15, 2011, available at <http://www.dhs.gov/ynews/testimony/20111115-borkowski-benda-tangora-house-maritime-security.shtm> (noting that "[m]any of the systems DHS currently uses for surveillance and situational awareness along the border come directly from DoD development and heritage" including the Predator Drone - MQ-9; Blackhawk - UH-60; Orion P-3; KingAir – Beechcraft; Mobile Surveillance System (MSS); Agent Portable Sensor System (APSS); Remote Video Surveillance System (legacy system); Unattended Ground Sensors (Monitron, McQ Omnisense); Night Vision Camera (FLIR Night Ranger); SBInet Block 1 Laser Illuminator; and SBInet Block 1 Radar

<sup>39</sup> Lesley Sapp, U.S. Dept of Homeland Security, Office of Immigration Statistics, Policy Directorate, "Fact Sheet, Apprehensions by the U.S. Border Patrol: 2005-2010," July 2011, available at <http://www.dhs.gov/xlibrary/assets/statistics/publications/ois-apprehensions-fs-2005-2010.pdf>.

<sup>40</sup> Nat'l Immigration Forum, National Guard Deployments to the Southwest Border, Dec. 2011. Available at [http://www.immigrationforum.org/images/uploads/2011/National\\_Guard-Border\\_Fact\\_Sheet-2011.pdf](http://www.immigrationforum.org/images/uploads/2011/National_Guard-Border_Fact_Sheet-2011.pdf).

<sup>41</sup> Nat'l Immigration Forum, National Guard Deployments to the Southwest Border, Dec. 2011. Available at [http://www.immigrationforum.org/images/uploads/2011/National\\_Guard-Border\\_Fact\\_Sheet-2011.pdf](http://www.immigrationforum.org/images/uploads/2011/National_Guard-Border_Fact_Sheet-2011.pdf).

<sup>42</sup> Nat'l Immigration Forum, *The Math of Immigrant Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies*, at 2, August 2013 Available at <http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf>.

<sup>43</sup> *Id.*



<sup>44</sup> See House of Representatives Chairman Hal Rogers summary of the omnibus, available at [http://appropriations.house.gov/uploadedfiles/01.13.14\\_fy\\_2014\\_omnibus\\_-\\_homeland\\_security\\_-\\_summary.pdf](http://appropriations.house.gov/uploadedfiles/01.13.14_fy_2014_omnibus_-_homeland_security_-_summary.pdf); Senate Chairwoman Barbara Mikulski summary of the omnibus, available at

<http://www.appropriations.senate.gov/news.cfm?method=news.view&id=5aa8e660-f52e-4074-945f-9618eb963ae9>; see also Bill Text & Joint Explanatory Statement, available at <http://rules.house.gov/bill/113/hr-3547-sa>.

<sup>45</sup> ACLU of Georgia and Georgia Detention Watch, "Securely Insecure: The Real Costs, Consequences, and Human Face of Immigration Detention," available at [http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/1.14.11\\_Fact%20Sheet%20FINAL\\_0.pdf](http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/1.14.11_Fact%20Sheet%20FINAL_0.pdf).

<sup>46</sup> ACLU of Georgia and Georgia Detention Watch, "Securely Insecure: The Real Costs, Consequences, and Human Face of Immigration Detention," available at [http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/1.14.11\\_Fact%20Sheet%20FINAL\\_0.pdf](http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/1.14.11_Fact%20Sheet%20FINAL_0.pdf).

<sup>47</sup> Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – A Two-Year Review*, 2011, at iii.

<sup>48</sup> Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – A Two-Year Review*, 2011, at i.

<sup>49</sup> Detention Watch Network, Grassroots Leadership, Inc., and Sarah V. Carswell, "The Influence of the Private Prison Industry in Immigrant Detention," available at <http://www.detentionwatchnetwork.org/privateprisons>.

<sup>50</sup> *Id*; Dora Schiro, *Immigration Detention: Overview and Recommendations 2* (DHS Oct 6, 2009), available at <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>

<sup>51</sup> See, e.g. Report to the American Bar Ass'n, *Reforming the Immigration System*, Executive Summary, Feb. 2010, at p. ES-25, available at [http://www.americanbar.org/content/dam/aba/migrated/media/nosearch/immigration\\_reform\\_executive\\_summary\\_012510.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/media/nosearch/immigration_reform_executive_summary_012510.authcheckdam.pdf).

<sup>52</sup> See Department of Homeland Security Appropriations Act, 2010, Pub. L. 111-83, 123 Stat. 2142, 2149 (October 28, 2009), available at [www.gpo.gov/fdsys/pkg/PLAW-111publ83/pdf/PLAW-111publ83.pdf](http://www.gpo.gov/fdsys/pkg/PLAW-111publ83/pdf/PLAW-111publ83.pdf) (requiring 33,400 beds per day). Similar language was included in the Consolidated Appropriations Act of 2012, increasing the number to 34,000.

<sup>53</sup> Immigration Policy Center, "Immigration Detainers: A Comprehensive Look," available at <http://immigrationpolicy.org/just-facts/immigration-detainers-comprehensive-look>.

<sup>54</sup> Santos, Fernanda and Charlie Savage. "Lawsuit Says Sheriff Discriminated Against Latino." *New York Times*, 10 May 2012 (<http://www.nytimes.com/2012/05/11/us/justice-department-sues-arizona-sheriff-joe-arpaio.html?ref=global-home>).

<sup>55</sup> Taylor, Paul, et. al. "Unauthorized Immigrants: Length of Residency, Patterns of Parenthood." Pew Research Center, 1 Dec. 2011, available at <http://www.pewhispanic.org/2011/12/01/unauthorized-immigrants-length-of-residency-patterns-of-parenthood/>.

<sup>56</sup> Poo, Ai-Jen Poo and Miriam W. Yeung. "AZ Immigration Ruling Endangers Women and Families." Open Society Foundations, 16 July 2012, available at <http://www.soros.org/voices/az-immigration-ruling-endangers-women-and-families>.

<sup>57</sup> Operation Streamline: Drowning Justice and Draining Dollars along the Rio Grande (Grassroots Leadership, July 2010). Available at [www.grassrootsleadership.org/publications/OperationStreamline.pdf](http://www.grassrootsleadership.org/publications/OperationStreamline.pdf)

<sup>58</sup> Transactional Records Access Clearinghouse, TRAC Immigration, "Immigration Prosecutions for September 2011," available at <http://trac.syr.edu/tracreports/bulletins/immigration/monthlysep11/fil/>.

<sup>59</sup> See U.S. Sentencing Commission Preliminary Quarterly Data Report (October 31, 2011), available at: [http://www.ussc.gov/Data\\_and\\_Statistics/Federal\\_Sentencing\\_Statistics/Quarterly\\_Sentencing\\_Updates/USSC\\_2011\\_4th\\_Quarter\\_Report.pdf](http://www.ussc.gov/Data_and_Statistics/Federal_Sentencing_Statistics/Quarterly_Sentencing_Updates/USSC_2011_4th_Quarter_Report.pdf)

<sup>60</sup> See "Latinos Form New Majority of those Sentenced to Federal Prison," (Huffington Post, 9/6/11) available at: [http://www.huffingtonpost.com/2011/09/09/hispanic-majority-prison\\_n\\_955823.html](http://www.huffingtonpost.com/2011/09/09/hispanic-majority-prison_n_955823.html)

<sup>61</sup> See Barbara A. Frey and X. Kevin Zhao, "The Criminalization of Immigration and the International Norm of Non-Discrimination: Deportation and Detention in U.S. Immigration Law," *XXIX Law and Inequality: A Journal of Theory and Practice* 2, Summer 2011, at 279, et seq.

<sup>62</sup> INA § 235(b)(1)(B)(iii)(IV).

<sup>63</sup> Section 236(c) of the INA mandates detention of any alien who is inadmissible by reason of having committed any offense covered in § 212(a)(2); is deportable by reason of having committed any offense covered in INA § 273(a)(2)(A)(ii), (A)(iii), (B), (C), or (D); is deportable under INA § 237(a)(2)(A)(i) on the basis of an offense for which the alien has been sentenced to a term of imprisonment of at least 1 year; or is inadmissible under INA § 212(a)(3)(B) or deportable under INA § 237(a)(4)(B) when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

<sup>64</sup> Human Rights Watch, *Costly and Unfair: Flaws in US Immigration Detention Policy*, May 2010, at 8-9.

<sup>65</sup> See, e.g., Barbara A. Frey and X. Kevin Zhao, "The Criminalization of Immigration and the International Norm of Non-Discrimination: Deportation and Detention in U.S. Immigration Law," *XXIX Law and Inequality: A Journal of Theory and Practice* 2, Summer 2011, at 310-11.

<sup>66</sup> See INA § 236(c).

<sup>67</sup> Geoffrey Heeren, *Pulling Teeth: The State of Mandatory Immigration Detention*, 45 HARV. C.R.-C.L. L. REV. 601, 601-02 (2010), available at <http://harvardcrcl.org/wp-content/uploads/2009/06/601-6341.pdf>

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Families for Freedom, Press Release, Oct. 31, 2013, available at <http://familiesforfreedom.org/news/releases/families-freedom-demands-independent-investigation-detainee-suicide-york-detention>.

<sup>72</sup> INA § 235(b)(1)(B)(iii)(IV).

<sup>73</sup> See HUMAN RIGHTS FIRST, RENEWING U.S. COMMITMENT TO REFUGEE PROTECTION: RECOMMENDATIONS FOR REFORM ON THE 30<sup>TH</sup> ANNIVERSARY OF THE REFUGEE ACT (Mar. 2010) at 10 (noting that while Immigration Judges can review ICE's custody decisions for other immigrant detainees, they are precluded under regulatory language from reviewing the detention of "arriving aliens," a group that includes asylum seekers who arrive at airports and other U.S. entry points under regulations located primarily at 8 C.F.R. § 1003.19 and § 212.5, as well as § 208.30 and § 235.3). See also U.S. Comm'n on Int'l Religious Freedom, ICE Parole Guideline is an Important First Step to Fix Flawed Treatment of Asylum Seekers in the United States (Dec. 23, 2009) (noting low rates of release on parole and citing that New Orleans released only 0.5 percent of asylum seekers, New Jersey less than four percent, and New York eight percent following a finding of credible fear), available at [http://www.uscirf.gov/index.php?option=com\\_content&task=view&id=2891&Itemid=126](http://www.uscirf.gov/index.php?option=com_content&task=view&id=2891&Itemid=126).

<sup>74</sup> U.S. Dept. of Homeland Security, Immigr. 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>.

<sup>75</sup> Democracy Now, Exclusive: Dave Pierre on Surviving 1,144 Days Locked Up Inside the Failed U.S. Immigration System, Nov. 13, 2013, available at [http://www.democracynow.org/2013/11/13/exclusive\\_dave\\_pierre\\_on\\_surviving\\_1?autostart=true](http://www.democracynow.org/2013/11/13/exclusive_dave_pierre_on_surviving_1?autostart=true).

<sup>76</sup> See Lutheran Immigrant and Refugee Service, *Unlocking Liberty*, Oct. 2011. Available at <http://www.lirs.org/atf/cf/%7Ba9ddba5e-c6b5-4c63-89de-91d2f09a28ca%7D/RPTUNLOCKINGLIBERTY.PDF>.

<sup>77</sup> See Lutheran Immigrant and Refugee Service, *Unlocking Liberty*, Oct. 2011. Available at <http://www.lirs.org/atf/cf/%7Ba9ddba5e-c6b5-4c63-89de-91d2f09a28ca%7D/RPTUNLOCKINGLIBERTY.PDF>.

<sup>78</sup> *Zadvydas v. Davis*, 533 U.S. 678 (2001).

<sup>79</sup> Dora Schriro, U.S. Department of Homeland Security, Immigration and Customs Enforcement, *Immigration Detention Overview and Recommendations* (Oct. 6, 2010). Dr. Schriro reported in 2010 that while on average an alien is detained 30 days, the length of detention varies appreciably between those pursuing voluntary removals and those seeking relief. Dr. Schriro reported that about 2,100 aliens each year are detained for a year or more.

<sup>80</sup> See NAT'L IMMIGR. L. CTR., ACLU OF S. CAL., AND HOLLAND & KNIGHT, *A BROKEN SYSTEM: CONFIDENTIAL REPORTS REVEAL FAILURES IN U.S. IMMIGRANT DETENTION CENTERS 4* (2009) [*hereinafter* A BROKEN SYSTEM].

<sup>81</sup> See e.g., DETENTION WATCH NETWORK, *ABOUT THE U.S. DETENTION AND DEPORTATION SYSTEM*, available at [www.detentionwatchnetwork.org/aboutdetention](http://www.detentionwatchnetwork.org/aboutdetention).

<sup>82</sup> SHRIRO, *supra* note 53 at 2.

<sup>83</sup> ICCPR, *supra* note 25, art. 10(1) (guaranteeing that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person); *id.* art. 10(2)(a) (providing that accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons).

<sup>84</sup> U.S. Dept. of Homeland Security, Immigr. and Customs Enforcement, Press Release: ICE Announces Major Reforms to Immigration Detention System (Aug. 6, 2009), available at <http://www.ice.gov/pi/nr/0908/090806washington.htm>; U.S. Dept. of Homeland Security, Immigr. and Customs Enforcement, Fact Sheet: ICE DETENTION REFORM: PRINCIPLES AND NEXT STEPS: Sec. Napolitano Announces New Immigration Detention Reform Initiatives (Oct. 6, 2009), available at [http://www.dhs.gov/xlibrary/assets/press\\_ice\\_detention\\_reform\\_fact\\_sheet.pdf](http://www.dhs.gov/xlibrary/assets/press_ice_detention_reform_fact_sheet.pdf).

<sup>85</sup> 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.

<sup>86</sup> See Human Rights Advocates, Submission to the Human Rights Council, 11th Session, Agenda Item 3: Rights of Migrants.

<sup>87</sup> Visit by The Advocates for Human Rights to Ramsey County Adult Detention Center, 2011 (notes on file with author).

<sup>88</sup> Brittney Nystrom, Senior Legal Advisor, 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, available at <http://chsdemocrats.house.gov/SiteDocuments/20091210105703-50708.PDF>.

<sup>89</sup> Detention Watch Network, *Expose & Close*, November 2012, available at <http://www.detentionwatchnetwork.org/ExposeAndClose> (website links to all ten reports and the Executive Summary).

<sup>90</sup> Detention Watch Network, *Expose & Close: One Year Later*, November 2013, at 2, available at [www.detentionwatchnetwork.org/ExposeandClose2013](http://www.detentionwatchnetwork.org/ExposeandClose2013).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 4.

<sup>97</sup> *Id.*

<sup>98</sup> Nina Bernstein, *Hong Kong Emigrant's Death Attracts Scrutiny of U.S. Detention System*, N.Y. TIMES, Aug. 13, 2008 (reporting that "[i]n April, [Hiu Lui] Ng began complaining of excruciating back pain. By mid-July, he could no longer walk or stand. And last Wednesday, two days after his 34th birthday, he died in the custody of Immigration and Customs Enforcement in a Rhode Island hospital, his spine fractured and his body riddled with cancer that had gone undiagnosed and untreated for months."). See also Katherine Fennelly and Kathleen Moccio, U of Minn. Hubert H. Humphrey Inst. Of Pub. Affairs, "Attorneys' Perspectives on the Rights of Detained Immigrants in Minnesota," (Nov. 2009).

<sup>99</sup> Families for Freedom, Press Release, Oct. 31, 2013, available at <http://familiesforfreedom.org/news/releases/families-freedom-demands-independent-investigation-detainee-suicide-york-detention>.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*; see also Detention Watch Network, *Expose & Close: One Year Later*, November 2013, at 5. Available at [www.detentionwatchnetwork.org/ExposeandClose2013](http://www.detentionwatchnetwork.org/ExposeandClose2013).

<sup>105</sup> Correspondence regarding these requests are on file with the author.

<sup>106</sup> See e.g., American Civil Liberties Union of Georgia, Letter to the Inter-American 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," Mar. 28, 2011, at 5 (reporting that detainees were given dirty underwear at the Irwin County Detention Center). Available at <http://www.acluga.org/ACLUofGeorgia-submissiontoACHR.pdf>.

<sup>107</sup> *Expose & Close: One Year Later*, at 1.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> Immigration Equality, Conditions of Detention, <http://www.immigrationequality.org/issues/detention/conditions-of-detention/> (last visited Jan. 27, 2012).

<sup>111</sup> See, e.g., KATHERINE FENNELLY AND KATHLEEN MOCCIO, U. OF MINN. HUBERT H. HUMPHREY INST. OF PUB. AFFAIRS, ATTORNEYS' PERSPECTIVES ON THE RIGHTS OF DETAINED IMMIGRANTS IN MINNESOTA (Nov. 2009).

<sup>112</sup> 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.

<sup>113</sup> Detention Watch Network, *Expose & Close: One Year Later*, at 7.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 6-7.

<sup>116</sup> *Id.* at 7.

<sup>117</sup> 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.

<sup>118</sup> Detention Watch Network, *Expose & Close: One Year Later*, at 8.

<sup>119</sup> *Id.* at 8.

<sup>120</sup> 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](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.

<sup>121</sup> Detention Watch Network, *Expose & Close: One Year Later*, at 8.

<sup>122</sup> *Id.*

<sup>123</sup> See e.g., John E. Dannenberg, Prison Legal News, "Nationwide PLN Survey Examines Prison Phone Contracts, Kickbacks," available at [https://www.prisonlegalnews.org/\(S\(34xg4h553u305v453i4j5u45\)\)/23083\\_displayArticle.aspx](https://www.prisonlegalnews.org/(S(34xg4h553u305v453i4j5u45))/23083_displayArticle.aspx); Center for Constitutional Rights, <http://ccrjustice.org/learn-more/faqs/factsheet:-corporate-exploitation-and-prison-system>; 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.

<sup>124</sup> 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>.

<sup>125</sup> See, e.g., Georgia Detention Watch, Report on the December 2008 Humanitarian Visit to the Stewart Detention Center, at 6. Available at [http://www.acluga.org/Georgia\\_Detention\\_Watch\\_Report\\_on\\_Stewart.pdf](http://www.acluga.org/Georgia_Detention_Watch_Report_on_Stewart.pdf).

<sup>126</sup> Immigration Equality, Conditions of Detention, <http://www.immigrationequality.org/issues/detention/conditions-of-detention/> (last visited Jan. 27, 2012).

<sup>127</sup> 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>).

<sup>128</sup> 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>); see also Detention Watch Network, *Expose & Close: One Year Later*, November 2013, at 10, available at [www.detentionwatchnetwork.org/ExposeandClose2013](http://www.detentionwatchnetwork.org/ExposeandClose2013).

<sup>129</sup> Immigration Equality, Conditions of Detention, <http://www.immigrationequality.org/issues/detention/conditions-of-detention/> (last visited Jan. 27, 2012).

<sup>130</sup> Detention Watch Network, *Expose & Close: One Year Later*, at 10.

<sup>131</sup> *Id.*

<sup>132</sup> *2008 Operations Manual ICE Performance Based National Detention Standards*, (PBNDS), available at [http://www.ice.gov/doclib/dro/detention-standards/pdf/special\\_management\\_units.pdf](http://www.ice.gov/doclib/dro/detention-standards/pdf/special_management_units.pdf). (last visited Jan. 27, 2012).

<sup>133</sup> IMMIGRATION LAW & THE TRANSGENDER CLIENT 90 (Victoria Neilson ed., 2008).

<sup>134</sup> IMMIGRATION LAW & THE TRANSGENDER CLIENT 90 (Victoria Neilson ed., 2008).

<sup>135</sup> Immigration Equality, a national organization that advocates for the rights of gay, lesbian, bisexual, transgender, and HIV positive immigrants, has either conducted an intake with these individuals or directly represented them in their immigration cases.

<sup>136</sup> 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>.

<sup>137</sup> Detention Watch Network, *Expose & Close: One Year Later*, November 2013, at 3-5. Available at [www.detentionwatchnetwork.org/ExposeandClose2013](http://www.detentionwatchnetwork.org/ExposeandClose2013).

<sup>138</sup> See generally Center for Victims of Torture and Torture Abolition and Survivor Support Coalition, International, *Tortured and Detained: Survivor Stories of Immigrant Detention*, Nov. 2013. See also Dana Priest & Amy Goldstein, *Caught Without Care*, THE WASH. POST, May 13, 2008 (reporting that suicide is the most common cause of death among detained immigrants with 15 of 83 deaths since 2003 the result of suicide and stating, "No one in the Division of Immigration Health Services (DIHS), the agency responsible for detainee medical care, has a firm grip on the number of mentally ill among the 33,000 detainees held on any given day, records show. But in confidential memos, officials estimate that about 15 percent -- about 4,500 -- are mentally ill, a number that is much higher than the public ICE estimate. The numbers are rising fast, memos reveal, as state mental institutions and prisons transfer more people into immigration detention"). See also PHYSICIANS FOR HUMAN RIGHTS, BELLEVUE/NYU CENTER FOR SURVIVORS OF TORTURE, FROM PERSECUTION TO PRISON: THE HEALTH CONSEQUENCES OF DETENTION FOR ASYLUM SEEKERS (2003), available at <http://physiciansforhumanrights.org/library/documents/reports/report-perstoprison-2003.pdf>.

<sup>139</sup> See Detention Watch Network, "Tracking ICE Enforcement," at <http://www.detentionwatchnetwork.org/node/2382>.

<sup>140</sup> *Id.* at 5.

<sup>141</sup> Women's Refugee Commission, *Migrant Women and Children at Risk: In Custody in Arizona*, Oct. 2010, at 5.



<sup>142</sup> Florida Immigrant Advocacy Center, *Dying for Decent Care: Bad Medicine in Immigration Custody*, Feb. 2009, at 27. Available at <http://www.fiacfla.org/reports/DyingForDecentCare.pdf>. See also Human Rights Watch, *Detained and Dismissed: Women's Struggles to Obtain Health Care In United States Immigration Detention*, Mar. 2009, at 29 (finding that appropriate treatment was often delayed or denied and that detainees sometimes were denied healthcare request in retaliation). Available at <http://www.hrw.org/en/reports/2009/03/16/detained-and-dismissed>.

<sup>143</sup> U.S. Dept. of Homeland Security, Office of Inspector General, "Management of Mental Health Cases in Immigrant Detention," at 1. Available at [http://www.oig.dhs.gov/assets/Mgmt/OIG\\_11-62\\_Mar11.pdf](http://www.oig.dhs.gov/assets/Mgmt/OIG_11-62_Mar11.pdf). See also, Nat'l Immigration Forum, *The Math of Immigrant Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies*, at 5. Available at <http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf>.

<sup>144</sup> Physicians for Human Rights, *Dual Loyalties: The Challenges of Providing Professional Health Care to Immigration Detainees*, Feb. 2011, at 5. Available at [https://s3.amazonaws.com/PHR\\_Reports/2011\\_DualLoyalties\\_Final\\_3\\_24\\_2011\\_opt.pdf](https://s3.amazonaws.com/PHR_Reports/2011_DualLoyalties_Final_3_24_2011_opt.pdf).

<sup>145</sup> 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>.

<sup>146</sup> 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>.

<sup>147</sup> 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 <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](http://www.huffingtonpost.com/michelle-bran/women-ice-rape_b_1130756.html).

<sup>148</sup> See "Immigrants Held in Border Deep Freezers," at <http://www.thedailybeast.com/articles/2013/11/19/immigrants-held-in-border-deep-freezers.html>.

<sup>149</sup> 8 U.S.C. § 236; 8 C.F.R. § 236.1; CBP Directive No. 3340-030A (Mar. 9, 2004), available at <http://foia.cbp.gov/streamingWord.asp?i=10>.

<sup>150</sup> Adam Borowitz, *Wackenhut Worries: A Company with a Sketchy Record has Quietly Taken Over Deportation Duties from the Border Patrol*, THE TUCSON WEEKLY, May 2, 2007.

<sup>151</sup> INA § 292. See also, American Bar Ass'n, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*, Feb. 2010, at 40. Available at [http://www.americanbar.org/content/dam/aba/publications/commission\\_on\\_immigration/coi\\_complete\\_full\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/coi_complete_full_report.authcheckdam.pdf) (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).

<sup>152</sup> American Bar Ass'n, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*, Feb. 2010, at 40. Available at [http://www.americanbar.org/content/dam/aba/publications/commission\\_on\\_immigration/coi\\_complete\\_full\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/coi_complete_full_report.authcheckdam.pdf)

<sup>153</sup> American Bar Ass'n, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*, Feb. 2010, at 40. Available at [http://www.americanbar.org/content/dam/aba/publications/commission\\_on\\_immigration/coi\\_complete\\_full\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/coi_complete_full_report.authcheckdam.pdf)

<sup>154</sup> *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings – New York Immigrant Representation Study*, Dec. 2011, at 3. Available at [http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/markowitz-729/NYIRS\\_Report\(1\).pdf](http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/markowitz-729/NYIRS_Report(1).pdf).

<sup>155</sup> *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings – New York Immigrant Representation Study*, Dec. 2011, at 1. Available at [http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/markowitz-729/NYIRS\\_Report\(1\).pdf](http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/markowitz-729/NYIRS_Report(1).pdf).

<sup>156</sup> *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings – New York Immigrant Representation Study*, Dec. 2011, at 3. Available at [http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/markowitz-729/NYIRS\\_Report\(1\).pdf](http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/markowitz-729/NYIRS_Report(1).pdf).

<sup>157</sup> Human Rights First, *U.S. Detention of Asylum Seekers*, p. 55-62.

<sup>158</sup> National Immigrant Justice Center, *Isolated in Detention: Limited Access to Legal Counsel in Immigration Detention Facilities Jeopardizes a Fair Day in Court*, Sept. 2010, at 7. Available at [http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Detention%20Isolation%20Report%20FULL%20REPORT%202010%2009%2023\\_0.pdf](http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Detention%20Isolation%20Report%20FULL%20REPORT%202010%2009%2023_0.pdf).

<sup>159</sup> National Immigrant Justice Center, *Isolated in Detention: Limited Access to Legal Counsel in Immigration Detention Facilities Jeopardizes a Fair Day in Court*, Sept. 2010, at 7. Available at [http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Detention%20Isolation%20Report%20FULL%20REPORT%202010%2009%2023\\_0.pdf](http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Detention%20Isolation%20Report%20FULL%20REPORT%202010%2009%2023_0.pdf).

<sup>160</sup> National Immigrant Justice Center, *Isolated in Detention: Limited Access to Legal Counsel in Immigration Detention Facilities Jeopardizes a Fair Day in Court*, Sept. 2010, at 7. Available at [http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Detention%20Isolation%20Report%20FULL%20REPORT%202010%2009%2023\\_0.pdf](http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Detention%20Isolation%20Report%20FULL%20REPORT%202010%2009%2023_0.pdf).

<sup>161</sup> National Immigrant Justice Center, *Isolated in Detention: Limited Access to Legal Counsel in Immigration Detention Facilities Jeopardizes a Fair Day in Court*, Sept. 2010, at 8-9. Available at [http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Detention%20Isolation%20Report%20FULL%20REPORT%202010%2009%2023\\_0.pdf](http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Detention%20Isolation%20Report%20FULL%20REPORT%202010%2009%2023_0.pdf).

<sup>162</sup> National Immigrant Justice Center, *Isolated in Detention: Limited Access to Legal Counsel in Immigration Detention Facilities Jeopardizes a Fair Day in Court*, Sept. 2010, at 9. Available at [http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Detention%20Isolation%20Report%20FULL%20REPORT%202010%2009%2023\\_0.pdf](http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Detention%20Isolation%20Report%20FULL%20REPORT%202010%2009%2023_0.pdf).

<sup>163</sup> National Immigrant Justice Center, *Isolated in Detention: Limited Access to Legal Counsel in Immigration Detention Facilities Jeopardizes a Fair Day in Court*, Sept. 2010, at 8. Available at [http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Detention%20Isolation%20Report%20FULL%20REPORT%202010%2009%2023\\_0.pdf](http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Detention%20Isolation%20Report%20FULL%20REPORT%202010%2009%2023_0.pdf).

<sup>164</sup> *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings – New York Immigrant Representation Study*, Dec. 2011, at 3. Available at [http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/markowitz-729/NYIRS\\_Report\(1\).pdf](http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/markowitz-729/NYIRS_Report(1).pdf).

<sup>165</sup> American Civil Liberties Union and Human Rights Watch, *Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System*, July 2010, at 2. Available at [http://www.aclu.org/files/assets/usdeportation0710\\_0.pdf](http://www.aclu.org/files/assets/usdeportation0710_0.pdf).

<sup>166</sup> American Civil Liberties Union and Human Rights Watch, *Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System*, July 2010, at 3. Available at [http://www.aclu.org/files/assets/usdeportation0710\\_0.pdf](http://www.aclu.org/files/assets/usdeportation0710_0.pdf).

<sup>167</sup> American Civil Liberties Union and Human Rights Watch, *Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System*, July 2010, at 5. Available at [http://www.aclu.org/files/assets/usdeportation0710\\_0.pdf](http://www.aclu.org/files/assets/usdeportation0710_0.pdf).

<sup>168</sup> American Civil Liberties Union and Human Rights Watch, *Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System*, July 2010, at 6. Available at [http://www.aclu.org/files/assets/usdeportation0710\\_0.pdf](http://www.aclu.org/files/assets/usdeportation0710_0.pdf).

<sup>169</sup> American Civil Liberties Union and Human Rights Watch, *Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System*, July 2010, at 6-7. Available at [http://www.aclu.org/files/assets/usdeportation0710\\_0.pdf](http://www.aclu.org/files/assets/usdeportation0710_0.pdf).

<sup>170</sup> American Civil Liberties Union and Human Rights Watch, *Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System*, July 2010, at 4. Available at [http://www.aclu.org/files/assets/usdeportation0710\\_0.pdf](http://www.aclu.org/files/assets/usdeportation0710_0.pdf).

<sup>171</sup> See, e.g., Georgia Detention Watch, Report on the December 2008 Humanitarian Visit to the Stewart Detention Center, at 6 (reporting that in a visit on Feb. 21, 2009, "Julio" claimed that he had been detained for approximately three months and during that time had been unable to secure counsel for his deportation case. He told the volunteer that he had decided that it was "easier to give up" and had signed a stipulated order of removal). Available at [http://www.acluga.org/Georgia\\_Detention\\_Watch\\_Report\\_on\\_Stewart.pdf](http://www.acluga.org/Georgia_Detention_Watch_Report_on_Stewart.pdf).

<sup>172</sup> Jennifer Lee Koh, Jayashri Srikantiah, and Karen C. Tumlin, *Deportation Without Due Process*, Sept. 2011, available at [http://www.stanford.edu/group/irc/Deportation\\_Without\\_Due\\_Process\\_2011.pdf](http://www.stanford.edu/group/irc/Deportation_Without_Due_Process_2011.pdf).

<sup>173</sup> Jennifer Lee Koh, Jayashri Srikantiah, and Karen C. Tumlin, *Deportation Without Due Process*, Sept. 2011, at p. 5. Available at [http://www.stanford.edu/group/irc/Deportation\\_Without\\_Due\\_Process\\_2011.pdf](http://www.stanford.edu/group/irc/Deportation_Without_Due_Process_2011.pdf).

<sup>174</sup> See, e.g., E-mail from Ericka C. Curran to author describing the Baker County detention facility in Mclenny, Florida and reporting that the law library is frequently inaccessible to detainees causing some to miss filing deadlines.

<sup>175</sup> See, e.g., Barbara A. Frey and X. Kevin Zhao, "The Criminalization of Immigration and the International Norm of Non-Discrimination: Deportation and Detention in U.S. Immigration Law," XXIX *Law and Inequality: A Journal of Theory and Practice* 2, Summer 2011, at 303.

<sup>176</sup>The Constitution Project, *Recommendations for Reforming our Immigration Detention System and Promoting Access to Counsel in Immigration Proceedings*, 2009, at 17. Available at <http://www.constitutionproject.org/pdf/359.pdf>

<sup>177</sup> See, e.g., Barbara A. Frey and X. Kevin Zhao, "The Criminalization of Immigration and the International Norm of Non-Discrimination: Deportation and Detention in U.S. Immigration Law," XXIX *Law and Inequality: A Journal of Theory and Practice* 2, Summer 2011, at 302-3.

<sup>178</sup> See, e.g., Barbara A. Frey and X. Kevin Zhao, "The Criminalization of Immigration and the International Norm of Non-Discrimination: Deportation and Detention in U.S. Immigration Law," XXIX *Law and Inequality: A Journal of Theory and Practice* 2, Summer 2011, at 303.

<sup>179</sup> TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, HUGE INCREASE IN TRANSFERS OF ICE DETAINEES (2009), available at <http://trac.syr.edu/immigration/reports/220/> (finding that the number of detainees that ICE has transferred each year has grown much more rapidly than the already surging population held in custody by the agency, with over 50% of detainees transferred at least once and nearly 25% of detainees transferred multiple times while detained).

<sup>180</sup> Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Nov. 2011, at 5. Available at [www.arg.org](http://www.arg.org).

<sup>181</sup> Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Nov. 2011, at 8. Available at [www.arg.org](http://www.arg.org).

<sup>182</sup> Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Nov. 2011, at 8. Available at [www.arg.org](http://www.arg.org).

<sup>183</sup> Women's Refugee Commission, *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention*, Dec. 2010, available at [www.womensrefugeecommission.org](http://www.womensrefugeecommission.org).

<sup>184</sup> Women's Refugee Commission, *Migrant Women and Children at Risk: In Custody in Arizona*, Oct. 2010, at 3, 6, available at [www.womensrefugeecommission.org](http://www.womensrefugeecommission.org).

<sup>185</sup> Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Nov. 2011, at 6. Available at [www.arg.org](http://www.arg.org).

<sup>186</sup> Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Nov. 2011, at 5. Available at [www.arg.org](http://www.arg.org).

<sup>187</sup> Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Nov. 2011, at 33. Available at [www.arg.org](http://www.arg.org).

<sup>188</sup> Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Nov. 2011, at 35-36. Available at [www.arg.org](http://www.arg.org).

<sup>189</sup> Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Nov. 2011, at 32. Available at [www.arg.org](http://www.arg.org).

<sup>190</sup> No More Deaths, *Culture of Cruelty: Abuse and Impunity in Short-Term U.S. Border Patrol Custody*, 2011, at 5. Available at [www.cultureofcruelty.org](http://www.cultureofcruelty.org).

<sup>191</sup> See, e.g., KATHERINE FENNELLY AND KATHLEEN MOCCIO, U. OF MINN. HUBERT H. HUMPHREY INST. OF PUB. AFFAIRS, ATTORNEYS' PERSPECTIVES ON THE RIGHTS OF DETAINED IMMIGRANTS IN MINNESOTA (Nov. 2009) at 13-14.

<sup>192</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America, CERD/C/USA/CO/6, May 8, 2008, para. 20.

<sup>193</sup> See Concerns Regarding Racial Profiling in Immigration Enforcement, submitted by Rights Working Group to the Special Rapporteur on the Human Rights of Migrants (January 2012).

<sup>194</sup> Lutheran Immigrant and Refugee Service, *Unlocking Liberty*, Oct. 2011, at 18. Available at <http://www.lirs.org/atf/cf/%7Ba9ddba5e-c6b5-4c63-89de-91d2f09a28ca%7D/RPTUNLOCKINGLIBERTY.PDF>.

<sup>195</sup> U.S. Dept. of Homeland Security, Immigr. and Customs Enforcement, ICE ACCESS, available at <http://www.ice.gov/partners/dro/iceaccess.htm>

<sup>196</sup> See Submission to the Office of the High Commissioner for Hum. Rts., United Nations Universal Periodic Review (UPR): United States of America, Nov. 26, 2010, Ninth Session of the Working Group on the UPR, Human Rights Council, "The Persistence, in the United States, of Discriminatory Profiling Based on Race, Ethnicity, Religion and National Origin" at ¶¶ 20-27.

<sup>197</sup> The Advocates for Human Rights has documented cases of state and local law enforcement officers calling in federal immigration authorities for use as "interpreters" when making traffic stops of Latinos in the Upper Midwest region of the United States.

<sup>198</sup> See American Civil Liberties Union of Georgia, Letter to the Inter-American 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," Mar. 28, 2011. Available at <http://www.acluga.org/ACLUofGeorgia-submissiontoIACHR.pdf>.

<sup>199</sup> Aarti Kohli, Peter L. Markowitz and Lisa Chavez, *Secure Communities by the Numbers: An Analysis of Demographics and Due Process*, The Chief Justice Earl Warren Institute on Law and Social Policy, October 2011, available at [http://www.law.berkeley.edu/files/Secure\\_Communities\\_by\\_the\\_Numbers.pdf](http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf).

<sup>200</sup> Immigration and Customs Enforcement, *Secure Communities, IDENT/IAFIS Interoperability, Monthly Statistics through June 30, 2010*, prepared on July 9, 2010, ICE FOIA 10-2674.000080 - ICE FOIA 10-2674.000079, at ICE FOIA 10-2674.000086.

<sup>201</sup> "Congresswoman calls for investigation of enforcement program that screens for illegal immigrants in jails," LA Times, Apr. 22, 2011 available at <http://latimesblogs.latimes.com/lanow/2011/04/congresswoman-calls-for-investigation-of-enforcement-program-that-screens-for-illegal-immigrants-in-.html>.

<sup>202</sup> See Letter from Ranking Member of Subcommittee on Immigration Policy and Enforcement to DHS Office of the Inspector General and ICE Office of Professional Responsibility, dated Apr. 28, 2011 available at <http://www.docstoc.com/docs/78191508/Lofgren-letter-to-DHS-IG>. See also —Sen. Menendez in Support of Rep. Lofgren's Call for an Investigation into DHS's Implementation of Secure Communities Program, ll Apr. 28, 2011 available at <http://menendez.senate.gov/newsroom/press/release/?id=7948683e-ad67-4141-9d4b-e0fa98af4456>.

<sup>203</sup> See, e.g., Jonathan Dienst, Joe Valiquette and Shimon Prokupecz, "East Haven Police Accused of Racial Profiling," NBC Connecticut, Jan. 24, 2012, at <http://www.nbcconnecticut.com/news/local/FBI-Arrests-East-Haven-Police-Accused-of-Racial-Profilng-137956408.html>.

<sup>204</sup> See Letter from Thomas E. Perez, Assistant Attorney General, to Bill Montgomery, Maricopa County Attorney, dated Dec. 15, 2011, available at [http://www.justice.gov/crt/about/spl/documents/mcso\\_findletter\\_12-15-11.pdf](http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf)