



UNITED STATES OF AMERICA

Violations of Article 3 and 16 Rights of of Refugees, Asylum Seekers and Non-citizens

53rd Session of the United Nations Committee Against Torture

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I. REPORTING ORGANIZATION

1. **The Advocates for Human Rights** (“The Advocates”) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is committed to ensuring protection for refugees around the world and provides legal services to asylum seekers in the Upper Midwest region of the United States.

2. **Detention Watch Network** (DWN) is a national coalition of organizations and individuals working to expose and challenge the injustices of the U.S. immigration detention and deportation system and advocate for profound change that promotes the rights and dignity of all persons.

II. INTRODUCTION AND ISSUE SUMMARY

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

4. Of particular concern is the United States’ response to the recent influx of Central Americans, which has resulted in the *refoulement* and denial of protection to children and families from Central America with *bona fide* claims relief under the Convention against Torture (CAT).¹ The adjudication mechanisms in response to the influx of migrants from Central America do not

¹ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx> (accessed October 2, 2014)

afford migrants a fair hearing focused on a determination of credible fear of torture or other harms which could be grounds for protection.

5. Further, the United States dramatically fails to meet CAT Article 16 obligations to prevent acts of cruel, inhuman, or degrading treatment or punishment within its vast immigration detention system, affecting hundreds of thousands of migrants each year. Immigration and Customs Enforcement (ICE) detains migrants in detention centers, prisons, and jails using a penal model inappropriate for individuals detained on alleged civil status violations. There are no legally enforceable detention standards. Because of the penal nature of the facilities, detainees routinely are subject to cruel, inhuman and degrading conditions and treatment.

6. The Detention Watch Network (DWN) reported in 2013 that “the current state of the immigration detention system continues to be plagued by deaths and suicides, subpar medical and mental health care, inedible food, and arbitrary restrictions on visitation and access to legal resources.² Sexual abuse of migrants in detention is a problem of serious concern.³ Particularly alarming are recent reports of allegations of substantial and ongoing sexual abuse of women detained at the Karnes County Residential Center, a privately operated jail which currently holds over 500 mothers and their children, most of whom fled violence and persecution in Central America and are now seeking asylum in the U.S.⁴

7. The United States government’s recent response to Central American refugees has placed emphasis on deterrence of migration over protection for children and mothers seeking safety in a stated effort to deter asylum seekers from coming to the United States.⁵ In 2014, unaccompanied children and mothers with children fleeing violence in Central America to seek asylum in the U.S. have been subject to arbitrary detention at the newly opened family detention centers in Artesia, New Mexico and Karnes, Texas. Other centers are planned to expand the capacity to detain, deport, and deter asylum seekers from seeking safety in the United States.⁶

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

³ See American Civil Liberties Union, *Sexual Abuse in Immigration Detention Facilities*, <http://www.aclu.org/maps/sexual-abuse-immigration-detention-facilities> (last visited Aug. 28, 2013) (detailing findings of a Freedom of Information Act request relating to complaints of sexual abuse); see also Carrie Johnson, “All Things Considered: Immigration Detainees Seek Prison-Rape Protection” (Nat’l Public Radio broadcast Dec. 13, 2011), available at <http://www.npr.org/2011/12/13/143638236/immigration-detainees-seek-prison-rape-protection>.

⁴ MALDEF (Mexican American Legal Defense and Educational Fund), Letter Regarding Complaints of Sexual Abuse at Karnes County Residential Center, September 30, 2014, available at http://www.maldef.org/assets/pdf/2014-09-30_Karnes_PREA_Letter_Complaint.pdf

⁵ See e.g. Juan Carlos Llorca, Associated Press, “DHS secretary visits Artesia, N.M. facility; warns immigrants 'we will send you back.'” (quoting Secretary of Homeland Security Jeh Johnson: “Our border is not open to illegal immigration,” he said. “Our message to those who come illegally is we will send you back.”) http://www.elpasotimes.com/latestnews/ci_26128803/dhs-secretary-visit-artesia-nm-migrant-detention-center.

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

8. 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.⁷ 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.⁸

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

9. **Issue 11(b) requests detailed information on steps taken to establish a judicial mechanism for reviewing cases on noncitizens being returned to countries where they may face torture.** The United States government’s reply (¶80, US Response) to the issues raised in question 11(b) of the Committee’s list of issues incorporated by reference a description of immigration removal procedures from the 2011 ICCPR report: “In the immigration context, regulations implementing Article 3 of the Convention Against Torture permit aliens to raise *nonrefoulement* claims during the course of removal proceedings before an immigration judge. See 8 CFR 1208.16-18. These regulations set forth a fair and rule-bound process for considering claims for protection. Individuals routinely assert protection claims before immigration judges within the Department of Justice’s Executive Office for Immigration Review (EOIR), whose decisions are subject to review by the Board of Immigration Appeals, and ultimately by U.S. federal courts.”⁹

10. **While federal regulations implementing Article 3 of the CAT allow individuals to raise Article 3 claims for protection from *refoulement*, the U.S. has failed to create an adequate legal mechanism implementing fully the obligations of Article 3.** Pursuant to the implementing regulations, the claimant must show that “it is more likely than not that he would be tortured” in order to be granted CAT relief. This U.S. evidentiary standard is not consistent with the CAT Article 3 standard of “where there are substantial grounds for believing that he would be in danger of being subjected to torture.” The U.S. standard appears to inappropriately raise the evidentiary bar for Art. 3 claims by placing the burden on the claimant to provide proof that there is a likelihood that he or she would be tortured.

11. Further, the U.S. applies a heightened standard regarding government acquiescence in the torture. In 2002, the Bureau of Immigration Appeals (BIA) held that *refoulement* protection does

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

⁷ U.S. Dept. of Homeland Security, Immigr. and Customs Enforcement, ICE ACCESS, *available at* <http://www.ice.gov/partners/dro/iceaccess.htm>

⁸ *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.

⁹ Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights (2011 ICCPR Report), December 30, 2011, at ¶556. *Available at* <http://www.state.gov/j/drl/rls/179781.htm>

not extend to persons who fear private entities a government is unable to control.¹⁰ The United States continues to apply a different understanding of the term “acquiescence” in immigration cases, with at least one U.S. federal appellate court holding that Art. 3 prohibits return when the government in the receiving country is aware of a private entity’s behavior and does nothing to stop it;¹¹ some federal appellate courts have adopted a “willful blindness” standard rather than the “willful acceptance” standard articulated by the BIA.¹²

12. In addition, the REAL ID Act (2005) altered standards and procedures for many individuals fleeing persecution and torture, including those who may be eligible for relief under Art. 3. Among other changes, if interpreted restrictively, REAL ID could bar meaningful judicial review over some individuals’ Art. 3 claims.

13. “Expedited removal” further limits the ability of individuals who may be eligible for CAT relief to avail themselves of protection. Expedited removal allows immigration inspectors at ports of entry into the United States or within 100 miles of a U.S. border¹³ to summarily deport without providing them the opportunity to appear before an Immigration Judge certain immigrants who do not possess proper travel documents. Expedited removal has resulted in the routine detention of arriving asylum seekers and the summary expulsion of more than 192,000 people in 2013 alone.¹⁴ The nonpartisan United States Commission on International Religious Freedom has documented numerous occasions on which asylum seekers and those fleeing torture were subjected to expedited removal in violation of the United States’ *nonrefoulement* obligation.¹⁵

14. Asylum seekers routinely are deprived of their liberty as a result of the exercise of their right to seek asylum from persecution. 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.¹⁶ Although asylum seekers may be released following a finding of credible fear, discretion to

¹⁰ See *Matter of S-V*, 22 I&N Dec. 1306 (BIA 2000).

¹¹ See *Zheng v. Ashcroft*, 332 F.3d 1186 (9th Cir. Jun 18, 2003); *Ochoa v. Gonzales*, 406 F.3d 1166 (9th Cir. May 16, 2005); and *Perez v. Loy*, 356 F.Supp.2d 172 (D.Conn. Feb 17, 2005).

¹² *Ontunez-Turcios v. Ashcroft*, 303 F.3d 341, 354-55 (5th Cir. 2002); *Ali v. Reno*, 237 F.3d 591, 597 (6th Cir. 2001); *Zheng v. INS*, 332 F.3d 1186 (9th Cir. 2003); *Khouzam v. Ashcroft*, 361 F.3d 161 (2nd Cir. 2004); *Azanor v. Ashcroft*, 364 F.3d 1013 (9th Cir. 2004); *Lopez-Soto v. Ashcroft*, 383 F.3d 228, 240 (4th Cir. 2004)

¹³ Federal Register Volume 69, Number 154 (Wednesday, August 11, 2004) <http://www.gpo.gov/fdsys/pkg/FR-2004-08-11/html/04-18469.htm>.

¹⁴ US Department of Homeland Security, Immigration Enforcement Actions: 2013. Available at: http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2013.pdf (accessed October 2, 2014).

¹⁵ See http://www.uscirf.gov/countries/global/asylum_refugees/2005/february/

¹⁶ INA § 235(b)(1)(B)(iii)(IV).

release rests solely with ICE; regulations prevent administrative review of the custody decision.¹⁷ ICE revised its parole guidelines effective January 2010, but has not put these guidelines into regulations.¹⁸ While this revised guidance that requires ICE to assess each asylum seeker for the possibility of parole is welcome, ICE continues to have sole authority to release asylum seekers and asylum seekers continue to lack access to prompt review of their custody status by a judicial authority in violation of international standards.

15. The United States has used detention to deter asylum seekers from seeking protection in direct contravention of international obligations.¹⁹ In 2014, Central American mothers and children seeking asylum have been subject to arbitrary detention at the newly opened family detention centers in Artesia, New Mexico and Karnes, Texas in a stated effort by the United States to deter asylum seekers from coming to the United States.²⁰ Other centers are planned to expand family detention capacity from under 100 beds to over 6,300 beds in order to detain, deport, and deter asylum seekers from seeking safety in the United States.²¹

16. In practice, CAT Article 3 has been implemented as an extraordinary form of relief for individuals who are not eligible for asylum or other discretionary forms of relief because of criminal or other bars. It is a limited form of protection that does not allow for permanent residence or family reunification. It allows for removal to a third country without adequate guarantees of protection from return to the country where they fear torture. For all of the above reasons, the U.S. is not complying with its obligations under Article 3 of CAT.

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

¹⁷ See Human Rights First, “Renewing U.S. Commitment to Refugee Protection: Recommendations for Reform on the 30th 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. Commission on International 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.

¹⁸ U.S. Dept. of Homeland Security, Immigration and Customs Enforcement, “News Release: ICE issues new procedures for asylum seekers as part of ongoing detention reform initiatives,” (Dec. 16, 2009), available at <http://www.ice.gov/pi/nr/0912/091216washington.htm>.

¹⁹ Convention relating to the Status of Refugees, art. 31, para. 2.

²⁰ See e.g. Juan Carlos Llorca, Associated Press, “DHS secretary visits Artesia, N.M. facility; warns immigrants ‘we will send you back.’” (quoting Secretary of Homeland Security Jeh Johnson: “Our border is not open to illegal immigration,” he said. “Our message to those who come illegally is we will send you back.”) http://www.elpasotimes.com/latestnews/ci_26128803/dhs-secretary-visit-artesia-nm-migrant-detention-center.

²¹ See, e.g. Grassroots Leadership, Inc., “Facts About Family Detention,” <http://grassrootsleadership.org/facts-about-family-detention>. The Obama administration has requested funds to expand family detention from under 100 beds to over 6,300 beds. <http://www.appropriations.senate.gov/sites/default/files/hearings/SAC%20Hearing%20S1%20Testimony%207-10-14.pdf>.

18. In violation of CAT article 3 *nonrefoulement* obligations, migrants in detention, including children and families, **lack access to counsel**. U.S. law provides that migrants in removal proceedings have “the privilege of being represented,” but representation must be “at no expense to the Government.”²² One report estimates that approximately 84% of immigration detainees nationwide were unrepresented in their removal proceedings.²³ Representation of detained migrants in removal proceedings, insofar as it is available, is provided by NGOs.

19. Serious concerns have been raised regarding access to counsel for mothers and children seeking asylum from Central America, particularly for families being held at the Artesia, New Mexico, and Karnes, Texas detention centers.²⁴ The United States is in the process of opening additional correctional model detention centers to hold mothers and children.²⁵

20. In violation of CAT article 3 *nonrefoulement* obligations, the United States continues to impose **mandatory removal (deportation) without a discretionary hearing** in a broad category of cases involving convictions for aggravated felonies,²⁶ false claims to U.S. citizenship,²⁷ illegal reentry following unlawful presence in the United States,²⁸ reinstatement of prior orders of removal,²⁹ findings by an immigration judge of a frivolous asylum claim,³⁰ and other reasons. Immigration judges have no discretion to consider individualized circumstances, including family ties, length of residence, or rehabilitation.

²² INA § 292. *See also*, American Bar Association, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*, Feb. 2010, at 40, (noting that while courts may apply a case-by-case approach to determining whether the assistance of counsel would be necessary to provide fundamental fairness, under the United States Constitution’s Fifth Amendment due process guarantee, appointment of counsel has been denied in every published case).

²³ American Bar Association, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*, Feb. 2010, at 40. Available at

²⁴ *See e.g.* N.Y. Times, “Deported From the Middle of Nowhere: At an Immigrant Detention Center, Due Process Denied,” Aug. 25, 2014, available at <http://www.nytimes.com/2014/08/26/opinion/at-an-immigrant-detention-center-due-process-denied.html>

²⁵ Lauren Gambino, The Guardian, “Huge Family Detention Centre to Open in Texas for Undocumented Immigrants,” Sept. 6, 2014 (describing plans for a 2400-bed facility opening in Dilly, Texas, USA) and Joy Diaz, KWBU Public Radio, “A Private Prison Group Runs Texas’ New Immigrant Detention Center,” Aug. 6, 2014.

²⁶ 8 U.S.C. § 1227(a)(2)(A)(iii) states that any alien who has been convicted of an “aggravated felony” as defined by 8 U.S.C. § 1101(a)(43) is deportable. Aliens who are unlawfully present in the United States and are convicted of an aggravated felony are deportable subject to expedited proceedings, without a hearing before an immigration judge, pursuant to 8 U.S.C. § 1228. A person convicted of an aggravated felony is barred from seeking cancellation of removal pursuant to 8 U.S.C. § 1229b(a)(3).

²⁷ 8 U.S.C. § 1227(a)(3)(D) states that any alien who falsely claimed U.S. citizenship is deportable. No waiver of inadmissibility is available for false claims to United States citizenship, effectively rendering individuals unable to qualify for cancellation of removal.

²⁸ 8 U.S.C. § 1182(a)(9)(C)(i)(I) renders permanently inadmissible an individual who is present in the United States for more than 1 year, subsequently departs the United States, and attempts to or does reenter the United States without being admitted.

²⁹ 8 U.S.C. § 1231(a)(5) provides that if the attorney general finds that an alien has illegally reentered the United States after having been removed or departed voluntarily under an order of removal, the original order shall be reinstated and is not subject to reopening.

³⁰ 8 U.S.C. § 1158(d)(5) states that if the attorney general finds that an applicant for asylum has made a frivolous asylum application, the alien shall be permanently ineligible for any immigration benefits in the United States.

21. In violation of CAT article 3 *nonrefoulement* obligations, the United States relies on **summary deportation procedures** which fail to guarantee non-citizens' rights to due process, access to counsel, presentation of their case before a judge, and other fundamental safeguards of fairness.³¹ These summary procedures include stipulations of removal negotiated directly between detention officers and detained migrants, while in custody and without access to counsel. Summary procedures also include reinstatement of prior removal orders. In Fiscal Year 2013, more than 70 percent of all people ICE deported were subject to summary removal procedures.³²

22. **Provision of information about legal rights is limited and inadequate.** Currently formal Legal Orientation Programs (LOP) funded through the U.S. Department of Justice Executive Office for Immigration Review (EOIR) operate at 25 detention centers.³³ While EOIR should be commended for developing the LOP program and continuing to include the program in its budget, the program does not ensure that all detained migrants in the United States receive information about their legal rights. The LOP program is not adequately funded to provide information at all detention centers and, because it operates under the authority of EOIR, focuses on providing legal information only to those detained migrants who appear before the immigration courts. Detained migrants subject to summary expulsion proceedings and all migrants detained by Customs and Border Protection fall outside the scope of this effective but limited program.

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

23. **Issue 32 requests information on steps taken to design and implement appropriate measures to prevent all sexual violence in all its detention centres, as well as steps taken to ensure that prompt and independent investigation of complaints and prosecution of perpetrators.** The U.S. response describes proposed standards, agency policy and procedures, and the appointment of an agency-wide Prevention of Sexual Assault Coordinator (U.S. Response ¶¶ 172-173). The U.S. also describes safeguards within the ICE-Performance-Based National Standards (PBNDS) and reporting and investigative mechanisms. (U.S. Response ¶¶ 174 and 180).

³¹ These programs include stipulated orders of removal. Stipulated orders are essentially plea agreements negotiated directly between the detaining officer and the detained alien, without access to counsel, in which the alien admits to deportability, waives all rights to a hearing on any defenses to deportation, and agrees to be removed from the United States. While ICE and EOIR do not release statistics on the number of stipulated removals, an estimated 100,000 stipulated removal orders were issued between 2004 and 2008 according to the Migration Policy Institute. Migration Policy Institute, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* (Jan. 2013), available at <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf>.

³² Immigration Policy Center, "Removal Without Recourse: The Growth of Summary Deportations in the United States" (April 28, 2014), available at <http://www.immigrationpolicy.org/just-facts/removal-without-recourse-growth-summary-deportations-united-states>.

³³ See Vera Institute of Justice, *Legal Orientation Program* available at <http://www.vera.org/project/legal-orientation-program>

24. While these steps to prevent sexual violence in immigration detention are laudable, **sexual abuse of migrants in detention is a problem of serious concern.**³⁴ Over 200 reported complaints of sexual abuse have been filed by immigrant detainees in the past five years,³⁵ which advocates believe reflect a fraction of the problem.³⁶ Lack of governmental transparency,³⁷ as well as obstacles and disincentives to victim reporting, make it difficult to accurately assess the magnitude of this problem, but human rights organizations have documented incidents of sexual assault, abuse, and harassment from across the ICE detention system.³⁸ Detention standards that are not legally enforceable and frequent transfers of people between detention centers increase the likelihood that sexual abuse will remain unaddressed.³⁹

25. Allegations of sexual abuse of women detained at the Karnes County Residential Center, a privately operated jail which currently holds over 500 immigrant women and children, recently have emerged. According to the complaint filed September 30, 2014, guards and other personnel have removed women from their cells in the late evening and early morning hours for the purpose of engaging in sexual acts in other parts of the facility; guards and other personnel have referred to detained women as their “novias” and used their positions of power to request sexual favors in exchange for money, promises of assistance with their immigration cases, and promises of shelter if the women are released; and guards have kissed, fondled, and groped detained women in front of children who are also detained.⁴⁰

³⁴ See American Civil Liberties Union, *Sexual Abuse in Immigration Detention Facilities*, <http://www.aclu.org/maps/sexual-abuse-immigration-detention-facilities> (last visited Aug. 28, 2013) (detailing findings of a Freedom of Information Act request relating to complaints of sexual abuse); see also Carrie Johnson, “All Things Considered: Immigration Detainees Seek Prison-Rape Protection” (Nat’l Public Radio broadcast Dec. 13, 2011), available at <http://www.npr.org/2011/12/13/143638236/immigration-detainees-seek-prison-rape-protection>.

³⁵ 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>.

³⁶ 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>.

³⁷ The Department of Homeland Security is not mandated under law to publish data on sexual violence, and has not done so. Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, August 2010, at 4. Available at <http://www.hrw.org/node/92630>

³⁸ Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, August 2010, at 3. Available at <http://www.hrw.org/node/92630>

³⁹ Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, August 2010, at 19. Available at <http://www.hrw.org/node/92630>

⁴⁰ MALDEF (Mexican American Legal Defense and Educational Fund), Letter Regarding Complaints of Sexual Abuse at Karnes County Residential Center, September 30, 2014, available at http://www.maldef.org/assets/pdf/2014-09-30_Karnes_PREA_Letter_Complaint.pdf

26. Detained women may be victims of trafficking, survivors of sexual assault and domestic violence, pregnant women, and nursing mothers.⁴¹ Detained LGBTI migrants face particular vulnerability.

27. 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.⁴²

28. **In Issue 33, the Committee asked the U.S. to elaborate on the measures adopted by the State party to ensure that women in detention are treated in conformity with international standards and to provide information on the impact and effectiveness of these measures in reducing cases of ill-treatment of detained women.** The U.S. reply to Issue 33 described steps DHS/ICE has taken recently to enhance policy concerning the treatment of female detainees (U.S. Response ¶¶ 189 and 192).

29. **The U.S. response, however, does not describe the many ways that immigration detention in the U.S. fails to conform to international standards.** The Detention Watch Network (DWN) reported in 2013 that “the current state of the immigration detention system continues to be plagued by deaths and suicides, subpar medical and mental health care, inedible food, and arbitrary restrictions on visitation and access to legal resources.”⁴³

⁴¹Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, August 2010, at 3. Available at <http://www.hrw.org/node/92630>

⁴² 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.

⁴³ Detention Watch Network, *Expose & Close: One Year Later*, November 2013, at 2, available at www.detentionwatchnetwork.org/ExposeandClose2013.

30. Conditions of detention for migrants, including children, detained by Customs and Border Protection (CBP) in short-term custody facilities (which hold people for up to 72 hours) are of urgent concern. CBP apprehension and detention policies and practices lack transparency and accountability. Of particular concern is the practice reported since 2013 of holding detained immigrants in refrigerated or very cold cells.⁴⁴

31. ICE detains migrants in detention centers, prisons, and jails using a penal model inappropriate for individuals detained on alleged civil status violations. Because of the penal nature of the facilities, detainees routinely are subject to degrading conditions.⁴⁵ ICE detainees are kept in a punitive setting;⁴⁶ they wear prison uniforms, are regularly shackled during transport and in their hearings.⁴⁷ Detainees may be confined alone in tiny cells for up to twenty-three hours a day⁴⁸ and held for prolonged periods of time without access to the outdoors.⁴⁹ Phone privileges, access to legal counsel, and recreational time are often restricted or completely denied.⁵⁰ Telephone calls may be extremely expensive because they are placed through independent telephone companies that pay the state, the county jail, or the for-profit prison a commission that ranges from 15 percent to 60 percent either as a portion of revenue, a fixed upfront fee, or a combination of both.⁵¹ Depending upon where they are detained, they may not be permitted contact visits with family.⁵² In its immigration detention practices, the United States fails to adhere to guarantees in CAT article 16, as well as ICCPR articles 10(1) and 10(2)(a).⁵³

⁴⁴ See “Immigrants Held in Border Deep Freezers,” at <http://www.thedailybeast.com/articles/2013/11/19/immigrants-held-in-border-deep-freezers.html>.

⁴⁵ See, e.g., Letter from American Civil Liberties Union of Georgia (USA) to the Inter-Am. Commission on Human Rights, *Submission re. Racial Profiling in Gwinnett and Cobb Counties, Georgia, and Conditions of Detention at Stewart and Irwin County Detention Center* 5 (Mar. 24, 2011), available at https://www.aclu.org/files/assets/ACLU_of_Georgia-submission_to_IACHR.pdf (reporting that detainees were given dirty underwear at the Irwin County Detention Center).

⁴⁶ UNHRC, *Report of the Special Rapporteur on the Human Rights of Migrants*, ¶ 28, U.N. Doc. A/HRC/7/12/Add.2, (Mar. 5, 2008) (prepared by Jorge Bustamante, Mission to the United States of America).

⁴⁷ 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.

⁴⁸ Immigration Equality, *Conditions of Detention*, <http://immigrationequality.org/issues/detention/conditions-of-detention/> (last visited Aug. 28, 2013).

⁴⁹ County jails, designed for short periods of detention, do not necessarily have outdoor recreation facilities. The Ramsey County Adult Detention Center in St. Paul, Minnesota, for example, has no outdoor recreation access. People in detention have very limited access to a small room with window near the high ceilings which can be opened to let fresh air into the room. Notes on file with the author.

⁵⁰ 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>).

⁵¹ See Phone Justice for Immigrants in Detention; <http://nationinside.org/campaign/endisolation/who-we-are/>

⁵² County jails holding immigrant detainees in Minnesota have “video visits” with family members, where detainees see and speak with their family members via closed circuit television. Notes on file with the author.

⁵³ ICCPR, 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).

32. The United States holds all detained migrants in facilities with no legally enforceable detention standards. Non-binding detention standards are in force only in those facilities operated by ICE, and provide no private right of action for violations of the standards to any detained migrant. The facilities are not subject to sufficient independent monitoring and oversight and appear to face no penalties for violating standards.⁵⁴

33. Reports of poor food quality and limited amount of food are common.⁵⁵ 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.⁵⁶ 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.⁵⁷

34. 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.⁵⁸ 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.⁵⁹

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

⁵⁴ Brittney Nystrom, National Immigration Forum, Written Testimony before U.S. House of Representatives, House Homeland Security Committee, Border, Maritime, and Global Counterterrorism Subcommittee, Moving Toward More Effective Immigration Detention Management, Dec. 10, 2009, <http://chsdemocrats.house.gov/SiteDocuments/20091210105703-50708.PDF>.

⁵⁵ See, e.g., Georgia Detention Watch, *Report on the December 2008 Humanitarian Visit to the Stewart Detention Center*, at 5-6. Available at http://www.acluga.org/Georgia_Detention_Watch_Report_on_Stewart.pdf; letter from IRATE & First Friends to the author summarizing key complaints received by volunteers during their visits with people detained in New Jersey, Jan. 26, 2012, on file with author.

⁵⁶ Detention Watch Network, *Expose & Close: One Year Later*, at 8.

⁵⁷ Detention Watch Network, *Expose & Close: One Year Later*, at 8.

⁵⁸ 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>.

⁵⁹ 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>.

36. Of particular concern is the practice of placing transgender immigrants in solitary confinement.⁶⁰ Transgender individuals may be placed into “administrative segregation” without any individualized assessment⁶¹ or may face administrative segregation after being attacked or expressing fear for personal safety.⁶² One transgender woman, Ana Luisa,⁶³ 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.

37. Further, 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.⁶⁴ Low-cost solutions like shower curtains are rarely implemented. Medically-necessary hormone therapy is dramatically reduced or eliminated, resulting in rapid body changes.

38. **Issue 39 requests information about steps taken by the U.S. to address the reports of inconsistent and inadequate medical care for immigrant women held in the ICE detention system and for HIV-positive immigration detainees.** The U.S. government’s reply declares that DHS has “significantly improved health services for persons in its custody” (U.S. Response ¶ 224) and that it “investigates complaints alleging inappropriate or inadequate medical care at immigration detention facilities” (U.S. Response ¶ 225).

39. **In reality, access to medical and mental health care is a serious – even life-threatening – concern at a number of detention facilities.** Since 2003, 146 migrants have died in U.S. immigration detention.⁶⁵ Highly publicized 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

⁶⁰ 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. (last visited Jan. 27, 2012).

⁶¹ IMMIGRATION LAW & THE TRANSGENDER CLIENT 90 (Victoria Neilson ed., 2008).

⁶² IMMIGRATION LAW & THE TRANSGENDER CLIENT 90 (Victoria Neilson ed., 2008).

⁶³ Information from Immigration Equality, a national organization that advocates for the rights of gay, lesbian, bisexual, transgender, and HIV positive immigrants, about individuals that they have either conducted an intake with or directly represented in their immigration cases.

⁶⁴ Immigration Equality, Conditions of Detention, <http://www.immigrationequality.org/issues/detention/conditions-of-detention/> (last visited Jan. 27, 2012).

⁶⁵ Interview with Jennifer Chan, National Immigrant Justice Center, Sept. 10, 2014 (on file with the author).

failure to provide care to ill or injured persons in its custody abound.⁶⁶ Appropriate psychological and medical services for torture survivors are universally unavailable.⁶⁷

40. 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.⁶⁸ Many immigrants have suffered severe health consequences as a result of these practices. 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.” Immigrants have been provided with Gatorade or common painkillers, such as aspirin or Tylenol, to allegedly treat many health issues.

41. 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.”⁶⁹

42. 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

⁶⁶ 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).

⁶⁷ 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>.

⁶⁸ Detention Watch Network, *Expose & Close: One Year Later*, November 2013, at 3-5. Available at www.detentionwatchnetwork.org/ExposeandClose2013.

⁶⁹ Women’s Refugee Commission, *Migrant Women and Children at Risk: In Custody in Arizona*, Oct. 2010, at 5.

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.⁷⁰ Detention facilities lack the capacity to provide adequate care for the increasing number of people in detention and struggle to fill open medical positions.⁷¹

43. Medical and mental health issues are exacerbated by the lengthy and indefinite detention endemic in the immigration detention system. Many people in ICE custody are held in county jails or other facilities designed for short-term stays by people in pre-trial criminal custody. These facilities lack the screening, protocols, personnel, and facilities to deal with people detained by ICE whose average length of stay is over 30 days.⁷²

44. 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.⁷³ In 2012, she underwent a psychological evaluation that would have determined her continued detention.⁷⁴ The findings of that evaluation were not received until 11 months after it was conducted.⁷⁵ 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.”⁷⁶ ICE was well aware of her medical needs as documented in letters of appeal from

⁷⁰ 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. 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>.

⁷¹ 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.

⁷² See Detention Watch Network, “Tracking ICE Enforcement,” at <http://www.detentionwatchnetwork.org/node/2382>.

⁷³ Families for Freedom, Press Release, Oct. 31, 2013, available at <http://familiesforfreedom.org/news/releases/families-freedom-demands-independent-investigation-detainee-suicide-york-detention>.

⁷⁴ Families for Freedom, Press Release, Oct. 31, 2013, available at <http://familiesforfreedom.org/news/releases/families-freedom-demands-independent-investigation-detainee-suicide-york-detention>.

⁷⁵ Families for Freedom, Press Release, Oct. 31, 2013, available at <http://familiesforfreedom.org/news/releases/families-freedom-demands-independent-investigation-detainee-suicide-york-detention>.

⁷⁶ Families for Freedom, Press Release, Oct. 31, 2013, available at <http://familiesforfreedom.org/news/releases/families-freedom-demands-independent-investigation-detainee-suicide-york-detention>.

her attorney and had ample authority to exercise discretion to release her.⁷⁷ In October 2013, Ms. Carlos committed suicide after nearly three years in detention. She was 35 years old.⁷⁸ 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.⁷⁹ They have yet to receive responses that adequately address these questions.

45. Issue 34 requests updated information on steps taken to address the concern about the conditions of detention of children. The U.S. government's reply describes the responsibility of the Office for Refugee Resettlement (ORR) within the Department of Health and Human Services (DHS) for the custody and care of unaccompanied immigrant children under the age of 18 (U.S. Response ¶ 197), assuring that "the needs of this vulnerable population are addressed promptly" (U.S. Response ¶ 198). The U.S. reply also refers to the Berks Family Residential Center as a small facility for detaining family units during immigration proceedings (U.S. Response ¶ 199).

46. The recent influx of unaccompanied children and mothers with children fleeing violence in Central America has created new challenges and dramatically increased the number of children in immigration detention in the U.S. Migrants from Guatemala, Honduras, and El Salvador arriving at the United States southern border consist mostly of young children and families, including mothers with infants and toddlers. The number of unaccompanied children apprehended by U.S. Customs and Border Protection (CBP) jumped from 17,775 in FY2011 to 41,890 in FY2013⁸⁰. In fiscal year 2013, the U.S. Department of Homeland Security (DHS) apprehended about 10,000 families per year; this number has increased to more than 55,000 families in the first nine months of FY2014 alone.⁸¹

47. Guatemala, Honduras, and El Salvador were three of the five most violent countries in the world in 2013. The United Nations Office on Drugs and Crime (UNODC) found that Honduras had the world's highest per-capita homicide rate in 2012, at 90.4 homicides per 100,000 people. El Salvador was fourth in the world, at 41.2 homicides per 100,000 people, and Guatemala fifth,

⁷⁷ Families for Freedom, Press Release, Oct. 31, 2013, *available at* <http://familiesforfreedom.org/news/releases/families-freedom-demands-independent-investigation-detainee-suicide-york-detention>

⁷⁸ Families for Freedom, Press Release, Oct. 31, 2013, *available at* <http://familiesforfreedom.org/news/releases/families-freedom-demands-independent-investigation-detainee-suicide-york-detention>; *see also* Detention Watch Network, *Expose & Close: One Year Later*, November 2013, at 5. *Available at* www.detentionwatchnetwork.org/ExposeandClose2013.

⁷⁹ Correspondence regarding these requests are on file with the author.

⁸⁰ AILA Recommendations on Legal Standards and Protections for Unaccompanied Children, *available at* <http://www.aila.org/content/default.aspx?bc=25667|49203> (accessed October 7, 2014)

⁸¹ Center for American Progress, Dan Restrepo and Ann Garcia, "*The Surge of Unaccompanied Children from Central America: Root Causes and Policy Solutions*,"

with 39.9 homicides per 100,000 people.⁸² Gangs have contributed to the high homicide rates in Guatemala, El Salvador, and Honduras; many individuals are fleeing the region to escape torture, death threats, harassment, beatings, and sexual assault by gang members.⁸³

48. In 2013, the U.N. High Commissioner for Refugees (UNHCR) conducted interviews with a representative group of about 400 unaccompanied minors from El Salvador, Guatemala, Honduras, and Mexico, all of whom had arrived in the United States since FY2012. 48% of the children said they had experienced serious harm or had been threatened by organized criminal groups or state actors, and more than 20% had been subject to domestic abuse.⁸⁴

49. On June 2, 2014, President Obama correctly referred to the situation as “an urgent humanitarian crisis.” However, recent statements⁸⁵ have placed far greater emphasis on deterrence of migration than on the importance of protection of children and families seeking safety.⁸⁶

50. There is no doubt that the rise in the number of unaccompanied children seeking asylum in the United States from El Salvador, Honduras, and Guatemala during 2014 significantly strained the infrastructure in place, causing delays in placement of unaccompanied alien children from noncontiguous countries into appropriate shelter care facilities operated by the U.S. Department of Health and Human Services, Office of Refugee Resettlement. While concerns about the *refoulement* of Mexican children, who remain subject to the expedited removal process, without adequate international protection screening remain, it appears that procedures mandated in the 2008 Trafficking Victims Protection Reauthorization Act are being implemented for unaccompanied alien children from noncontiguous countries.

51. In contrast, Central American children travelling to the United States with their mothers are subject to detention by ICE. Detention of mothers with minor children in jail-like detention centers forms the backbone of the United States’ strategy to deter asylum seekers. More than 650 mothers and their children are held in the Federal Law Enforcement Training Center in Artesia, New Mexico, and about 550 more are detained in the Karnes City, Texas, facility, operated by the private prison company the GEO Group. An additional 2,400-bed facility is planned to open in Dilley, Texas, under an intergovernmental service agreement with Corrections Corporation of

⁸² Center for American Progress, Dan Restrepo and Ann Garcia, “*The Surge of Unaccompanied Children from Central America: Root Causes and Policy Solutions*,” July 24, 2014. Available at: <http://www.americanprogress.org/issues/immigration/report/2014/07/24/94396/the-surge-of-unaccompanied-children-from-central-america-root-causes-and-policy-solutions/> (accessed, October 2, 2014).

⁸³ Center for Gender and Refugee Studies, “*Gang-Related Violence*”, available at: <http://cgrs.uchastings.edu/our-work/gang-related-violence> (accessed October 1, 2014)

⁸⁴ U.N. High Commissioner for Refugees (UNHCR), *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*, March 12, 2014.

⁸⁵ White House Press Release, June 30, 2014, available at <http://www.aila.org/content/default.aspx?bc=9601|49057> (accessed October 9, 2014)

⁸⁶ AILA Resources on the Central American Humanitarian Crisis, available at: <http://www.aila.org/content/default.aspx?docid=49082> (accessed October 9, 2014)

America. Serious concerns with both companies' record of abuse and neglect of children and adults in their custody have been raised.⁸⁷

52. The Advocates for Human Rights has received reports of cruel, inhuman, or degrading treatment in the Artesia facility. One attorney, who traveled to Artesia to provide free legal services, reported following her visit: "All of the children are sick, with coughs at minimum. They are dehydrated and listless. Children are not eating, and there is little to no access to medication or to medical care. Mothers and children alike are all cold. There are no jackets or blankets. The 'residents' wrap towels around their shoulders for at least some comfort, and mothers cover their infants with multiple washcloths in an effort to keep them warm."⁸⁸

53. **In Issue 42, the Committee expressed concern about reports of brutality and use of excessive force by law enforcement officials and ill-treatment of vulnerable groups, including racial minorities, migrants and persons of different sexual orientation. The Committee requested information about systems for training and monitoring law enforcement officials, as well as steps for investigating reports of police brutality and excessive use of force.** In its reply, the U.S. reported the training and monitoring of law enforcement officers that participate in ICE's 287(g) program (U.S. Response ¶ 245).

54. **Racial discrimination in law enforcement and the administration of justice continues to be a significant problem in the United States, including in the context of immigration enforcement.** As the Committee on the Elimination of all forms of Racial Discrimination (CERD) stated in its 2014 concluding observations to the United States' most recent report on compliance with the Convention: "The Committee is concerned at the increasingly militarized approach to immigration law enforcement, leading to the excessive and lethal use of force by the CBP personnel; increased use of racial profiling by local law enforcement agencies to determine immigration status and to enforce immigration laws; increased criminal prosecution for breaches of immigration law; mandatory detention of immigrants for prolonged periods of time; and deportation of undocumented immigrants without adequate access to justice."⁸⁹ The CERD also called upon the U.S. to end immigration enforcement programs and policies, which indirectly promote racial profiling, such as the Secure Communities program and the 287(g) program⁹⁰, as well as to abolish "Operation Streamline" and deal with any breaches of immigration law through a civil, rather than criminal immigration system⁹¹.

⁸⁷ Grassroots Leadership and Justice Strategies, *For Profit Family Detention: Meet the Private Prison Corporations Making Millions by Locking Up Refugee Families*, Oct. 2014.

⁸⁸ Attorney Kim Hunter, reporting to The Advocates for Human Rights on conditions she witnessed inside the Artesia facility in August 2014.

⁸⁹ Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America, CERD/C/USA/CO/7-9, Aug. 29, 2014, ¶ 18.

⁹⁰ Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America, CERD/C/USA/CO/7-9, Aug. 29, 2014, ¶ 8 (c).

⁹¹ Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America, CERD/C/USA/CO/7-9, Aug. 29, 2014, ¶ 18 (a).

55. 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.⁹²

56. 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.⁹³ 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.

57. 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.⁹⁴ 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.⁹⁵

58. 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.⁹⁶

59. 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

⁹² 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).

⁹³ 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>.

⁹⁴ U.S. Dept. of Homeland Security, Immigr. and Customs Enforcement, ICE ACCESS, available at <http://www.ice.gov/partners/dro/iceaccess.htm>

⁹⁵ 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.

⁹⁶ 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.

individuals, those individuals' immigration status will be checked when they are fingerprinted.⁹⁷ 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.⁹⁸ 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.⁹⁹ 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.¹⁰⁰ This has resulted in reviews of Secure Communities by the DHS Office of the Inspector General as well as the Government Accountability Office.¹⁰¹

60. The United States does attempt to investigate allegations of local law enforcement practices targeting migrants,¹⁰² 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.¹⁰³ Such oversight should be encouraged and expanded.

61. CBP and other law enforcement agencies in the border region practice race-based enforcement against Latino residents on a regular basis, using checkpoints that often result in the questioning of drivers about their immigration status occur throughout the border region.¹⁰⁴ The "transportation checks" occur more frequently in communities with high numbers of Latino

⁹⁷ 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>.

⁹⁸ 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.

⁹⁹ 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.

¹⁰⁰ "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>.

¹⁰¹ 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, Apr. 28, 2011 available at <http://menendez.senate.gov/newsroom/press/release/?id=7948683e-ad67-4141-9d4b-e0fa98af4456>.

¹⁰² 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-Profiling-137956408.html>.

¹⁰³ 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

¹⁰⁴ See Border Network for Hum. Rights, "Human Rights Abuse Documentation Report 2009: El Paso, Texas – Southern New Mexico," (Dec. 9, 2009).

immigrants.¹⁰⁵ Racial profiling also may result in detention of non-citizens in the interior of the United States. Enforcement programs, including the 287(g) program, the Criminal Alien Program, the Secure Communities program, the use of detainer requests by ICE, and informal cooperation between federal immigration authorities and local law enforcement all have drawn substantial criticism for engendering racial profiling practices.¹⁰⁶ Cases of local law enforcement officers taking Latino drivers and passengers into custody without criminal charges following traffic stops and turning them over to ICE officials who are present in local jails through these programs have been documented.¹⁰⁷

¹⁰⁵ In a survey conducted with over 300 families in Arizona border communities, the Border Action Network found that a startling majority of residents (41% in Pirtleville, 66% in Naco, 70% in Nogales, and 77% in Douglas) felt that Border Patrol Agents stopped people for simply having brown skin.

¹⁰⁶ See, e.g. American Civil Liberties Union of Georgia (US), *The Persistence of Racial Profiling in Gwinnett: Time for Accountability, Transparency, and an End to 287(g)* (Mar. 2010) (demonstrating impact of the 287(g) program on the Gwinnett County, Georgia community and documenting exacerbation of racial profiling that has taken place after the implementation of 287(g)); Migration Policy Inst., “A Program in Flux: New Priorities and Implementation Challenges for 287(g) (Mar. 2010);” Univ. of N.C. at Chapel Hill, “The 287(g) Program: The Costs and Consequences of Local Immigration Enforcement in North Carolina Communities,” (February 2010) (examining available data on the 287(g) program related to public safety, financial cost, and the relationship between immigration and crime and examining effects on community relationships between police and Hispanic populations); Cardozo Immigr. Justice Clinic, *Immigration on ICE: A Report on Immigration Home Raid Operations* (July 2009) (analyzing ICE arrest records from home raids in NY and NJ, finding a far-reaching pattern of misconduct and constitutional violations by ICE agents); Police Foundation, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties* (April 2009) (discussing implications of state and local police enforcing federal immigration laws through the ICE 287(g) program, and the effect this enforcement has on the ability of local police to maintain trust and cooperation with immigrant communities); ACLU of N.C. Legal Foundation and Immigr. & Hum. Rgts. Policy Clinic, University of N.C. at Chapel Hill, “The Policies and Politics of Local Immigration Enforcement Laws: 287(g) Program in North Carolina,” (Feb. 2009); (finding shortcomings in complaint mechanisms, designation of functions, nomination of personnel, training of personnel, certification and authorization, ICE supervision, civil rights standards and provision of interpreters, required steering committee, community outreach, media relations/discretion, modification, and duration); Justice Strategies, *Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement* (Feb. 2009) (finding 287(g) programs were not targeted at high-crime areas but did target race); Migration Policy Inst., *Collateral Damage: An Examination of ICE’s Fugitive Operations Program* (Feb. 2009) (examining the National Fugitive Operations Program (NFOP), run by ICE, comparing apprehension and detention data from Fugitive Operations Teams (FOTs) to stated program objectives and finding that 73 percent of FOT apprehensions from the beginning of the program in 2003 to FY 2008 had no criminal conviction); U.S. Govt. Accountability Office, *Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws* (Jan. 2009) (finding that 287(g) program lacks “documented program objectives,” that 4 of 29 287(g) participants reviewed used the agreement to process minor crimes, such as speeding; that ICE does not describe in detail its supervision over 287(g) participants, creating a “wide variation in the perception” of supervisory responsibilities for ICE field officials; and that over half of the 29 agencies surveyed reported concerns from community members that local law enforcement would engage in racial profiling and intimidation).

¹⁰⁷ The Advocates for Human Rights, *Moving from Exclusion to Belonging: Immigrant Rights in Minnesota Today* (Apr. 2014) at 61-64, available at http://theadvocatesforhumanrights.org/uploads/ahr_moving_from_exclusion_to_belonging_final_2.pdf.

62. The United States uses **automatic prosecution** in violation of the right to an individualized, case-by-case assessment of the need to detain, criminally prosecute, and incarcerate migrants who enter the United States illegally. Begun in 2005, Operation Streamline operates in five of the nine southwestern U.S. border patrol sectors.¹⁰⁸ The *en masse* procedures courts use in implementing Operation Streamline have been held as deficient under the Federal Rules of Criminal Procedure.¹⁰⁹

63. Cooperation between U.S. border and interior immigration enforcement agencies and state and local law enforcement agencies throughout the United States **circumvents procedural safeguards against constitutional violations** and leave migrants vulnerable to incarceration in violation of law. The U.S. criminal justice procedures which allow persons accused of crimes to challenge the legality of arrests, searches, and seizures and to exclude evidence, including testimony, from trial if found to have been obtained in violation of law routinely are bypassed when migrants are turned over to federal immigration authorities after arrest but prior to conviction. Border Patrol and ICE officers regularly interview and take custody of migrants who have been arrested or detained by state or local law enforcement. This means that migrants have no opportunity to challenge the legality of their initial arrest.

64. Undocumented youth are susceptible to racial profiling through aggressive school discipline policies that punish and exclude minority children, including undocumented Latinos, in disproportionate numbers. While juvenile delinquency adjudications generally do not make a child deportable, contact with the juvenile justice system can result in an undocumented child being turned over to ICE officers for deportation.¹¹⁰

V. SUGGESTED QUESTIONS

65. What steps has the United States taken to ensure that persons in ICE or CBP custody are not subject to cruel, inhuman, or degrading treatment while detained?

66. What oversight exists within and independent of the Department of Homeland Security to report, detect, and correct cruel, inhuman, or degrading treatment, including such treatment that is the result of inadequate facilities? Specifically describe accountability mechanisms relating to ICE and CBP facilities, to intergovernmental service agreements with private contractors, and to contracts with state or local units of government.

67. What standards exist relating to conditions of detention of migrants? What are the consequences to individuals or contracted institutions of violations of any such standards? What

¹⁰⁸ See, e.g., Donald Kerwin and Kristin McCabe, “Arrested on Entry: Operation Streamline and the Prosecution of Immigration Crimes,” Apr. 29, 2010, <http://www.migrationpolicy.org/article/arrested-entry-operation-streamline-and-prosecution-immigration-crimes/>.

¹⁰⁹ *United States v. Arqueta-Ramos* (9th Cir. Sept. 20, 2013).

¹¹⁰ The Advocates for Human Rights, *Moving from Exclusion to Belonging: Immigrant Rights in Minnesota Today*, Apr. 2014, at 137-38.

private right of action exists to make whole migrants detained in immigration custody who are victims of cruel, inhuman, or degrading treatment?

68. What steps is the United States taking to address allegations of sexual abuse against detained immigrant women?

69. Please provide specific information about the process for ensuring that protection claims under Article 33 of the Refugee Convention or Article 3 of the Convention Against Torture can be raised for individuals facing (1) expedited removal; (2) reinstatement of removal; (3) stipulated removal; and (4) prosecution as part of Operation Streamline or similar prosecution initiatives.

70. How does the United States ensure that all asylum seekers, including children seeking protection under Article 33 of the Refugee Convention and Article 3 of the Convention Against Torture, have access to fair proceedings in the absence of legal representation?

VI SUGGESTED RECOMMENDATIONS

71. Immigration and Customs Enforcement (ICE) should cease the practice of detaining asylum seekers as a deterrent to migration; ensure that any detention of asylum seekers is consistent with international standards that allow for detention of asylum seekers only as a last resort; and seriously consider community-based (rather than corrections-based) alternatives to detention. Until that time, the United States must ensure that asylum seekers are not inhibited by their detention from pursuing international protection claims under Article 33 of the Refugee Convention or Article 3 of the Convention Against Torture.

72. The United States should immediately implement enforceable, rights-respecting detention standards in all facilities detaining non-citizens, including short-term facilities and contracted private, state, and local jails and prisons. Any such detention standards should ensure humane treatment, including access to adequate physical and mental medical care, fresh air, access to family and legal counsel, and rehabilitation and educational services.

73. Customs and Border Protection (CBP) should immediately ensure that all detained migrants are provided with potable water, appropriate and nutritious food, access to bathroom facilities including private toilets and basic hygiene supplies, a cot and clean linens, and room with adequate and appropriate lighting that does not remain on 24 hours per day. Independent monitoring should be allowed.

74. CBP, ICE, and local and state law enforcement agencies must develop procedures and standards to ensure that migrants turned over to federal immigration authorities by local or state law enforcement agencies were not stopped, arrested, or detained in violation of law.