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fabricating loopholes that the previous administration used to avoid its obligations to prevent and punish torture and cruel treatment.

As this report demonstrates, there are many areas where U.S. law, policy, and practices continue to fall short of U.S. treaty obligations and set dangerous examples to other countries, including force-feeding, indefinite detention, and unfair trials of detainees at Guantanamo, as well as punitive detention and deportation of immigrants, often in violation of non-refoulement obligations. Our submission includes additional questions for the Committee to pursue with the U.S. government during the review process, and recommendations for the Committee to consider in regards to: intelligence, counter-terrorism, and military operations; use of solitary confinement and access to legal remedies for prisoners; and the mistreatment of immigrants including abusive detention conditions, prolonged and indefinite detention and handling of migrant children and families at the US-Mexico border. The ACLU report also highlights key aspects of the criminal justice system that do not comply with article 16 of the Convention, which requires the prevention of acts of cruel, inhuman or degrading treatment or punishment, including through racial profiling, use of the death penalty, life without parole sentences, and militarization of law enforcement.

In addition to the concerns raised here, the ACLU has endorsed other reports submitted to the Committee by coalitions of civil society organizations on other issues, including sexual vi

these enhanced interrogation techniques, techniques that I believe and I think any fair-minded person would believe were torture, we crossed a line. And that needs to be -- that needs to be understood and accepted. And we have to, as a country, take responsibility for that so that, hopefully, we don't do it again in the future."[1]

The Obama administration currently has a unique opportunity to take a clear stand against torture and abuse by clearly and credibly demonstrating to the world a firm commitment to the prohibition of torture, and to meet its human rights obligations to fully investigate acts of torture and provide redress to victims. Failure to do so will set a dangerous standard for future

Non-Refoulement: Rendition by U.S. Intelligence Agencies and Diplomatic Assurances

I. Issue Summary

In 2009, by Executive Order 13491 (Ensuring Lawful Interrogations) the United States

VI. Suggested Recommendations

1. Do not conduct, facilitate or participate in extrajudicial transfers, which deprive a detainee of the opportunity to provide information about his individual risk factors for torture or challenge the reliability of assurances.

2. Establish minimum standards for the contents of assurances, including access to a lawyer and the ICRC, recording of all interrogations, independent medical examination, prohibition of incommunicado detention, and post-return monitoring. Do not conduct transfers where the receiving government systematically commits torture or cruel, degrading or inhuman treatment or punishment.

3. Establish effective post-return monitoring standards and procedures. Prohibit transfers where receiving governments are unwilling to permit monitoring compliant with these standards and procedures.

4. Adopt transparency measures with regard to transfers with assurances. In particular, make publicly available the Special Task Force on Interrogation and Transfer Policyôs report, as well as the annual reports on transfers with assurances that agencies submit (with only those redactions necessary to protect information that is properly classified).

5. Clarify the governmentôs position on judicial review and ensure that all detainees are afforded an opportunity for meaningful judicial review of transfer decisions.

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[1] Exec. Order No. 13491 (Ensuring Lawful Interrogations), 3 C.F.R. 13491 (2009).
[2] Press Release, U.S. Depôt of Justice, *Special Task Force on Interrogations and Transfer Policies Issues Its Recommendations to the President* (Aug. 24, 2009), *available at* http://www.justice.gov/opa/pr/special-task-force-interrogations-and-transfer-policies-issues-its-recommendations-president.
[3] *Id*.
[4] *See e.g.*, Columbia Law School Human Rights Institute, *Promises to Keep: Diplomatic Assurances Against Torture in US Terrorism Transfers* (Dec. 2010) *available at* http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/PromisestoKeep.pdf.
[5] U.N. Comm. Against Torture, *List of Issues Prior to the Submission of the Fifth Periodic Report of the United States of America* ¶11 (Jan. 20, 2010), U.N. Doc. CAT/C/USA/Q/5.
[6] U.S. Depôt of State, *Third to Fifth Periodic Reports of the United States to the Committee Against Torture* ¶78 (Dec. 4, 2013), U.N. Doc. CAT/C/USA/3-5.
[7] *Id.* at para. 79
[8] *Id.* at para. 82
[9] *See* UN Human Rights Council, *Report submitted by the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* ¶¶60-63 (Feb. 3, 2011), U.N. Doc. A/HRC/16/52.
[10] The U.N. Human Rights Committee has called on the U.S. to ñadopt clear and transparent proceduresò regarding transfers based on assurances. U.N. Human Rights Comm., *Concluding Observations of*

Non-Refoulement: Asylum-Seekers at the Border

I. Issue Summary

Each year, many foreign nationals arrive in the United States escaping persecution or torture and seeking protection in the United States. While some are able to enter the United States, be interviewed by an asylum officer, and present their asylum case in court, others are instead deported rapidly at the border and returned to the persecution they fled, sometimes with devastating consequences. In the broadly defined border zone[1] and at ports of entry, U.S. law allows immigration officers to order deported individuals who arrive in the country without valid travel documents immediately upon their arrival through a procedure called ñexpedited removal.ò[2] When this law was introduced in 1996, the U.S. government recognized the danger that

II. Human Stories

Nydia R. is a 36-year-old transgender woman from Mexico. After years of threats and harassment for being transgender, Nydia fled to the United States in 2003 but was turned away with an expedited removal order, despite having several visible bruises from a recent attack in Mexico. After securing asylum, she returned to Mexico to attend a funeral where she was again attacked and raped. When she tried, twice, to return to the United States, Nydia was illegally ordered deported by immigration officers and returned to Mexico, where she was attacked and trapped in sex trafficking.

Rosa, a 22-year-old woman, fled domestic violence in El Salvador and was arrested by border officials when crossing into Texas. Although she was asked about her fear of returning, she was never referred to an asylum officer. Instead she was deported back to El Salvador where her ex-boyfriend found her and continued to abuse her. She eventually was able to return to the United States and seek asylum.

Hermalinda and her husband are indigenous Guatemalans, political activists who were involved in challenging mining companiesô extraction activities. Their activism put them in danger, however. Hermalinda recalls, ñOn the 5th of March 2011, about four men came to our house and beat us. Two were police officers and two were dressed in civilian clothes. They beat us and took us 30 minutes by car. Then they made us get out of the car and they beat us more. They took off my clothes and they raped me.ò[11] Hermalinda and her husband fled to the U.S. to seek protection but were arrested near the U.S.-Mexico border by U.S. immigration agents who issued a deportation order and removed them from the United States.

III. CAT Position

Article 3 of the Convention against Torture states, ñNo State Party shall expel, return (ñrefoulerò) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.ò[12] In its General Comment No.3, this Committee observed that in order to ñguarantee non-repetition of torture or ill-treatment,ò States should ñensur[e] compliance with article 3 of the Convention prohibiting refoulement.ò[13]

In response to the 2006 Committee against Torture observations, the U.S. government claimed that ñin the context of immigration removals from the United States . . . there are procedures for alleging torture concerns and procedures by which those claims can be advanced.ò[14] These procedures, however, are not self-activating and are only available when an immigration officer asks about a personôs fear, records it, and refers the individual to those processes. More recently, the Committee requested information from the United States on steps taken to ensure compliance with ñthe non-refoulement guarantee to all detainees in its custody.ò[15] The U.S. response contends that the U.S. government conducts a ñthorough and

rigorous process [to] ensure[] that any transfers are consistent with the U.S. non-refoulement commitment,ò[16] but did not specifically discuss procedures like expedited removal, and other processes where an individual never sees a judge, where asylum-seekers are deported (often at the border) by immigration enforcement agents with limited review. For individuals who were never asked about the torture they face if deported or whose pleas were ignored, it is unlikely that the U.S. government conducts a meaningful review before or after the deportation.

IV. Recommended Questions

1. In light of mounting evidence that border officers do not consistently ask noncitizens about fear of torture if returned to their country, what steps is the U.S. government taking to ensure that asylum seekers are asked about their fears and referred to an asylum officer?

2. What processes are in place to monitor border officersô compliance with U.S. obligations under Article 3 and to censure officers who routinely disregard those obligations?

V. Suggested Recommendations

1. Create stronger, independent monitoring of interviews between immigration officers and asylum seekers to ensure that asylum seekers are not deported back to danger without the opportunity to first seek protection in the United States.

2. Independent monitoring should include periodic audits and video recording of asylum interviews.

3. Ensure that asylum seekers are not misled or coerced into abandoning their rights to seek asylum before being removed from the United States.

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[1] Customs and Border Protection, an agency of the US government responsible for border protection and apprehending unauthorized migrants, operates within 100 miles of any international land or sea border, maximizing its interpretation of ñreasonable distanceò in I.N.A.§ 287(a)(3). ACLU, *Customs and Border Protection's (CBP's) 100-Mile Rule, available at* http://legalactioncenter.org/sites/default/files/CBP%20100%20Mile%20Rule.pdf.

[2] I.N.A. § 235(b).

[3] *See generally*, PHILIP G. S

[10] Information and interviews on file with the ACLU as part of forthcoming report. Other organizations have also recorded problems with the referral system at the border, with asylum-seekers being turned away and ordered deported by immigration officers. *See* Human Rights First, *How to Protect Refugees and Prevent Abuse at the Border: A Blueprint for US Government Policy* (Jun. 2014), *available at* http://www.humanrightsfirst.org/resource/how-protect-refugees-and-prevent-abuse-border; AMERICAN IMMIGRATION COUNCIL, MEXICAN AND CENTRAL AMERICAN ASYLUM AND CREDIBLE FEAR CLAIMS: BACKGROUND AND CONTEXT (May 2014), *available at* http://www.immigrationpolicy.org/sites/default/files/docs/asylum_and_credible_fear_claims_final.pdf.

[11] Interview with Hermalinda L., Berkeley, CA, Mar. 18, 2014 (on file with the ACLU).

[12] Art. 197.

[13] U.N. Comm. against Torture, *General Comment No. 3, Implementation of article 14 by States parties* ¶ 18 (Dec. 12, 2012), U.N. Doc. CAT/C/GC/3.

[14] U.S. Depôt of State, *Comments by the Government of the United States of America to the Conclusions and Recommendations of the Committee against Torture (CAT/C/USA/CO/2)* ¶5 (Nov. 6, 2007), U.N. Doc. CAT/C/USA/CO/2/Add.1.

[15] U.N. Comm. Against Torture, *List of Issues Prior to the Submission of the Fifth Periodic Report of the United States of America* ¶10(a) (Jan. 20, 2010), U.N. Doc. CAT/C/USA/Q/5.

[16] U.S. Depôt of State, *Third to Fifth Periodic Reports of the United States to the Committee Against Torture* ¶69 (Dec. 4, 2013), U.N. Doc. CAT/C/USA/3-5.

I. Issue Summary

During the administration of President George W. Bush, many hundreds of people were tortured and abused by the Central Intelligence Agency (ñCIAò) and the Department of Defense, primarily in Afghanistan, Iraq and at Guantánamo Bay, but also in other states after unlawful renditions. Yet, to date, there has been little accountability for abuses including torture, arbitrary detention and enforced disappearances.

In January 2009, President Barack Obama took important steps to dismantle the previous administrationôs torture program. In Executive Order 13491, President Obama ordered the CIA to close its secret prisons, banned the CIA from all but short-term transitory detention, and put the CIA under the same interrogation rules that apply to the military.[1] But since then ð as the ACLU and other NGOs have documented ð the Obama administration has undermined that early promise by thwarting accountability for torture and other abuses.

No survivor of the U.S. torture program has had his or her day in a U.S. court. The United States and government officials have repeatedly invoked state secrecy and the doctrine of qualified immunity to dismiss civil suits alleging torture, unlawful detention, and enforced disappearance before the merits are heard.[2] With domestic avenues for redress closed, a number of victims of U.S. torture have filed petitions against the United States with the Inter-American

accountability for the previous administrationôs torture program. In December 2012, the Senate Intelligence Committee adopted its full 6,000 page report. The executive branch and the Intelligence Committee are currently engaged in a struggle over how much of the summary will be divulged to the public.[6] It is critical that the report be released, with only those redactions necessary to protect legitimate intelligence sources and methods, to prevent such abuses from ever occurring again. Even more transparency beyond the summary is also needed. The ACLU continues to press in Fre

In response to the Committeeôs requests for detailed information on the existence of

charges, and the sentences. Has any member of the armed forces been charged with the war crimes of torture or cruel or inhuman treatment?

3. As every lawsuit for civil redress brought by a victim of the previous administrationôs torture program has been dismissed by U.S. courts as a result of claims of state secrecy and other privileges asserted by the United States or its officials, has the United States taken any measures to provide redress, including compensation and rehabilitation, to such victims outside of the U.S. court system? Has the United States publicly acknowledged or apologized to any victim, including family members? If the United States has provided compensation or rehabilitation services, please provide statistics concerning the number of victims, the amount of compensation paid, and the rehabilitation services provided.

VI. Suggested Recommendations

1. Ensure that all cases of torture or other ill-treatment, unlawful detention, and enforced disappearance are effectively, independently, and impartially investigated. Ensure that perpetrators including, in particular, senior military and civilian officials who authorized or acquiesced in torture, are investigated and prosecuted if warranted by the evidence.

2.

Detention and Trials at Guantanamo

I. Issue Summary

Almost 13 years after it opened, the prison at Guantánamo Bay still holds 149 foreign detainees. Seventy-nine of these men are cleared for transfer from the prison yet remain detained, the vast majority having been cleared by a U.S. government interagency task force[1] in 2010. Another 60 men have even less recourse from the U.S. policy of indefinite detention without charge or trial. And 7 men face charges in the flawed military commission system.[2]

Delays in Transfers

Due to delays within the executive branch as well as legislative restrictions, transfer of cleared detainees has become infrequent. Only one detainee in this category has been transferred in 2014.[3] Moreover, the Obama administration bears responsibility for opposing in court the release of detainees against whom it has presented scant evidence of wrongdoing.

meeting with attorneys.[7] These intrusive searches have led some detainees to refuse attorney meetings, chilling detaineesô efforts to contest the lawfulness of their detention or prepare for PRB hearings. The searches were upheld by a federal appeals court earlier this year.[8]

Potential Indefinite Detention in the United States

There are also troubling reports that the Obama administration supports closing the Guantánamo prison by moving detainees to a Department of Defense detention facility in the United States. Indefinite detention in the United States is as unlawful and unacceptable as it is at Guantánamo.

Force Feeding Hunger Strikers

The Defense Department has responded to hunger strikes protesting indefinite detention at Guantánamo by using painful, inhuman and cruel force feeding methods. By July 2013, more than 100 detainees were participating in a hunger strike, and nearly half of them were on a list to be force fed.[9] In December, the Defense Department stopped reporting the number of hunger strikers.[10] This year, it released a redacted version of a new force feeding protocol that indicates that hunger strikers subjected to so-called ñenteral feedingsò are restrained in a special chair with nasal feeding tubes inserted and removed up to twice a day.[11] ñI canôt describe how painful it is to be force-fed this way,ò said one detainee of the tube insertion process.[12] Lawyers continue to

IV. U.S. Government Response

The United Statesô third to fifth periodic report focuses on changes in law and policy regarding the Guantánamo Bay prison and the military commissions since President Obama took office.

The report points to Presidentôs Obamaôs repeated promises to close Guantánamo, explains the work of the inter-agency task force, notes the Presidentôs signing statements objecting to Congressional restrictions on transfers, and reports on the establishment of the PRBs and the appointment of special envoys to negotiate transfers.[26] As detailed above, Guantanamo remains open, 79 men cleared for release are still held there, and prospects of release or a fair trial for the remaining men are dim.

With respect to hunger strikers, the United States reports that they are ñnourishedò in accordance with procedures similar to those used for federal prisoners,[27] without acknowledging that the World Medical Association, the American Medical Association, and each of the Special Rapporteurs on Torture, Human Rights and Counter-Terrorism, and Health oppose force feeding.[28]

whenever a party ñadvances a plausible reasonò that evidence may have been obtained by torture or cruel, inhuman or degrading treatment.

3. End the practice of force-feeding hunger strikers and launch a prompt, thorough, and impartial investigation into all past cases of force-feeding. Release all protocols describing the standard operating procedures for managing hunger strikers. Resume the practice of reporting a daily count of the number of detainees who are engaging in a hunger strike, being force fed, and hospitalized.

4. Ensure that coerced evidence including statements obtained through torture or other ill-treatment of the defendant or a third party, evidence obtained in a third state, and evidence derived from torture is excluded from all military commission proceedings. Ensure that all relevant records concerning torture and other ill-treatment, including

Prohibiting Secret Detention by the Central Intelligence Agency

I. Issue Summary

In 2009, President Obama signed Executive Order 13491 on ñEnsuring Lawful

III. U.S. Government Response

In its report, the U.S. government stated that the ñCIA does not operate any detention facilities.ò However, that declaration was qualified with the statement that ñthe United States operates battlefield transit and screening facilities, the locations of which are often classified for reasons of military necessity.ò[6]

The U.S. stated that operation of any such facility is ñconsistent with applicable U.S. law and policy and international law, including Common Article 3 of the Geneva Conventions, the Detainee Treatment Act of 2005, and DoD Directive 2310.01E.ò Per the governmentôs response, the ICRC and ñrelevant host governmentsò are informed about such facilities with the ICRC being allowed access to individuals detained in a law of war context.[7]

The U.S. also stated that ñunder U.S. law every U.S. official, wherever he or she may be, is prohibited from engaging in torture or in cruel, inhuman or degrading treatment or punishment, at all times, and in all placesò but has not acknowledged that secret detention is a violation of the Convention.[8]

IV. Other UN and Regional Human Rights Bodies Recommendations

In their 2010 joint study, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention, and the Working Group on Enforced and Involuntary Disappearances emphasized that ñ[s]ecret detention is irreconcilable with international human rights law and international humanitarian law.ò The study found that the practice ñamounts to a manifold human rights violationò ï representing at a minimum a *per se* violation of the right to liberty and security of the person and the prohibition of arbitrary arrest or detention under Article 9 of the International Covenant on Civil and Political Rights ï ñthat cannot be justified under any

arbitrariness] and [is] a most grave violation of Article 5.ò[11]

Upon its adoption of Special Rapporteur for the Committee on Legal Affairs and Human Rights Dick Martyôs report on secret detentions and illegal transfers in 2007 the Parliamentary Assembly of the Council of Europe passed Resolution 1562 repudiating member statesô participation in the CIA Rendition, Detention, and Interrogation program in particular and the practice of secret detention more generally. ñ[S]ecret detention as such,ò the Assembly found, ñis contrary to many international undertakings, both of the United States and of the Council of Europe member states concerned.ò[12]

V. Recommended Questions

1.

[1] Exec. Order No. 13491, 74 FR 4893 §4(a) (2009), *available at* http://www.gpo.gov/fdsys/pkg/CFR-2010-title3-vol1/pdf/CFR-2010-title3-vol1-eo13491.pdf.
[2] *Id.* §2(g).

Interrogation Policies

I. Issue Summary

Executive Order 13491 Did Not End All Interrogation Techniques that Amount to Torture or Ill-Treatment

On January 22, 2009, President Obama issued Executive Order 13491

agencies, of the practices and methods set out in the Army Field Manual concluded that no revisions were needed.[10] The special task forceôs report has never been released to the public.[11]

More recently, the Department of Defense issued policy directives that also raise concerns about the use of impermissible interrogation techniques. A 2012 directive, No. 3115.09,

been used since January 22, 2009. What measures are in place to prevent interrogators from abusing detainees who are being subjected to ñseparationò as an interrogation technique? Is there any mechanism for a detainee who is held in isolation to complain about ill-treatment?

2. Department of Defense Directive No. 3115.09 permits interrogation of detainees who have been ñsegregated,ò which it defines as physically removing a detainee from other detainees for purposes unrelated to interrogation. What procedural safeguards govern the placement of a detainee in segregation? What measures are in place to

Solitary Confinement

I. Issue Summary

Solitary confinement is the policy or practice of physically and socially isolating a prisoner for 22 hours per day or more, and for one or more days.[1] Recent decades have seen an explosion in the use of this practice in detention facilities in the United States. It is employed for a broad variety of reasons, including for administrative and security purposes, discipline, protection from harm, and health-related reasons. Although many prisoners in solitary confinement are housed in specially constructed ósupermaximumô facilities, solitary confinement is practiced in jails, prisons and other federal, state and local detention facilities throughout the United States. Placement may stretch on for days, weeks, months or years. Any prisoner or detainee, regardless of age, gender, or physical or mental health, may be subject to solitary confinement. Persons with mental disabilities are dramatically overrepresented in solitary confinement.[2] Children are subjected to solitary confinement in juvenile facilities as well as in jails, and prisons that otherwise house adults.[3] Reports also document that women prisoners, vulnerable LGBTI prisoners and immigration detainees are all placed in solitary confinement, in both civil and criminal detention facilities.[4] An estimated 20,000 to 25,000 prisoners are held in the harshest levels of solitary confinement;[5] more than 80,000 prisoners are housed in some form of restricted population unit.[6]

Typically solitary confinement cells are designed to separate the prisoner from most forms of human contact and environmental stimulation. Frequently they have solid-metal doors with sm

groups, such as children and persons with mental illness, are particularly vulnerable. In the case of children, research suggests that the harmful effects of solitary confinement are exacerbated by the developmental immaturity of the isolated individual.[12] In order to fully understand the impact of solitary confinement on children, more research is needed. In short, the human rights violations associated with widespread use of solitary confinement in the United States are manifold.[13]

While in recent years some jurisdictions have taken legislative or administrative steps to potentially end or limit the use of solitary confinement for certain categories of prisoners, litigation remains the primary means of addressing the problem.[14] However, pursuing remedies for victims of the practice in U.S. courts is an often lengthy and complicated process, fraught with legal obstacles. The ACLU is involved in several class action lawsuits challenging the use of solitary confinement.[15] Evidence gathered in two of these cases, from Mississippi and Arizona, illustrates the egregious conditions that often accompany periods spent in solitary confinement.

Mississippi

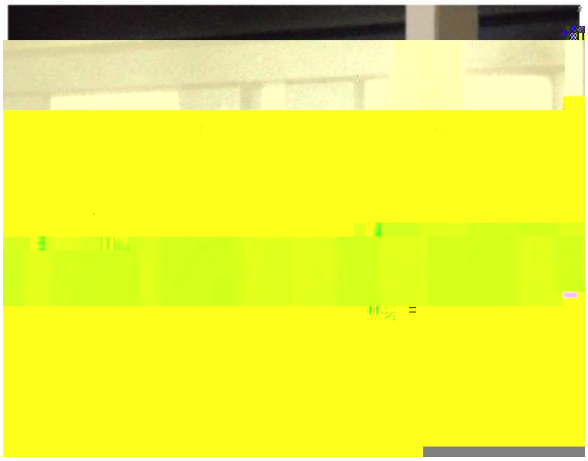
The East Mississippi Correctional Facility is designated to house the stateôs most seriously mentally ill prisoners. Many of these prisoners are held in the prisonôs solitary confinement units. Following an inspection of these units, Dr. Terry Kupers, M.D., M.S., an expert in correctional psychiatry retained on behalf of the prisoners, issued a report finding that ñ[a] large group of prisoners, very many suffering from serious mental illness, are consigned to long-term segregation . . . for years and seemingly have no exit route.ò [16] Many prisoners in solitary confinement are ñforced to live in the dark for weeks or months on endò[17] and that conditions ñpress the outer bounds of what most humans can psychologically tolerate.ò[18] The isolation and idleness is ñprofoundò and ñunremittingò 1 -582 re-1080046400444005100oe005C25m 0 Tc[(The)5( )] TJETBT/F4 3 0 071 0

13manifold.

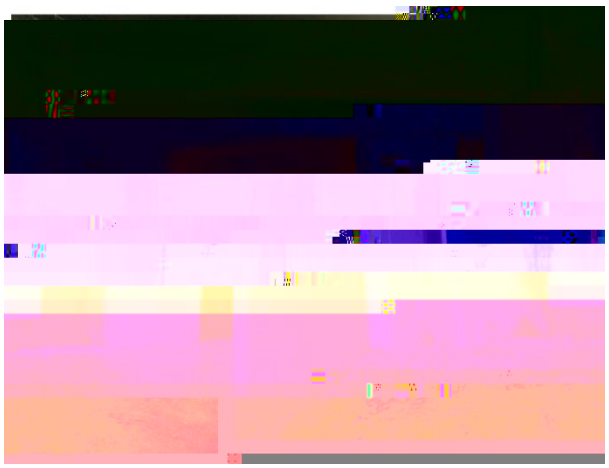
Prisoners in solitary confinement are ignored and abandoned by staff. A former state correctional administrator, also retained as an expert on behalf of the prisoners, observed that:

> ñ[p]risoners [in solitary] can get attention for their most basic human needs only by setting fires, flooding their cells, cutting themselves, or violating rules by refusing to remove their arms from the food slots in their cell doors, thereby knowingly subjecting themselves to being gassed with pepper spray.ò[24]

In one recent example, two days before his death, a prisoner with a serious cardiac condition had to set a fire in his cell to get medical attention.[25]



Fire set by a prisoner in a solitary confinement unit, East Mississippi Correctional Facility, April 3, 2014



Cell doors in a solitary confinement unit, East Mississippi Correctional Facility, April 3, 2014

Arizona

The Arizona Department of Corrections has solitary confinement units in prisons throughout the state. These units house a substantial population of prisoners with serious mental illness, some of whom are housed in solitary as a consequence of behavior directly related to symptoms of their illness: that is, behavior that they cannot control.[26] Dr. Craig Haney, Ph.D., J.D., an expert in the effects of solitary confinement retained on behalf of the prisoners, concluded the state had ñtaken the ill-advised step of housing large numbers of mentally ill prisoners in isolated conditions that cause suffering and place their psychological well-being at risk. . . .ò[27] He also found that the state further jeopardized the health and safety of these vulnerable prisoners by spraying them with chemical agents (e.g., pepper spray).[28] Further, the state subjected these prisoners to dangerous levels of heat notwithstanding the added risk of heat-related illness faced by prisoners taking psychotropic medications.[29] Based on the evidence, Dr. Haney concluded that,

ñ[t]he adverse consequences of exposure to these conditions can be extreme and even irreversible, including the loss of psychological stability, significantly impaired mental functioning, the inability to function in social settings and personal relationships, self-mutilation and harm, and even death.ò[30]

Based on these conclusions, the Special Rapporteur issued multiple recommendations, including prohibiting the use of prolonged solitary confinement (defined as exceeding 15 days) and solitary confinement for indefinite periods, and excluding any person below 18 years of age and persons with mental disabilities from solitary confinement.[46]

The Inter-American Commission on Human Rights has emphasized that ñ[i]n essence, solitary confinement should only be used on an exceptional basis, for the shortest amount of time possible and only as a measure of last resort. Additionally, the instances and circumstances in

a. State the number of prisoners held in solitary confinement in the last 24 months who have a Medical Duty Status (MDS) Assignment for mental illness or mental retardation, as set forth in Chapter 2 of the Federal Bureau of Prisons, Program Statement 5310.12 ñPsychology Services Manualò (pp. 12-13);

b. State the number of suicides or other incidents of self-harm in the last 24 months among prisoners held in solitary confinement.

2. What measures are required by federal, state, and local governments to limit or regulate the imposition of solitary confinement on particularly vulnerable detainees, including children, non-citizens, the elderly, persons with mental illness or

[1] *See*

[37] PERIODIC REPORT TO THE COMMITTEE AGAINST TORTURE ¶212.
[38] *See* 42 U.S.C. §1997a(a) (limiting DOJ to litigating against a ñState or political subdivision of a State, official, employee, or agent thereof, or other person acting on behalf of a State or political subdivision of a State . . . .ò).
[39] PERIODIC REPORT TO THE COMMITTEE AGAINST TORTURE ¶214.
[40] Declaration of Jeffrey L. Metzner, M.D., in Support of Plaintiffs' Motion for Class Certification, *Cunningham v. BOP*, No. 1:12-cv-05170 (D. Colo. filed Dec. 20, 2013) (Doc. No. 149-6) at ¶21 [*hereinafter* ñMetzner Declarationò].
[41] Metzner Declaration ¶20.
[42] *See* GAO REPORT OF IMPROVEMENTS NEEDED at 41. In its reply submitted prior to the final publication of the report, BOP represented that it would conduct a study of restricted housing at the ADX facility, with the exception of H Unit. *See* GAO REPORT OF IMPROVEMENTS NEEDED at 64.
[43] U.N. Human Rights Comm., *Concluding Observations of the Human Rights Committee: United States of America* ¶20 (2014), U.N. Doc. CCPR/C/USA/CO/4/ [*hereinafter* HUMAN RIGHTS COMMITTEE CONCLUDING OBSERVATIONS].
[44] HUMAN RIGHTS COMMITTEE CONCLUDING OBSERVATIONS ¶20.
[45] Letter from Juan E. Méndez, United Nations Special Rapporteur on the question of torture
and other cruel, inhuman or degrading treatment or punishment, to Senator Dick Durbin, Chairman, Subcommittee on the Constitution, Civil Rights, and Human Rights, Senate Committee on the Judiciary, Feb. 24, 2014, at 2, *available at* http://antitorture.org/wp-content/uploads/2014/02/Special-Rapporteur-on-Torture-Submission-to-Second-Congressional-Hearing-on-Solitary-Confinement.pdf.
[46] Letter from Juan E. Méndez at 2-4.
[47] INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, ORGANIZATION OF AMERICAN STATES, REVISION OF THE UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS ¶ 411, UNODC/CCPCJ/EG.6/2014/INF/2 (Oct. 8, 2013), *available at* http://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/IEGM_Brazil_Jan_2014/IACHR_English.pdf.
[48] INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, ORGANIZATION OF AMERICAN STATES, ANNEX TO THE PRESS RELEASE ISSUED AT THE CLOSE OF THE 147TH SESSION, 023A (Apr. 5, 2013), *available at* http://www.oas.org/en/iachr/media_center/PReleases/2013/023A.asp.
[49] ACLU, UNFINISHED BUSINESS: TURNING THE OBAMA ADMINISTRATIONôS HUMAN RIGHTS PROMISES INTO POLICY (Mar. 21, 2012), https://www.aclu.org/files/assets/unfinished_business_aclu_final.pdf.

Denial of Access to Justice under the Prison Litigation Reform Act

I. Issue Summary

In 1996, Congress passed the Prison Litigation Reform Act (PLRA) with the stated purpose of curtailing allegedly frivolous litigation by prisoners.[1] However, since its enactment, the PLRA has had a disastrous effect on the ability of prisoners to seek protection of their rights, creating numerous burdens and restrictions on lawsuits brought by prisoners in the federal courts.[2] As a result of these restrictions, prisoners seeking a remedy for injuries inflicted by prison staff and others, or seeking the protection of the courts against dangerous or unhealthy conditions of confinement, have had their cases dismissed. Three provisions in particular affect the ability of prisoners, most of whom have no access to legal counsel, to bring their claims before the federal courts.

these complex administrative systems are virtually impossible to navigate. Third, prisoners who file grievances may be subject to threats and retaliation. [14] All these factors bar prisonersô access to the courts and deny them remedies for serious violations of their rights.

The provisions of the PLRA also apply to children confined in prisons, jails, and juvenile detention facilities.[15] Application of the PLRA to children is especially problematic because

reiterated civil societyôs concerns regarding obstacles to access justice and legal remedies and recommended to amend the PLRA.[22]

V. Recommended Questions

1. Has the United States determined how many lawsuits alleging torture or cruel, inhuman or degrading treatment or punishment are dismissed pursuant to the provisions of the PLRA?

VI. Suggested Recommendations

1.

FEMALE INMATES IN OHIO (Dec. 2003), *available at* http://www.spr.org/pdf/sexabuseohio.pdf (including discussion of sexual assaults by staff in juvenile wing of facility); ACLU OF HAWAIÔI, HAWAIÔI YOUTH CORRECTIONAL FACILITY TO PAY OVER HALF A MILLION DOLLARS FOR óRELENTLESS CAMPAIGN OF HARASSMENTô OF GAY AND TRANSGENDER YOUTH (June 15, 2006) (threats of violence and physical and sexual assault), *available at* http://www.aclu.org/lgbt-rights_hiv-aids/hawaii-youth-correctional-facility-pay-over-half-million-dollars-relentless-cam;

Prolonged and Indefinite Immigration Detention

I. Issue Summary

brotherôs real estate business. A year and a half later, Mr. Scarlett was summoned to a DHS office, charged with removability based on his drug possession conviction, and was summarily detained without a bond hearing. Mr. Scarlett remained in mandatory detention for the next five years. In 2009, Mr. Scarlett filed a pro se habeas petition in federal court, which granted his petition and ordered a bond hearing, where Mr. Scarlett ultimately won his release.[4]

Lobsang Norbu, a Buddhist monk from Tibet, fled China after he had been arrested, incarcerated, and tortured on the basis of his religious and political beliefs. Upon arrival in the US, he sought asylum and was immediately placed in immigration detention pending adjudication of his claim. Although the American Tibetan community pledged to provide him lodging and ensure his appearance at any hearings, DHS denied his request for release on parole, a decision that DHS claims is unreviewable by an immigration judge. As a result, Mr. Norbu spent approximately 14 months in detention before he ultimately won asylum and was released.

Amadou Diouf suffered 20 months of detention while litigating the denial of his motion to reopen his removal proceedings on the basis of his prima facie eligibility for adjustment of status. The only process Mr. Diouf was provided during his detention was a file review by ICE, after which he received ICEôs decision to continue his imprisonment: a single, boilerplate sentence. Mr. Diouf won his release only after filing a habeas action in district court, after which an immigration judge ordered his release on $5,000 bond.

III. CAT Position

The Committee against Torture has earlier recognized that all persons deprived of their liberty are entitled to certain basic guarantees, including the right to challenge the legality of their detention.[5] Individuals in immigration detention in the United States, however, are unable to meaningfully challenge their detention, even when it becomes prolonged in nature, when the US government refuses to provide a bond hearing where the individualôs detention can be evaluated and reviewed. For this review, the Committee asked the US government to describe steps taken to ensure that immigration laws are not used to detain individuals with more limited protections than exist in the criminal justice setting.[6] In response, the US government defended the constitutionality of pre-deportation detention and observed that ñ[a]liens subject to mandatory detention under the immigration laws, may [] file petitions for writs of habeas corpus to challenge the legality of their detention. In addition, an alien may challenge in a hearing

cited in the US response are complex, often slow, and not easily accessed by most immigration

2. Since 2013, pursuant to court order in *Rodriguez v. Robbins*, immigrants detained more than six months within the region of the Ninth Circuit have been given bond

[13] U.N. Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante: Mission to the United States of America* ¶¶122-

Conditions of Confinement in US Immigration Detention Facilities

I. Issue Summary

Every day, tens of thousands of noncitizens are administratively detained in jails and prisons throughout the United States. Despite years of advocacy and some additional oversight, these detention facilities, generally run by Immigration and Customs Enforcement (ICE), continue to continue to be plagued by inhumane conditions, including over-use of solitary confinement and sexual assault. In short-term custody cells and facilities, run by Customs and Border Protection (CBP) along the US border, adults and unaccompanied children have been subjected to abuse, harassment, and mistreatment.

Sexual assault

Sexual assault and abuse against detained immigrants, including children and LGBT[1] and trans individuals, is not a new crisis.[2] The Government Accountability Office examined 215 allegations of sexual abuse and assault in ICE detention facilities from October 2009 through March 2013 and found that detainees face challenges in reporting abuse. [3] Even when detainees do report it, many local ICE offices fail to inform headquarters.[4] In 2013, the US government extended the protections of the Prison Rape Elimination Act (PREA)[5] to immigration detainees (although final regulations were not issued until 2014).[6] However, these protections have not been fully implemented; notably, privately-owned contracted detention facilities and local jails have not been required to fully and immediately comply with PREAôs standards.[7] Moreover, despite these reforms, abuse and mistreatment of vulnerable immigrant populations continues. For example, the US government continues to detain trans female detainees in menôs facilities, placing them in predictable danger.[8]

As recently as September 30, 2014, a complaint was filed with DHS and ICE demanding the immediate investigation of and swift response to widespread allegations of sexual abuse and harassment at one of the newest family detention centers in Karnes City, Texas.[9] The Karnes facility, which opened in August 2014, currently holds over 500 women and children, many of whom have fled violence and persecution in Central America, and is privately operated by the The GEO Group, Inc. The complaint cites abuse allegations such as removing female detainees from their cells late in the evening and early morning hours for the purpose of engaging in sexual acts in various parts of the facility, calling detainees their ñnovias,ò or ñgirlfriendsò and requesting sexual favors from female detainees in exchange for money or promises of assistance with their pending immigration cases, and kissing, fondling, and/or groping female detainees in front of other detainees, including children.[10]

Unaccompanied children are particularly vulnerable to abuse and face unique barriers in reporting that abuse due to their immigration status, language, social, and cultural barriers. Even before the recent increase in the numbers of unaccompanied migrant children in Department of Health and Human Services (HHS) custody, there were many documented cases of sexual abuse

of these children by staff.[11] Under the Violence Against Women Reauthorization Act of 2013, HHS, which is responsible for the care and welfare of unaccompanied minors in removal proceedings, is required to implement regulations protecting children from sexual assault. To

3. What steps has the US taken to ensure that its directive on solitary confinement in immigration detention is uniformly and properly enforced in all facilities housing immigration detainees?

4. What steps has ICE/DHS taken in response to the September 2014 complaint re Karnes sexual abuse complaint? Have any of the families detained in Karnes (as of September 30, 2014) been deported from the U.S.? What assurances/safeguards has the US government taken to ensure that none of the victims or witnesses to the alleged Karnes sexual abuse is deported? Has ICE screened Karnes detainees for U visa relief? Has ICE permitted non-profits to screen mothers detained at Karnes (as of September 30, 2014) for U visa relief?

VI. Suggested Recommendations

1. Ensure that all facilities where immigrants are detained have fully implemented PREA and other federal regulations to prevent sexual assault, limit the use of solitary confinement, and protect transgender and LGBT detainees.

2. Institute regular monitoring and audits of all facilities used for administrative detention of immigrants, and publicly report on each facilityôs compliance, to ensure that detention conditions are humane and that federal regulations are uniformly and consistently implemented.

3. Terminate the ICE-GEO contract for the Karnes family detention facility, and release all families detained at Karnes on reasonable bond or place them on alternatives to detention.

[1] SHARITA GRUBERG, CENTER FOR AMERICAN PROGRESS, DIGNITY DENIED: LGBT IMMIGRANTS IN U.S. IMMIGRATION DETENTION (Nov. 2013), *available at* http://cdn.americanprogress.org/wp-content/uploads/2013/11/ImmigrationEnforcement.pdf . A June 2011 report from

http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2013feb26_abuseinconfinementfacilities_l.authcheckdam.pdf; National

[28] UN Human Rights Committee, ñConcluding observations on the fourth periodic report of the United States of America,ò April 23, 2014, para. 20, *available at* http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fUSA%2fCO%2f4&Lang=en

[29]

Administrative Family Detention

I. Issue Summary

attorney would actually facilitate their deportation, and allowing insufficient time for attorneys and clients to meet before the client must go forward in an asylum interview.[15]

III. CAT Position

The Committee against Torture has recognized the responsibility of states both to prevent ill-treatment and to provide redress and care for those subjected to torture or ill-treatment. For example, the Committee earlier noted that States have a responsibility to provide rehabilitative services for victims of torture, including ñcommunity and family-oriented assistance and servicesò and recognizing that ñvictims may be at risk of re-traumatization and have a valid fear of acts which remind them of the torture or ill-treatment they have endured.ò[16] Many of the families arriving in the U.S. seeking asylum have escaped torture and persecution and yet, upon arrival in the U.S., are detained in prison-like facilities and monitored by armed guards. In its second general comment, the Committee also observed that States are responsible preventing ill-treatment of all individuals in their custody, including in detention as well as in institutions providing care for children.[17]

In 2010, the Committee requested that the U.S. government provide information on conditions of detention for children and steps taken to address ill-treatment of detained women, as well as for information regarding inadequate medical care for women in immigration detention.[18] In its responsive 2013 report to the Committee, the U.S. government acknowledged that it detains families in removal proceedings in one facility in Pennsylvania, and stated that the environment in that facility ñempowers parents to continue to be responsible for their children, including for their supervision and discipline.ò[19] With respect to this last point, advocates are concerned that family detention in fact breaks down family structures and relationships because it is the immigration officer who is charge of discipline, meals, and availability of basic sanitation and social services.[20] But more generally, the U.S. response does not address the necessity of family detention, despite the deleterious effects of detention on children and their parents, and in spite of the availability of alternatives to detention. Since the U.S. response was submitted, moreover, the U.S. government has dramatically expanded the use of family detention, even though detention of children, whatever the conditions, is internationally recognized as objectionable.

IV. Other UN and Regional Human Rights Bodies Recommendations

In the United States, the detention of families, including those with young children, is part of a larger scheme of administrative detention for immigrants, one which the Committee on the Elimination of Racial Discrimination recently called upon the United States to reform so that detention decisions were based on an individualized assessment.[21] In recent years, international consensus and human rights law have cautioned against the use of administrative immigration detention, particularly for children detained with or without their families.[22] The United Nations

period of time possible. Use and expand the use of alternatives to detention in place of institutional detention.

2. Ensure that administrative detention, when absolutely necessary, comply with all human rights obligations to provide humane treatment and care, including medical, legal, and social services.

3. Investigate all complaints regarding conditions of confinement or abuse, ensure that officers who abuse immigration detainees are held accountable, and revise oversight protocol, training, and other policies to prevent inappropriate conditions of confinement or officer behavior in the future.

[1] *See* Customs and Border Protection, ñSouthwest Border Unaccompanied Alien Children (0-

ns_act_2014.pdf.; Dara Lind, *Inside the remote, secretive detention center for migrant families*, Vox News (July 24, 2014), *available at* http://www.vox.com/2014/7/24/5932023/inside-the-remote-secretive-detention-center-for-migrant-families.

[14] Laura W. Murphy, Family detention: A shame and a waste, The Hill (Aug 1, 2014), *available at* http://thehill.com/blogs/congress-blog/civil-rights/214001-family-detention-a-shame-and-a-waste; Eleanor Acer, *Immigrant Families Not Treated Properly*, ALBUQUERQUE JOURNAL, (Aug. 3, 2014), *available at* http://www.abqjournal.com/439865/opinion/immigrant-

Life-without-Parole Sentences

I. Issue Summary

Life in prison without a chance of parole is, short of execution, the harshest imaginable punishment. Life without parole (LWOP) is permanent removal from society with no chance of reentry, no hope of freedom. One would expect the U.S. criminal justice system to condemn someone to die in prison only for the most serious offenses. Yet across the United States, at least 3,278 people are serving life sentences without the possibility of parole for nonviolent crimes as petty as siphoning gasoline from an 18-wheeler, shoplifting three belts, breaking into a parked car and stealing a womanôs bagged lunch, or possessing a bottle cap smeared with heroin residue. Many thousands more are serving life without parole for other non-homicide offenses, or are serving mandatory sentences of life imprisonment without parole for crimes committed as adults. More than 2,500 other individuals are serving life sentences without the possibility of parole for crimes committed when they were children. These prisoners will languish in prison until they die, irrespective of whether they pose a threat to society or have been rehabilitated.

Human rights law and principles have long required proportionality between the seriousness of the offense and the severity of the sentence. These disproportionately severe sentences violate fundamental rights to humane treatment, proportionate sentence, and rehabilitation, and they constitute a form of cruel, inhuman, or degrading punishment[1] in violation of Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).[2]

Rise in Life-without-Parole Sentences

robbery, carjacking, and battery.[7] In 29 states, a LWOP sentence is mandatory upon conviction of particular crimes, thus denying judges any discretion to consider the circumstances of the crime or the defendant.[8]

Life-without-Parole Sentences for Nonviolent Offenses

According to data collected and analyzed by the ACLU, 3,278 prisoners are serving LWOP for drug, property, and other nonviolent crimes in the United States as of 2012.[9] Nearly two-thirds of prisoners serving LWOP for nonviolent offenses nationwide are in the federal system; of these, 96 percent are serving LWOP for drug crimes. Of the states that sentence people to LWOP for nonviolent offenses, Louisiana, Florida, Alabama, Mississippi, South Carolina, and Oklahoma have the highest numbers of such prisoners, largely due to three-strikes and other habitual offender laws that mandate a LWOP sentence for the commission of a nonviolent crime if the person has previously been convicted of certain prior felonies, which need not be violent or even serious in most of these states.

An ACLU sample study of prisoners serving life without paro

Significantly, the rulings leave open the possibility of judges imposing LWOP sentences in homicide cases, even where the child played a minimal role such as a ñlookoutò or accomplice, and courts continue to impose the sentence.[14] While many of the individuals who were sentenced to mandatory terms of life without the possibility of parole for crimes that

II. Human Stories

Kevin Ott is serving life without parole for three-and-a-half ounces of methamphetamine. When Ott was on parole for marijuana charges, parole officers found the drug and paraphernalia in a warrantless search of the trailer in which he was living. He was sentenced t

that the United States considers itself bound by the obligation to prevent cruel, inhuman or degrading treatment or punishment under Article 16 ñonly insofar as the term ócruel, inhuman or degrading treatment or punishmentô means the cruel, unusual and inhumane treatment or punishment prohibited by the…Constitution of the United Sates.ò[44] The U.S. Government also

VII. Suggested Recommendations

1. Abolish the sentence of life without parole for non-homicide offenses. Congress should eliminate all existing laws that either mandate or allow for a sentence of LWOP for a non-homicide offense. State legislatures should repeal all existing laws or the portions of such laws that either allow for or mandate a sentence of life without parole for a non-homicide offense. Such laws should be repealed for non-homicide offenses, regardless of whether LWOP operates as a function of a three-strikes law, habitual offender law, or other sentencing enhancement. Make elimination of non-homicide LWOP sentences retroactive and require resentencing for all people currently serving LWOP for nonviolent offenses.

2. Abolish the sentence of life without parole for offenses committed by children under 18 years of age. Enable child offenders currently serving life without parole to have their cases reviewed by a court for resentencing, to restore parole eligibility and/or for a sentence reduction.

[13] *Miller v. Alabama*, 132 S. Ct. 2455 (2012).
[14] For example, despite *Miller*, since the ruling five youth in Michigan have been sentenced to life without possibility of parole. *See, e.g.*, Gary Ridley, *Flint teen gets life in prison without parole in first-of-its-kind juvenile sentencing hearing*, MLIVE (Aug. 20, 2013), *available at* http://www.mlive.com/news/flint/index.ssf/2013/08/flint_teen_gets_life_in_prison.html.
[15] The seven states whose high courts have ruled that *Miller* applies retroactively are Nebraska, Illinois, Iowa, Massachusetts, Mississippi, New Hampshire, and Texas. *See* Marsha Levick, Juvenile Law Center, *Between Hope and Despair, Waiting for Meaningful Implementation of Miller v. Alabama*, HUFFINGTON POST (June 24, 2014); THE SENTENCING PROJECT, SLOW TO ACT: STATE RESPONSES TO 2012 SUPREME COURT MANDATE ON LIFE WITHOUT PAROLE (2014), *available at* http://sentencingproject.org/doc/publications/jj_State_Responses_to_Miller.pdf.
[16] *See Commonwealth v. Cunningham*, 81 A.3d 1 (Pa. 2013), *cert. denied*, 82 U.S.L.W. 3555 (2014); *Louisiana v. Tate*, No. 2012-OK-2763, 2013 WL 5912118 (La. Nov. 5, 2013), *cert. denied*, No. 13-8915 (May 27, 2014).
[17] *See Evans v. Ohio*, Case No. 2013-1550 (Ohio 2014) *cert denied*, No. 14-5425 (Oct. 6, 2014).
[18] *See* Marsha Levick, Juvenile Law Center, *Between Hope and Dedenie Dedenin*

[35] State Ex Rel Jackson v. State, 1999-KH-2705 (La. 3/31/00).
[36] Letter to the ACLU from Timothy Jackson, Louisiana State Penitentiary, Angola, Louisiana, Apr. 23, 2013.
[37] Letter from Judge Michael R. Snipes, Criminal District Court #7, Dallas County Veterans Court, former federal prosecutor who tried Dicky Joe Jacksonôs case, Jan. 30, 2013 (stating ñI saw no indication that Mr. Jackson was violent, that he was any sort of large scale narcotics trafficker, or that he committed his crimes for any reason other than to get money to care for his gravely ill child.ò)
[38] ACLU telephone interview with Dicky Joe Jackson, Forrest City Medium Federal Correctional Institution, Forrest City, Arkansas, Mar. 12, 2013.
[39] *Id*.
[40] *Id*.
[41] Comm. Against Torture, Conclusions and Recommendations of the Committee Against Torture: United States of America, ¶ 34, 36th Sess., May 1-19, 2006, U.N. Doc. CAT/USA/CO/2 (July 25, 2006).
[42] *Id*.
[43] U.S. Depôt of State, *Third to Fifth Periodic Reports of the United States to the Committee Against Torture* ¶202 (Dec. 4, 2013), U.N. Doc. CAT/C/USA/3-5.
[44] Comments by the United States of America to the Conclusions and Recommendations of the Committee against Torture, ¶ 31, 36th Sess., May 1-19, 2006, U.N. Doc. CAT/USA/CO/2/Add.1 (Nov. 6, 2007).
[45] *Id*. ¶ 32.
[46] Response of the Government of the United States of America to the Inter-American Commission on Human Rights Concerning the March 25, 2014 Hearing Before the Commission, *Henry Hill, et al. v. United States of America*, Case No. 12.866 (May 6, 2014) *available at* https://www.aclu.org/sites/default/files/assets/usg_response.pdf.
[47] Human Rights Comm., Concluding Observations of the Human Rights Committee on the Fourth Periodic Report of the United States of America, ¶ 23, 110th Sess., March 10-28, 2014, U.N. Doc. CCPR/C/USA/CO/4 (April 23, 2014).
[48] *Id*.
[49] *Id*. ¶ 6.
[50] Human Rights Comm., Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee, ¶ 34, U.N. Doc. CCPR/C/SR.2395 (July 27, 2006) (noting that ñsentencing children to a life sentence without parole is of itself not in compliance with article 24(1) of the Covenant.ò) .
[51]

The Death Penalty

I. Issue Summary

Since 1976, when the modern death penalty era began in this country,[1] 1,389 people have been executed.[2] As of July 2014, there were 3,049 people awaiting execution across the country.[3] The U.S. death penalty system in 32 states, the federal system, and the military violates international law and raises serious concerns regarding the United Statesô international legal obligations under the Convention against Torture.

There continue to be positive developments regarding the death penalty in the United States. The number of new death sentences continues to drop, and on May 2, 2013, Maryland became the sixth state in six years to repeal the death penalty. Despite these positive signs, the U.S. death penalty system remains fraught with problems.

Although the Supreme Court has held that one current method of lethal injection used in the U.S. is constitutional,[4] that method depended upon a drug that is no longer available after its manufacturer objected to the use of the drug for executions. States have hurriedly switched to new, untested methods, with little information released or oversight allowed.[5] As a result, many states ð

II. Human Stories

On April 29, 2014, Clayton Lockett suffered an excruciating death using an untested drug protocol, in the state of Oklahoma. Prison officials had severe difficulty locating a vein and finally located one in his groin. Mr. Lockett writhed, breathed heavily, clenched his teeth, and tried to rise off the bed. The warden, finally realizing that something had gone horribly wrong, called off the execution. Mr. Lockett died shortly thereafter of a heart attack. The State never disclosed the source of the drugs or their efficacy.

On January 16, 2014, Denis McGuire gasped for about 25 minutes while the drugs used in his execution took effect. Witnesses reported that Mr. McGuire was heaving, making horrible snorting and choking sounds, appearing to writhe in pain.

On July 23, 2014, in the state of Arizona, Joseph Wood choked and snorted for over an hour after the drugs were injected.

Henry Lee McCollum, a Black man, spent nearly three decades on North Carolinaôs death row before DNA evidence exonerated him just last month. His half-brother Leon Brown, who was serving a life sentence but had previously spent 12 years on death row for the same crime, was also exonerated. When Mr. McCollumôs case had been before the United States Supreme Court years earlier on a challenge to the constitutionality of lethal injection, Justice Antonin Scalia held up Mr. McCollum as an example of someone who deserved to die.[14]

III.

IV. U.S. Government Response

In the fast-moving and ever-changing realm of executions by lethal injection in the United States, the information in the United Statesô response is inaccurate and severely outdated. The United States maintains, for example, that ñexecution procedures utilized in the United States are carried out in a humane manner by appropriately trained and qualified personnel, and have been effectively utilized by the states and federal government.ò[15]

Recently, in fact, the White House itself characterized the gruesome execution of Clayton Lockett as falling short of the requirement that the death penalty be carried out humanely. On May 2, 2014, President Obama tasked Attorney General Eric Holder with conducting a full policy review of capital punishment in the U.S., acknowledging both the cruelty of lethal injections and racial disparities in sentencing. It is unclear what type of investigation or review Attorney General Holder will conduct and no further information has been provided at this time.[16]

At the Committeeôs request, the U.S. government included information on the failed execution of Romell Broom on September 15, 2009 in Ohio. The U.S. government report, which was submitted in August 2013, does not mention the subsequent botched execution of Dennis McGuire earlier this year. The governmentôs statement that executions are now on hold in Missouri is outdated. Missouri, in fact, has emerged as a leader in executions, second only to Texas in the number of people executed this year, and an investigative report by St. Louis Public Radio revealed that Missouri state officials deliberately hid crucial facts about the stateôs lethal injection drugs and their administration.[17] In light of this new information, four justices of the U.S. Supreme Court voted to halt Missouriôs most recent execution of Earl Ringo, Jr., but were one vote short of the required majority.

V. Other UN and Regional Human Rights Bodies Recommendations

In its most recent review of the United States, the Human Rights Committee welcomed news of the decline in executions and increasing number of abolitionist states, it remained concerned about the racial bias in the administration of the death penalty, the high number of exonerations from death row, and the ñreports about the administration, by some states, of untested lethal drugs to execute prisoners and the withholding of information about such drugs (arts. 2, 6, 7, 9, 14 and 26).ò[18]

The Human Rights Committee recommended, among other things, that the United States should take measures to ensure that the death penalty is not tainted by racial bias[19]; to strengthen safeguards to protect against wrongful convictions and executions; to ñensure that lethal drugs used for executions originate from legal, regulated sources, and are approved by the United States Food and Drug Administration and that information on the origin and composition

of such drugs is made available to individuals scheduled for executionò; and to consider a federal moratorium on the death penalty.[20]

In his 2012 report to the UN General Assembly, the UN Special Rapporteur on torture, Juan Mendez, expressed concern about lethal injection as practiced in the United States. He explained that ñthe conventional view of lethal injection as a peaceful and painless death is questionableò and stated that experts believe lethal injection protocols in the United States ñprobably violate the prohibition of cruel and unusual punishment.ò [21] Special Rapporteur Mendez also explained that ñdeath row phenomenonò produces ñsevere mental trauma and

[1] *Gregg v. Georgia*, 428 U.S. 153 (1976); *Proffitt v. Florida*, 428 U.S. 242 (1976); *Jurek v. Texas*, 428 U.S. 262 (1976); *Woodson v. North Carolina*, 428 U.S. 280 (1976); *Roberts v. Louisiana*, 428 U.S. 325 (1976).
[2] Executions by Year, Death Penalty Information Center, http://www.deathpenaltyinfo.org/executions-year.
[3] NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, DEATH ROW U.S.A. (Summer 2014), *available at* http://www.naacpldf.org/files/publications/DRUSA_Summer_2014.pdf.
[4] Baze v. Rees, 553 U.S. 35 (2008).
[5] Lethal Injection ð Changes to state execution protocols, Death Penalty Information Center, http://www.deathpenaltyinfo.org/lethal-injection-moratorium-executions-ends-after-supreme-court-decision#changes.
[6] Compounding Pharmacies and Lethal Injection, Death Penalty Information Center, available at http://www.deathpenalty

Racial Profiling

I. Issue Summary

Racial profiling in law enforcement is a persistent problem in the United States. Although

Border enforcement: In the past decade, the federal government has made unprecedented financial investments in border enforcement without creating corresponding oversight mechanisms, leading to an increase in serious human and civil rights violations, including the racial profiling and harassment of Native Americans, Latinos, and other people of color.[5] The ACLU has documented numerous cases of profiling at ports of entry, the use of internal checkpoints, and the spread of Border Patrol roving patrols. The federal government asserts near limitless authority to conduct suspicionless investigative stops and searches within a ñreasonable distanceò from the border; outdated federal regulations define this distance as 100 air miles from any external U.S. boundary.[6] This area includes roughly two-thirds of the U.S. population, several entire states, and nine of the countryôs ten largest metropolitan areas.[7] Federal agents also overuse and exceed their statutory authority to enter private property without a warrant within 25 miles of any border (except dwellings).[8]

Immigration Enforcement: ñSecure Communitiesò and ñSection 287(g) Agreementsò are programs that have led to extensive racial profiling by local police.

> Section 287(g) of federal immigration law allows state and local law enforcement agencies to enter into an agreement with the federal Immigration and Customs
>
> turns state and local law enforcement officers into immigration agents, many of whom are not adequately trained, and some of whom improperly rely on race or ethnicity as a proxy for status as an undocumented immigrant. The predictable result is that any person who looks or sounds ñforeignò is more likely[9] to be stopped by police and more likely to be arrested (rather than warned, cited, or simply let go) when stopped.[10]
>
> Secure Communities is a program under which everyone arrested and booked into a local jail has their fingerprints checked against Immigration and Custom

take him or her into federal custody. The number of detainers has soared in recent years, with more than 270,000 issued in 2012 alone. This compares to about 80,000 in 2008, prior to the rollout of Secure Communities.[13] Determinations to issue detainers are made with limited verification of information and no supervisory approval at DHS headquarters. Indeed, deputized state and local police under the 287(g) program issue detainers on their own. Detainers request detention without a constitutionally required judicial determination of probable cause. As a result, state and local authorities may improperly detain people who are misidentified or profiled through these programs ð including U.S. citizens ð or people who are not immigration enforcement priorities and may be eligible for immigration relief. In addition, in some cases, jurisdictions have held individuals for longer than 48 hours, including a case in New Orleans, Louisiana, in which local police held an immigrant on a detainer in excess of 160 days.[14] In response to the negative impacts on local communities, jurisdictions in several states have passed laws or policies that limit compliance with U.S. Immigration and Customs Enforcement detainers in some fashion.

As can be seen, the result of these broad exemptions and omissions is that the Guidance sanctions profiling against almost every minority community in the United States in violation of Article 16 of the Convention which requires prevention of acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture. Allowing profiling in ñborder integrityò investigations disproportionately impacts Latino communities and communities living and working within the 100-mile zone; profiling in national security investigations has led to the inappropriate targeting of Muslims, Sikhs, and people of Arab, Middle Eastern, and South Asian descent. In fact, U.S. Border Patrol recently settled a lawsuit brought by the ACLU of Washington and allied organizations, which challenged Border Patrolôs practice of routinely stopping vehicles on Washingtonôs Olympic Peninsula and interrogating occupants about their immigration status based solely on the occupantsô racial and ethnic appearance.[15] Moreover, given the diversity of the American Muslim population, the failure to ban religious profiling specifically threatens African-Americans as well, who comprise from one-quarter to one-third of American Muslims.[16]

II. Human Stories

Ernest Grimes is a resident of Neah Bay, Washington, a correctional officer at Clallam Bay Corrections Center, and a part-time police officer. In 2011 near Clallam Bay, a Border Patrol agent stopped the vehicle in which Mr. Grimes was traveling, approached with his hand on his weapon, and yelled at Mr. Grimes to roll down his window. Without offering a reason for the stop, the agent interrogated Mr. Grimes about his immigration status. Mr. Grimes, who is African-American, was wearing his correctional officer uniform at the time.[17]

Hamid Hassan Raza is an American citizen living with his wife and child in Brooklyn, New York. He serves as imam at Masjid Al-Ansar, a Brooklyn mosque, where he leads prayer services, conducts religious education classes, and provides counseling to members of the community. The New York City Police Department has subjected Imam Raza to suspicionless surveillance since at least 2008, and, as a result, he has had to take a range of measures to protect himself. For example, he records his sermons out of fear that an officer or informant will misquote him, or take a statement out of context. He also steers clear of certain religious topics or current events in his sermons and conversations, so as to avoid statements that the NYPD or its informants might perceive as controversial. Imam Razaôs knowledge and fear of suspicionless police scrutiny have diverted his time and attention from ministry and counseling while chilling his ability to speak on topics of religious and community importance. The NYPDôs unlawful surveillance prevents Imam Raza from fulfilling his duty as a religious minister, educator, and scholar in the Masjid Al-Ansar community.[18]

policies, which indirectly promote racial profiling, such as the Secure Communities programme and the 287(g) programmeò[24]

In its 2014 Concluding Observations on the United States, the UN Human Rights Committee urged the U.S. to review the 2003 Guidance and to expand the ñprotection against

VII. Suggested Recommendations

1. Revise the Department of Justiceôs Guidance Regarding the Use of Race to: (1)

DEATHS, CROSSING THE LINE: HUMAN RIGHTS ABUSES OF MIGRANTS IN SHORT-TERM CUSTODY ON THE ARIZONA/SONORA BORDER (2008), *available at* http://bit.ly/1o42N6S.

[6] *See* 8 C.F.R. § 287.1(b).

[7]

The Excessive Militarization of Policing

I. Issue Summary

As the nation watched Ferguson, Missouri, in the aftermath of the death of Michael Brown, it saw a highly and dangerously militarized response by law enforcement. Media reports indicate that the Ferguson Police Department responded to protests and demonstrations with ñarmored vehicles, noise-based crowd-control devices, shotguns, M4 rifles like those used by forces in Iraq and Afghanistan, rubber-coated pellets and tear gas.ò[1] Protestors were denied the right to assemble and a curfew was instituted. Almost a dozen reporters were arrested while exercising their First Amendment rights and other journalists reported being harassed and physically removed by police.[2] Veterans from the Iraq and Afghanistan wars expressed horror and shock that they, while on active duty overseas, were less heavily-armed and combative then the local police in Ferguson.[3] Domestic and international media equated the images from Ferguson to familiar ones from combat zones in Iraq and Gaza. Law enforcementôs response in Ferguson gave pause to many, and brought the issue of police militarization to national attention, especially in Washington, where President Obama said ñ[t]here is a big difference between our military and our local law enforcement, and we don't want those lines blurred.ò[4]

Militarized policing is not limited to situations like those in Ferguson or emergency situations ð like riots, barricade and hostage scenarios, and active shooter or sniper situations ð that Special Weapons And Tactics (SWAT) were originally created for in the late 1960s.[5] Rather, SWAT teams are now overwhelmingly used to serve search warrants in drug investigations, with the number of these teams having grown substantially over the past few decades. Dr. Peter Kraska has estimated that the number of SWAT teams in small towns grew from 20% in the 1980s to 80% in the mid-2000s, and that as of the late 1990s, almost 90% of larger cities had them. The number of SWAT raids per year grew from 3,000 in the 1980s to 45,000 in the mid-2000s.[6]

A recent ACLU report titled *War Comes Home: The Excessive Militarization of American Policing*, found that 79% of the incidents reviewed involved the use of a SWAT team to search a personôs home, and more than 60% of the cases involved searches for drugs. We also found that more often in drug investigations, violent tactics and equipment, including armored personnel carriers (APCs) were used. The use of a SWAT team to execute a search warrant essentially amounts to the use of paramilitary tactics to conduct domestic criminal investigations in searches of peopleôs homes. This sentiment is shared by Dr. Kraska, who has concluded that ñ[SWAT teams have] changed from being a periphery and strictly reactive component of police departments to a proactive force actively engaged in fighting the drug war.ò[7]

Just as the War on Drugs has disproportionately impacted people and communities of color, we have found that the use of paramilitary weapons and tactics also primarily impacts

people of color. Of the people impacted by SWAT deployments for warrants, at least 54% were minorities. When data was examined by agency (and with local population taken into consideration), racial disparities in SWAT deployments were extreme. In every agency, African Americans were disproportionately more likely to be impacted by a SWAT raid than whites, sometimes substantially so. For example, in Allentown, Pennsylvania, African Americans were nearly 24 times more likely to be impacted by a SWAT raid than whites were, and in Huntington, West Virginia, African Americans were 37 times more likely. Further, in Ogden, Utah, African Americans were 40 times more likely to be impacted by a SWAT raid than whites were.[8]

The militarization of American policing has occurred in part as a result of federal programs that use equipment transfers and funding to encourage aggressive enforcement of the War on Drugs by state and local police agencies, specifically:

> The Department of Defense 1033 program, which has resulted in the free transfer of over $4 billion worth of military equipment to state and local law enforcement agencies;
>
> The Homeland Security Grant Program, which has provided billions of dollars to state and local law enforcement agencies for ñterrorism prevention-related law enforcement activities,ò though that phrase does not appear to be clearly defined;[9] and
>
> The Department of Justiceôs Edward Byrne Memorial Justice Assistance Grant program, which state and local law enforcement agencies often use to fund lethal and less-lethal weapons, tactical vests, and body armor.[10]

President Obama has ordered a review of these programs. His administration is in the process of evaluating these programs in order to determine whether they are being administered as intended and whether they are effective.

II. Human Stories

After the Phonesavanh familyôs home in Minnesota burned down, they dro70050004C>3604F>116

IV. Other UN and Regional Human Rights Bodies Recommendations

In its 2014 Concluding Observations on the United States, the Committee on the Elimination of Racial Discrimination expressed concern ñat the increasingly militarized approach to immigration law enforcement, leading to the excessive and lethal use of force by the CBP personnelò.[11]

V. Recommended Questions

1. What is the current status of President Obamaôs review of the federal programs that use equipment transfers and funding to encourage aggressive, militaristic enforcement of the War on Drugs by state and local police agencies? Will the Administration implement a moratorium on the 1033 program while the review is being conducted? Will President Obamaôs review be guided by U.S. CAT obligations and other human rights commitments?

2. Is there a legitimate role for the United States government to play in providing free military equipment to state and local law enforcement agencies, in light of the traditional distinction that has been drawn between the military and the police? If so, what is the scope of that role?

3. What steps will the United States government take to ensure that state and local law enforcement agencies are not making inappropriate use of weapons designed for combat and in violation of U.S. human rights obligations? Specifically, will the United States government ban the free transfer of automatic and semi-automatic