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# Concerning the Use of Solitary Confinement in Immigrant Detention Facilities in the United States of America (2013)

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**JOINT SUBMISSION TO THE U. N. COMMITTEE AGAINST TORTURE**

**CONCERNING THE UNITED STATES' MISTREATMENT OF IMMIGRANT  
DETAINEES IN VIOLATION OF THE CONVENTION AGAINST TORTURE  
AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR  
PUNISHMENT**

**IN RELATION TO THE UNITED STATES 5<sup>TH</sup> PERIODIC REPORT ON THE  
CONVENTION AGAINST TORTURE**

**53rd Session, November 12 and 13, Geneva**

**Submitted September 22, 2014**

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**This report is jointly submitted by the following organizations:**

**The John Marshall Law School International Human Rights Clinic**

The John Marshall Law School International Human Rights Clinic (“IHRC”) is a nonprofit, nonpartisan law school legal clinic dedicated to promoting and protecting human rights in the United States and around the world. The IHRC offers students a background in human rights advocacy through the practical experience of working in international human rights cases and projects.

**National Immigrant Justice Center, Heartland Alliance**

Heartland Alliance’s National Immigrant Justice Center (“NIJC”) is a non-governmental organization dedicated to safeguarding the rights of noncitizens. With offices in Chicago, Indiana, and Washington, D.C., NIJC advocates for immigrants, refugees, asylum seekers, and victims of human trafficking through direct legal representation, policy reform, impact litigation, and public education. NIJC and its network of 1,500 *pro bono* attorneys provide legal counsel to approximately 10,000 noncitizens annually. NIJC provides Know Your Rights presentations and direct representation for thousands of adults and children at detention facilities in the Midwest, and provides *pro se* support to detainees nationwide. In addition, NIJC co-chairs the Department of Homeland Security (DHS)-NGO Detention and Enforcement Working Group to monitor detention conditions nationwide, and increase transparency and accountability for the treatment of immigrants in detention.

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## I. Introduction and Summary

Heartland Alliance's National Immigrant Justice Center and The John Marshall Law School's International Human Rights Clinic appreciate the opportunity to submit this report in response to the United States' periodic report relating to the Convention Against Torture ("CAT"). This report addresses the mistreatment and abuse that adult immigrant detainees suffer in U.S. detention facilities. It specifically addresses the widespread and deplorable conditions of detention, the use of solitary confinement, and the serious problem of sexual violence in detention, and how these conditions deter asylum seekers from pursuing legal protections in the United States.

Asylum seekers in search of safety and protection often find themselves arrested and imprisoned upon entry to the United States.<sup>1</sup> Immigrants are criminalized for trying to seek protection and dehumanized by harsh detention conditions.<sup>2</sup> Immigrant detainees are held in prison-like facilities, where they arrive in handcuffs, wear prison uniforms, are guarded by officers in prison attire, visit family through glass barriers, and have little to no freedom of movement within the facilities.<sup>3</sup>

The Committee Against Torture ("Committee") has expressed concern regarding the treatment of immigrant detainees who are or have been subjected to sexual violence and the lack of prompt and independent investigation of such acts;<sup>4</sup> the refoulement of detainees who face real risk of torture;<sup>5</sup> the enforcement of the non-derogable prohibition of torture;<sup>6</sup> and the prevention of cruel, inhuman or degrading treatment or punishment.<sup>7</sup> The Committee has also requested information related to:

- Acts of torture (including acts of psychological torture);<sup>8</sup>
- Domestic legal provisions to implement the principle of the absolute prohibition on torture;<sup>9</sup>
- Guarantees of non-refoulement to all detainees;<sup>10</sup>
- Establishing adequate judicial mechanisms to challenge all refoulement decisions;<sup>11</sup>
- Ensuring specific training for all medical personnel dealing with detainees in the detection of signs of torture and ill-treatment;<sup>12</sup>
- Procedures in place to review the circumstances of detention;<sup>13</sup>
- Ensuring full redress, compensation, and rehabilitation to all victims of acts of torture, including sexual violence;<sup>14</sup> and
- Addressing the ill-treatment of vulnerable groups, in particular migrants and persons of different sexual orientation.<sup>15</sup>

Included in this report are examples of current practices gathered from detention facilities around the United States housing Immigration and Customs Enforcement ("ICE") immigrant detainees. This report does not include a comprehensive list of abuses in immigration detention, but rather focuses on issues that are of particular concern for adult asylum seekers in detention.

The United States' failure to protect the rights of immigrant detainees represents a violation of the CAT Articles 1, 2, 3, 7, 10, 13, 14, 16, as well as United States' obligations under other international and regional human rights instruments and laws.<sup>16</sup> We respectfully

request that the Committee urge the United States to: ensure detention center conditions are humane, expand alternatives to detention (ATDs), implement robust regulations to prevent sexual assault in immigration detention, ensure access to counsel for all detainees, and ensure that all detainees have meaningful opportunities to express fear of return and seek release from detention.

## **II. The United States' International Obligations**

### **A. Impact of Detention on Asylum Seekers and Torture Survivors Can Rise to "Acts of Cruel, Inhuman or Degrading Treatment or Punishment"**

Article 1 of the CAT defines torture as an "any act by which severe pain or suffering is intentionally inflicted on a person."<sup>17</sup> Under Article 16(1) of the CAT, the United States is required to prevent "acts of cruel, inhuman or degrading treatment or punishment...when such acts are committed by...or with the acquiescence of a public official or other person acting in an official capacity."<sup>18</sup> More specifically, this duty includes the obligation to eliminate any legal or other obstacles that permit the recurrence of the torture or ill-treatment.<sup>19</sup> In the context of asylum seekers who re-live the experience of torture, the United States is strictly obligated to prevent the ill-treatment of these detainees. The U.S. must take positive measures to ensure that the recurrence of ill-treatment during detention is effectively prevented.<sup>20</sup>

Asylum in the United States can offer victims of persecution safety and a path to healing, but the traumatic experiences continue for survivors of torture and other forms of violence who are detained upon arrival in the United States.<sup>21</sup> The Center for Victims of Torture has estimated that 6,000 torture survivors were detained while seeking asylum protection between October 2010 and February 2013.<sup>22</sup> Torture survivors often struggle with sleep disorders, anxiety, chronic pain, irritability, suicidal ideation, and depression, and describe themselves as socially estranged and profoundly alone.<sup>23</sup> The long-term impacts of torture in combination with the resulting trauma from being detained can be re-traumatizing.<sup>24</sup> The sense of powerlessness and loss of control involved in being detained can remind torture survivors of the persecution they experienced in their home countries, especially when coupled with the indefinite nature of immigration detention.<sup>25</sup> Particularly for survivors whose torture occurred in a confinement setting, immigration detention can lead to reliving the experiences of torture, contributing to further psychological damage.<sup>26</sup> Additionally, the psychological health of detained asylum seekers worsens the longer that they are detained, and the uncertainty about the length of detention can be a significant source of anxiety and mental distress.<sup>27</sup>

### **B. Right of Non-refoulement**

Article 3(1) of the CAT prohibits States from "expel[ling], return[ing]...or extradite[ing] a person to another State where there are substantial grounds for believing he would be in danger of being subjected to torture."<sup>28</sup> When the United States removes asylum seekers to a jurisdiction where torture is a strong or likely possibility, it is in violation of its obligation under Article 3. This prohibition against refoulement is coupled with the duty to "ensure in its legal systems that the victim of an act of torture obtains redress."<sup>29</sup>

Individuals seeking asylum often find a number of procedural and substantive obstacles to their claims. Noncitizens who are subject to expedited removal can ask for asylum and are entitled to a Credible Fear Interview (CFI) to determine if they have a credible fear of persecution upon return.<sup>30</sup> However, the U.S. Citizenship and Immigration Services' (USCIS) reinterpretation of the credible-fear standard makes this initial requirement to an asylum claim more difficult to show.<sup>31</sup> In order to establish a credible fear of persecution, the asylum seeker must show a "significant possibility" that he or she could establish eligibility for asylum.<sup>32</sup> But that "significant possibility" element now requires demonstrating "a substantial and realistic possibility of succeeding," rather than a minimal or mere possibility of success.<sup>33</sup> Additionally, some immigration officers have improperly encouraged asylum seekers to withdraw their asylum applications, or incorrectly failed to refer them for a CFI.<sup>34</sup> Moreover, detention conditions may deter asylum seekers from pursuing legal protections. When asylum seekers arrive in the United States, they expect to find refuge. Instead, they are frequently shocked to find themselves in a prison-like setting. Asylum seekers are particularly vulnerable to re-traumatization in detention, as described in Section A.

Furthermore, asylum seekers also have no right to government-appointed counsel. Being detained often impedes asylum seekers' ability to obtain legal representation, given the remote location of most detention facilities and poor phone access in detention.<sup>35</sup> This is especially problematic since many asylum seekers cannot afford private legal representation and require *pro bono* legal services. Because the asylum application process is so complex, legal representation can mean the difference between receiving protection and being removed to a country where the asylum seeker will face persecution. According to the New York Immigration Representation Study, 78 percent of represented and non-detained individuals were granted relief, while only three percent of detained and non-represented individuals were granted relief.<sup>36</sup> Further, the asylum application requires considerable resources, including country condition reports, primary documentary evidence, affidavits from witnesses in the home country, and medical and psychological evaluations. These are nearly impossible for asylum seekers to obtain while being detained. Some asylum seekers abandon their asylum claims altogether because of detention conditions. In one case, a woman from Colombia accepted deportation after 17 months of detention, despite having a well-founded fear of persecution, because she could no longer handle the stress of detention.<sup>37</sup>

### **C. Right to be Free from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Immigration Detention**

As mentioned above, torture includes "any act by which severe pain or suffering is intentionally inflicted on a person."<sup>38</sup> The United States has the duty to take effective legislative, administrative, judicial, or other measures to prevent acts of torture or other cruel, inhuman or degrading treatment or punishment, under Articles 2 and 16 of the CAT.<sup>39</sup> This obligation to prevent torture includes the prevention of any ill-treatment.<sup>40</sup> This duty is absolutely non-derogable<sup>41</sup> so that "[n]o exceptional circumstances... may be invoked as a justification."<sup>42</sup>

Article 10(1) also requires that the United States ensure that education and information are fully included in the training of personnel involved in the treatment of detainees,<sup>43</sup> such as those employed in immigration detention facilities.

### **i. Sexual Violence in Immigration Detention**

This Committee has recognized that rape can amount to torture under Article 1 as per the *C.T. and K.M. v. Sweden*<sup>44</sup> and *V.L. v. Switzerland*<sup>45</sup> cases: “The acts concerned, constituting among others multiple rapes, surely constitute infliction of severe pain and suffering perpetrated for a number of impermissible purposes, including interrogation, intimidation, punishment, retaliation, humiliation and discrimination based on gender.”<sup>46</sup>

In addition to the recognition of rape or sexual violence as torture under Article 1, under Article 10(1), the United States is required to ensure that any personnel involved in detention must be trained on the prohibition against torture, including sexual violence committed both by its personnel and in its facilities.<sup>47</sup>

The problem of sexual abuse in ICE detention facilities is widespread and indicates a systematic problem, rather than isolated incidents.<sup>48</sup> The National Prison Rape Elimination Commission (“NPREC”) has reported that persons in immigration detention facilities are especially vulnerable to sexual abuse and its effects because of social, cultural, and language isolation; poor understanding of U.S. culture and the subculture of U.S. prisons; and the traumatic experiences they have endured in their country of origin.<sup>49</sup> The NPREC also reported that immigrant detainees may be especially vulnerable to sexual abuse and assault by detention facility staff, because detainees are confined by the same agency that has the power to deport them.<sup>50</sup> In other words, immigrant detainees fear retaliation by detention facility staff, and they therefore tend to be less likely than other prisoners to challenge abuse and other conditions of their confinement.<sup>51</sup> Detainees who have survived previous sexual violence and torture in detention may be even more hesitant to report abuse.<sup>52</sup>

Immigrants are also vulnerable to sexual assault and abuse in detention from other detainees, especially when they are commingled with criminally-convicted nonimmigrant inmates. For instance, NIJC’s client, Audemio, was attacked and raped in his sleep on his first night in immigration detention. Audemio was the only immigrant in his cell. Despite the fact that Audemio had no criminal history, he was commingled with individuals who are listed on a state sexual and violent offender database.<sup>53</sup>

### **ii. The Use of Solitary Confinement in Immigration Detention**

As mentioned in the previous sections, Articles 1 and 16 of the CAT require that States prevent torture or any ill-treatment.<sup>54</sup> In furtherance of the prevention of torture and ill-treatment, Article 10 requires that ICE “ensure that education and information regarding the prohibition against torture [and “ill-treatment”] are fully included in the training of law enforcement personnel...and other persons who may be involved” in the treatment of individuals in detention,<sup>55</sup> especially as it relates to solitary confinement.



While immigration detention is not intended to be punitive, immigration detention facilities are often indistinguishable from jails, and employ similar correctional policies, including the widespread use of solitary confinement.<sup>56</sup> The restrictions imposed upon those in solitary confinement may include the denial of recreation opportunities, access to lawyers and legal materials, and family visitation, and is often used as a control mechanism against those who have helped file complaints about detention conditions.<sup>57</sup> Staff often segregate individuals with mental illnesses, or who identify as Lesbian, Gay, Bisexual, or Transgender, rather than addressing their unique circumstances and vulnerabilities.<sup>58</sup> These populations are frequently placed in solitary confinement against their wishes, but allegedly it is for their own protection.<sup>59</sup>

The health effects of solitary confinement have long been documented by researchers, and are seen even among prisoners with no prior history of mental illness.<sup>60</sup> Detainees suffering from previous mental health issues, such as those caused by torture or abuse, tend to experience even further deterioration of their mental health while in solitary confinement.<sup>61</sup> Those with preexisting psychiatric disorders are frequently placed in solitary confinement so staff can avoid dealing with detainees' mental illnesses.<sup>62</sup> Studies have also found continued health problems long after release from isolation, such as sleep disturbances, depression, anxiety, confusion, and impaired memory and concentration.<sup>63</sup> The United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has pointed out that prolonged solitary confinement may amount to an act of torture and other cruel, inhuman or degrading treatment or punishment and recommended that solitary confinement should not be used in the case of minors or the mentally disabled.<sup>64</sup> Additionally, solitary confinement, when used for the purpose of punishment, cannot be justified for any reason, precisely because it imposes severe mental pain and suffering beyond any reasonable retribution for criminal behavior and thus constitutes torture or ill-treatment as defined in Article 1 or Article 16 of the CAT, and a breach of Article 7 of the International Covenant on Civil and Political Rights.<sup>65</sup>

ICE must ensure that a strict, comprehensive, and independent oversight of segregation practices (solitary confinement) be implemented throughout all detention facilities housing immigrant detainees to guarantee that solitary confinement is only used as a last resort, after all alternatives have been exhausted, for the shortest time possible, and under humane conditions.<sup>66</sup> In order to comply with Article 10 of the CAT, ICE must ensure that detention facility staff is fully trained and supervised, and that such oversight is provided, in order for immigrant detainees not to be subjected to torture or ill-treatment.

#### **D. Right to Make a Complaint, Obtain Redress, and Fair Compensation**

Article 13 provides that individuals with allegations of torture (or ill-treatment) have the right to complain to the competent authorities and have their case promptly and impartially examined.<sup>67</sup> Ill-treatment or intimidation stemming from such complaints or evidence submitted is prohibited.<sup>68</sup> In addition, victims of torture (or ill-treatment) have an “enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible.”<sup>69</sup>

Immigrant detainees face challenges to make complaints, obtain redress, and receive fair compensation because they have no right to government-appointed counsel and frequently do not have proper phone access to reach the outside world. For instance, at one detention center in

Hudson, New York, it costs five dollars to make a phone call lasting less than 10 minutes.<sup>70</sup> In addition, the vast majority of immigration detention facilities are located in remote areas far from city centers with the capacity to provide qualified legal services.<sup>71</sup> Without assistance to navigate the complex immigration system, immigrant detainees struggle to understand their rights, particularly those who do not speak English fluently. Further, they may face retaliatory measures from detention staff when they do submit formal complaints on detention conditions.<sup>72</sup>

### III. Conclusions and Recommendations

The United States continues to breach its obligations under the CAT by permitting egregious immigration detention conditions, including the use of solitary confinement, pervasive sexual violence against detainees, and procedural and substantive obstacles to asylum claims resulting in refoulement. The United States' failure to protect the rights of immigrant detainees represents a violation of Articles 1, 2, 3, 7, 10, 13, 14, 16, under the CAT. Because of the United States' failure to protect the right of immigrant detainees in respect to the CAT, we respectfully request that the Committee urge the United States to:

- A. Ensure detention center conditions are humane.** We remain concerned that many immigration detention facilities are not compliant with the most current detention standards from 2011. Some facilities are still governed by outdated 2000 and 2008 detention standards, which are much weaker overall and do not include robust protections against sexual assault. Moreover, none of these standards are legally binding or enforceable by private actors.
- B. Expand alternatives to detention (ATDs).** ATDs, such as release on recognizance, release on an order of supervision, and secure ankle bracelets, are more humane and cheaper than detention. Individuals released into communities are better able to access legal and other critical services.
- C. Implement robust regulations to prevent sexual assault in immigration detention.** The U.S. Department of Homeland Security (DHS) released long overdue regulations under the Prison Rape Elimination Act (PREA) of 2003 in March of 2014 to ensure protections against sexual assault in immigration detention. NIJC and IHRC are concerned that DHS does not have adequate plans to fully implement regulations in all detention centers and is troubled that the Department of Health and Human Services (HHS) has delayed promulgation of its regulations that would apply to unaccompanied immigrant children detained in their shelters.
- D. Ensure access to counsel for all detainees.** Immigrants have no right to government-appointed counsel and are forced to navigate the complex immigration system with no assistance. Without counsel, immigrants are at great risk of being deported even if they may face persecution in their home country or have strong claims for relief from deportation.
- E. Ensure all detainees have meaningful opportunities to express fear of return and seek release from detention.** NIJC has encountered many individuals who have not been properly screened for asylum eligibility. DHS must have a process

to make sure the U.S. does not deport people back into dangerous situations or environments.

## Endnotes

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<sup>1</sup> The Center for Victims of Torture, The Unitarian Universalist Service Committee & The Torture Abolition and Survivor Support Coalition, Int'l, *Tortured & Detained: Survivor Stories of U.S. Immigration Detention 2* (2013), available at [http://www.cvt.org/sites/cvt.org/files/Report\\_TorturedAndDetained\\_Nov2013.pdf](http://www.cvt.org/sites/cvt.org/files/Report_TorturedAndDetained_Nov2013.pdf) ["*Tortured & Detained*"].

<sup>2</sup> *Id.*

<sup>3</sup> Human Rights First, *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison 1* (2009), <http://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-RP-hrf-asylum-detention-report.pdf> ["Human Rights First"].

<sup>4</sup> Comm. Against Torture, *U.N. Committee Against Torture: Conclusions and Recommendations, United States of America*, ¶ 32, U.N. Doc. CAT/C/USA/CO/2 (July 25, 2006), available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fCO%2f2&Lang=en) ["Conclusions & Recommendations"].

<sup>5</sup> *Id.* at ¶ 20.

<sup>6</sup> *Id.* at ¶ 23.

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

<sup>8</sup> Comm. Against Torture, *List of Issues Prior to the Submission of the Fifth Periodic Report of the United States of America*, ¶ 2, CAT/C/USA/Q/5 (Jan. 20, 2010) ["*List of Issues*"].

<sup>9</sup> List of Issues, *supra* note 8, at ¶ 7; see also Human Rights Comm., *Concluding Observations of the Human Rights Comm.*, ¶ 30, U.N. Doc. CCPR/USA/CO/3/Rev.1 (Dec. 18, 2006).

<sup>10</sup> List of Issues, *supra* note 8, at ¶ 10(a).

<sup>11</sup> *Id.*

<sup>12</sup> List of Issues, *supra* note 8, at ¶ 16(b).

<sup>13</sup> *Id.*

<sup>14</sup> List of Issues, *supra* note 8, at ¶ 27(a).

<sup>15</sup> List of Issues, *supra* note 8, at ¶ 42; see also Comm. on the Elimination of Racial Discrimination, *Concluding Observations of the Comm. on the Elimination of Racial Discrimination, United States of America*, ¶ 25, U.N. Doc. CERD/C/USA/CO/6 (May 8, 2008).

<sup>16</sup> Other relevant international instruments and laws include but are not limited to: Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 302; Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, G.A. Res. 128, U.N. GAOR 44 Sess., Supp. No. 49 at 207, U.N. Doc. A/44/824 (Dec. 15, 1989); International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3; Optional Protocol to the International Covenant on Economic Social and Cultural Rights, G.A. Res. 63/117, U.N. Doc. A/Res/63/117 (Dec. 10, 2008); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families G.A. Res. 45/158, U.N. GAOR, 45th Sess., Supp. No. 49A, U.N. Doc. A/45/49 (1990); Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; Protocol Relating to the Status of Refugees, Oct. 4, 1967, 606 U.N.T.S. 267; Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287; Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 609; Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977); Basic Principles for the Treatment of Prisoners, G.A. res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988); United Nations Rules for the Protection of Juveniles Deprived of their Liberty,

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G.A. res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990); Migration for Employment (Revised) (ILO No. 97), 120 U.N.T.S. 70, entered into force January 22, 1952; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force July 1, 2003; American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123; Cartagena Declaration on Refugees, Nov. 22, 1984, Annual Report of the Inter-American Commission on Human Rights, OAS Doc. OEA/Ser.L/V/II.66/doc.10, rev. 1, at 190-93 (1984-85), 17 April 1998.); the San Jose Declaration on Refugees and Internally Displaced Persons adopted by the International Colloquium: 10 Years of the Cartagena Declaration on Refugees, San Jose, Costa Rica (5-7 December 1994).

<sup>17</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Art. 1, U.N. Doc. A/RES/39/46 (June 26, 1987) [“CAT”].

<sup>18</sup> CAT, *supra* note 28, at art. 16(1).

<sup>19</sup> Office of the High Comm'n on Human Rights, Comm. Against Torture, Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, *General Comment No. 2: Implementation of Article 2 by States Parties*, ¶ 4, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008) [“General Comment No. 2”].

<sup>20</sup> General Comment No. 2, *supra* note 19, at ¶ 4.

<sup>21</sup> *Tortured & Detained*, *supra* note 1, at 6.

<sup>22</sup> *Id.* at 5.

<sup>23</sup> *Id.* at 5.

<sup>24</sup> *Id.* at 2.

<sup>25</sup> *Id.* at 3.

<sup>26</sup> *Id.* at 10.

<sup>27</sup> *U.S. Detention of Asylum Seekers*, *supra* note 3, at 7.

<sup>28</sup> CAT, *supra* note 28, at art. 1.

<sup>29</sup> *Id.* at Art. 14(1).

<sup>30</sup> 8 C.F.R. § 235.3(b)(4)

<sup>31</sup> U.S. Citizenship and Immigration Services, Asylum Officer Basic Training Lesson Plan 12 (2006), *available at* <http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AOBTCLesson%20Plans/Credible-Fear-31aug10.pdf>.

<sup>32</sup> *Id.*

<sup>33</sup> Memorandum from U.S. Citizenship & Immigration Services on Release of Updated Asylum Division Officer Training Course (ADOTC) Lesson Plan, Credible Fear of Persecution and Torture Determinations 2 (Feb. 28, 2014), *available at* <http://www.aila.org/content/default.aspx?docid=48256>.

<sup>34</sup> U.S. Comm'n on Int'l Religious Freedom, Asylum Seekers in Expedited Removal 5-6 (2005), *available at* [http://www.uscirf.gov/sites/default/files/resources/stories/pdf/asylum\\_seekers/execsum.pdf](http://www.uscirf.gov/sites/default/files/resources/stories/pdf/asylum_seekers/execsum.pdf).

<sup>35</sup> Detention Watch Network, *Expose & Close: One Year Later 7* (2013), *available at* [http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/expose-1yrlaternov13\\_0.pdf](http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/expose-1yrlaternov13_0.pdf) [Detention Watch Network, *Expose & Close*].

<sup>36</sup> New York Immigrant Representation Study, *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings*, (Dec. 2011), 372; Dep't of Justice, Executive Office of Immigration Review, *FY2012 Statistical Yearbook*, (Feb. 2013), K2, <http://www.cardozolawreview.com/Joomla1.5/content/33-2/NYIRS%20Report.33-2.pdf>.

<sup>37</sup> Human Rights First, *supra* note 3, at 7.

<sup>38</sup> CAT, *supra* note 28, at art. 1.

<sup>39</sup> *Id.* at arts. 2(1), 16.

<sup>40</sup> General Comment No. 2, *supra* note 19, at ¶ 3.

<sup>41</sup> *Id.*

<sup>42</sup> CAT, *supra* note 28, at art. 2(1).

<sup>43</sup> *Id.* at art. 10(1).

<sup>44</sup> Comm. Against Torture, *C.T. and K.M. v. Sweden*, Communication No. 279/2005, Nov. 17, 2006, U.N. Doc. CAT/C/37/D/279/2005 (2007).

<sup>45</sup> Comm. Against Torture, *V.L. v. Switzerland*, Communication No. 262/2005, Nov. 20, 2006, U.N. Doc. CAT/C/37/D/262/2005 (2007).

<sup>46</sup> *Id.* at ¶ 8.10.

<sup>47</sup> CAT, *supra* note 28, at art. 10(1).

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<sup>48</sup> See Stop Prison Rape, *No Refuge Here: A First Look at Sexual Abuse in Immigration Detention* (2004), available at <http://www.justdetention.org/pdf/NoRefugeHere.pdf> [“Stop Prison Rape”]; Human Rights Watch, *Detained and At Risk: Sexual Abuse and Harassment in United States Immigration Detention* (2010), <http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf>.

<sup>49</sup> U.S. Government Accountability Office, *Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse* 1 (2013), available at <http://www.gao.gov/assets/660/659145.pdf> [“U.S. Government Accountability Office”].

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 1, 16. (substantiated allegations of sexual violence include a variety of types of sexual abuse and assault, including attempted penetration, inappropriate touching, and sexual harassment).

<sup>52</sup> See Stop Prison Rape, *supra* note 48, at 2.

<sup>53</sup> John S. Adams, *Man Alleges Rape While in Immigration and Customs Enforcement Custody: Detainee Says Fellow Inmates Assaulted Him at Jefferson County Jail*, Great Falls Tribune, Nov. 13, 2013, <http://archive.greatfallstribune.com/article/20131113/NEWS01/311130003/Man-alleges-rape-while-Immigration-Customs-Enforcement-custody-Detainee-says-fellow-inmates-assaulted-him-Jefferson-County-Jail>.

<sup>54</sup> CAT, *supra* note 28, at art. 1,16.

<sup>55</sup> *Id.* at art. 10(1).

<sup>56</sup> Nat’l Immigrant Justice Ctr, *Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention* 3 (Sept. 2012), available at [https://www.immigrantjustice.org/sites/immigrantjustice.org/files/Invisible%20in%20Isolation-The%20Use%20of%20Segregation%20and%20Solitary%20Confinement%20in%20Immigration%20Detention.September%202012\\_7.pdf](https://www.immigrantjustice.org/sites/immigrantjustice.org/files/Invisible%20in%20Isolation-The%20Use%20of%20Segregation%20and%20Solitary%20Confinement%20in%20Immigration%20Detention.September%202012_7.pdf) [“Invisible in Isolation”].

<sup>57</sup> *Id.* at 9.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Physicians for Human Rights, *Buried Alive: Solitary Confinement in the US Detention System*, 31 (2013), available at [https://s3.amazonaws.com/PHR\\_Reports/Solitary-Confinement-April-2013-full.pdf](https://s3.amazonaws.com/PHR_Reports/Solitary-Confinement-April-2013-full.pdf).

<sup>61</sup> *Id.* at 32.

<sup>62</sup> *Id.*

<sup>63</sup> Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman and Degrading Punishment and Treatment, *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*, ¶ 65, U.N. Doc. A/66/268 (Aug. 5, 2011), available at [http://www.immigrantjustice.org/sites/immigrantjustice.org/files/2011\\_08%20United%20Nations%20Report%20on%20Solitary%20Confinement.pdf](http://www.immigrantjustice.org/sites/immigrantjustice.org/files/2011_08%20United%20Nations%20Report%20on%20Solitary%20Confinement.pdf) [“Interim Report”].

<sup>64</sup> *Id.* at ¶ 32.

<sup>65</sup> Interim Report, *supra* note 63, at ¶ 72; CAT, *supra* note 28, at art. 1; *International Covenant on Civil and Political Rights*, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171 (1966), Art. 7.

<sup>66</sup> The John Marshall Law School Int’l Human Rights Clinic, Nat’l Immigrant Justice Ctr., Nat’l Lawyers Guild Int’l Comm., *Shadow Report Prepared for the UN Human Rights Committee Concerning the Use of Solitary Confinement in Immigration Detention Facilities in the United States, in Relation to the United States’ 4<sup>th</sup> Periodic Report*, Sept. 10, 2013, available at <http://www.jmls.edu/clinics/international-human-rights/pdfs/solitary-confinement-report.pdf>; *Invisible in Isolation*, *supra* note 56, at 9.

<sup>67</sup> CAT, *supra* note 28, at art. 13.

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

<sup>69</sup> *Id.* at art. 14.

<sup>70</sup> Detention Watch Network: Expose & Close, *supra* note 35, at 7.

<sup>71</sup> Detention Watch Network, *Immigration Detention Backgrounder 1*, available at [http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/immigration\\_detention\\_backgrounder.pdf](http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/immigration_detention_backgrounder.pdf).

<sup>72</sup> ACLU, *Conditions of Confinement in Immigration Detention Facilities* 12-13, available at [https://www.aclu.org/files/pdfs/prison/unsr\\_briefing\\_materials.pdf](https://www.aclu.org/files/pdfs/prison/unsr_briefing_materials.pdf).