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Institute for the Elimination of Poverty & Genocide



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Working Group on the use of mercenaries Office of the High Commissioner for Human Rights Palais des Nations CH-1211 Geneva 10

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Switzerland

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Re: Submission Addressing the Role of Private Military and Security Companies in Immigrant Detention and the Impact on the Protection of the Rights of All Migrants: Case Studies from the United States and particularly Detention Centers in Rural Georgia and Similarly Situated Facilities

## Dear UN Working Group on the use of mercenaries:

We make this submission on behalf of Project South and Detention Watch Network—a regional and national organization working extensively with immigrant communities in the United States to end immigration detention practices—to address the outsourcing of immigrant detention to private security companies in the United States and the multitude of rights abuses committed under the management of those private security companies.

In May 2018, we submitted to this Working Group, together with the UN Special Rapporteur on the Rights of Migrants and other Special Procedures whose mandates covered the rights of immigrants detained in privately run detention facilities, a communication addressing U.S. violations of international law at immigration detention facilities in the U.S. State of Georgia (copy attached). We were joined in that communication by civil and immigrants' rights organizations across the country in calling for the ban of privately-owned for-profit security facilities that detain immigrants. In this communication, we address the continued assault on fundamental human rights committed by the U.S. government and those with whom it contracts at the Stewart Detention Center (Stewart) (operated by CoreCivic) and the Irwin County Detention Center (Irwin) (operated by LaSalle Southwest Corrections), both privately-owned and operated for-profit security corporations, and other facilities across the United States that are owned and operated by for-profit corporations. The rights abuses referenced in our original communication persist and are emblematic of a system that is motivated by profit, though not unique to privately-owned facilities.

The U.S. Department of Homeland Security – Immigration and Custom Enforcement (ICE) contracts four different types of facilities for purposes of immigration detention: Contract detention facilities (owned and operated by private corporations that contract directly with ICE); Service Processing Centers (owned and operated by ICE but in which services such as transportation and surveillance are contracted to private companies); Intergovernmental Service Agreements (owned and operated by local governmental entities which subcontract to private corporations to administer the facilities); and U.S. Marshals Service (contracts with the U.S. Department of Justice's U.S. Marshals Service which is not subject to renegotiation or updated detention standards). Immigrants' rights advocates have particularly been alarmed by the privatization of ICE's detention system wherein the maximization of profit seemingly takes precedence over fundamental human rights such as health, safety, and access to justice. Immigrants are contracted to private corporations and surveillance are contracted to private companies.

As immigration enforcement has reached a record high for FY2019,<sup>3</sup> the population of detained immigrants has also soared. At its height in the summer of 2019, there were over 52,000 detained immigrants in facilities nationwide. Over 70 percent of the detained population are held in privately run facilities.<sup>4</sup> Of the remaining population, about ten percent are held in ICE facilities and about 20 percent in local jails.<sup>5</sup> The immigrant population detained by prison corporations grew 442 percent since 2002.<sup>6</sup> As of July 2019, there were 55 privately run immigration detention facilities across the U.S. and 65 facilities with unknown operators.<sup>7</sup>

As this submission and accompanying documents illustrate, the United States government continues to abdicate its responsibility to hold private corporations and their officers accountable for the human rights violations committed in the contracted facilities, including various forms of mental

<sup>7</sup> Mapping U.S. Immigration Detention, Freedom for Immigrants, <a href="https://www.freedomforimmigrants.org/map">https://www.freedomforimmigrants.org/map</a>.

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<sup>&</sup>lt;sup>1</sup> Fatal Neglect: How ICE Ignores Deaths in Detention, Am. Civ. Liberties Union, Det. Watch Network, Nat'l Immigrant Justice Ctr., p. 4 (2016) <a href="https://www.detentionwatchnetwork.org/sites/default/files/reports/Fatal Neglect ACLU-DWN-NIJC.pdf">https://www.detentionwatchnetwork.org/sites/default/files/reports/Fatal Neglect ACLU-DWN-NIJC.pdf</a>.

<sup>&</sup>lt;sup>2</sup> Banking on Detention: 2016 Update, Det. Watch Network (2016), <a href="https://www.detentionwatchnetwork.org/sites/default/files/reports/A%20Toxic%20Relationship\_DWN.pdf">https://www.detentionwatchnetwork.org/sites/default/files/reports/A%20Toxic%20Relationship\_DWN.pdf</a>. In July 2009, the Inter-American Commission conducted a site visit to five immigration detention centers in Texas and Arizona, noting that the "many men, women, and children detained in those facilities are held in unacceptable conditions, and the right of these persons to due process remains, in many cases, compromised." Press Release No. 53/09, Inter-Am. Comm'n on Human Rights, *IACHR Visits U.S. Immigration Detention Facilities*, <a href="https://www.cidh.oas.org/Comunicados/English/2009/53-09eng.htm">https://www.cidh.oas.org/Comunicados/English/2009/53-09eng.htm</a>.

<sup>&</sup>lt;sup>3</sup> U.S. Immigration and Customs Enforcement, *Fiscal Year 2019 Enforcement and Removal Operations Report* (2019), <a href="https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf">https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf</a>.

<sup>4</sup> <a href="https://www.usnews.com/news/articles/2016-08-18/private-prison-companies-punched-in-the-gut-will-keep-most-federal-business">https://www.usnews.com/news/articles/2016-08-18/private-prison-companies-punched-in-the-gut-will-keep-most-federal-business</a>.

<sup>&</sup>lt;sup>5</sup> Emily Kassie, *Detained: How the US built the world's largest immigrant detention system*, THE GUARDIAN (Sept. 24, 2019), <a href="https://www.theguardian.com/us-news/2019/sep/24/detained-us-largest-immigrant-detention-trump">https://www.theguardian.com/us-news/2019/sep/24/detained-us-largest-immigrant-detention-trump</a>.

<sup>&</sup>lt;sup>6</sup> Capitalizing on Mass Incarceration: US Growth in Private Prisons, The Sentencing Project (Aug. 2, 2018) <a href="https://www.sentencingproject.org/publications/capitalizing-on-mass-incarceration-u-s-growth-in-private-prisons/">https://www.sentencingproject.org/publications/capitalizing-on-mass-incarceration-u-s-growth-in-private-prisons/</a>.

and physical torture, solitary confinement and sexual assault,<sup>8</sup> and deaths<sup>9</sup>. The lack of sufficient government oversight typifies the violent, abusive, and inhumane nature of immigrant detention throughout the United States, putting the health and welfare of immigrants in grave risk, now exacerbated by the COVID-19 pandemic.

I. BACKGROUND AND CONTEXT: THE UNITED STATES' USE OF FOR-PROFIT PRIVATELY-OWNED SECURITY FACILITIES IN THE CONTEXT OF IMMIGRATION DETENTION

The United States has the largest incarceration rate in the world with over two million people currently serving sentences in prisons notorious for inhumane and abusive conditions—a 500 percent increase over the last 40 years. While just 8.2 percent of the incarcerated population is currently detained in private prisons, more than 70 percent of detained immigrants are held in facilities run by three for-profit corporations: CoreCivic, GeoGroup, and Management and Training Corporation. 11

The modern private immigration detention system in the U.S was institutionalized in the early 1980s with the boom of mass incarceration and the private prison industry. The world's first private prison company (Corrections Corporation of America, currently operating as CoreCivic) was created in 1983 at the same time the Reagan Administration launched the Mass Immigration Emergency Plan—establishing a 10,000 immigration detention bed quota. In *Jean v. Nealson*, the U.S. Supreme Court overturned a mandatory detention policy which targeted Haitian nationals. This partly served to prompt Congress to pass the Immigration Reform and Control Act (IRCA) in 1986 which contained an amnesty provision for undocumented persons in the United States, but also increased internal enforcement and immigration control measures by sanctioning employers for hiring unauthorized workers. Between 1983 and 1985, CoreCivic contracted with the federal government to open the country's first privately-owned immigration detention centers in Texas. Ten years later, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) which significantly expanded the number of immigrants who can be placed in mandatory detention. By 2002, nearly 5,000 detained immigrants were held in privately-run facilities.

By way of context, the number of individuals held in federal private prisons rose by 120 percent between 2000 and 2016, but steadily decreased in 2014 under the Obama Administration due to changes in sentencing policies. <sup>17</sup> Despite the Administration's prison reforms, the number of detained immigrants

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<sup>&</sup>lt;sup>8</sup> Lauren Sukin, *The United States Treats Migrants Worse than Prisoners of War*, Foreign Policy (July 26, 2019) https://foreignpolicy.com/2019/07/26/the-united-states-treats-migrants-worse-than-prisoners-of-war/

<sup>&</sup>lt;sup>9</sup> Det. Watch Network, *Fatal Neglect*, *supra* note 1.

<sup>&</sup>lt;sup>10</sup> Fact Sheet: Trends in U.S. Corrections (updated June 2019), The Sentencing Project, <a href="https://www.sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf">https://www.sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf</a>.

<sup>&</sup>lt;sup>11</sup> Mia Armstrong, *Here's Why Abolishing Private Prisons Isn't a Silver Bullet*, The Marshall Project (12 Sept. 2019) <a href="https://www.themarshallproject.org/2019/09/12/here-s-why-abolishing-private-prisons-isn-t-a-silver-bullet">https://www.themarshallproject.org/2019/09/12/here-s-why-abolishing-private-prisons-isn-t-a-silver-bullet</a>.

<sup>&</sup>lt;sup>12</sup> Shull, Kristina Karin, "Nobody Wants These People": Reagan's Immigration Crisis and America's First Private Prisons (2014), https://escholarship.org/uc/item/4v54x9hp.

<sup>&</sup>lt;sup>13</sup> Jean v. Nealson, 472 U.S. 846 (1985).

<sup>&</sup>lt;sup>14</sup> United States Immigration Detention Profile, Global Detention Project (2016), https://www.globaldetentionproject.org/countries/americas/united-states#\_ftn19.

<sup>&</sup>lt;sup>16</sup> C. Mason, *Dollars and Detainees: The Growth of For-Profit Detention*, The Sentencing Project (July 19, 2012), <a href="https://www.sentencingproject.org/publications/dollars-and-detainees-the-growth-of-for-profit-detention/">https://www.sentencingproject.org/publications/dollars-and-detainees-the-growth-of-for-profit-detention/</a>.

<sup>&</sup>lt;sup>17</sup> Capitalizing on Mass Incarceration, supra note 6.

increased every year between 2009 and 2012—reaching a record number of 477,523 during FY2012<sup>18</sup> (not including people who are detained at ports of entry by U.S. Customs and Border Protection or who are arrested and imprisoned as part of criminal procedures stemming from their immigration status). While the decline in the use of private facilities to hold individuals incarcerated in federal prisons marked a loss for the private prison industry, Congress's establishment of a quota for immigration detention beds—which rose from 33,400 in 2009 to 34,000 in FY2013—contributed to CoreCivic and GeoGroup's \$3.5 billion combined revenue in 2015.<sup>19</sup>

The Obama Administration's efforts in 2016 to phase out the use of private prisons<sup>20</sup> were rescinded by the former Attorney General Jeff Sessions in 2017. While former Deputy Attorney General Yates highlighted the ineffectiveness of private prisons in her policy directive, stating: "[t]hey do not save substantially on costs, and as noted in a recent report by the Department's Office of Inspector General, they do not maintain the same level of safety and security," Attorney General Sessions reversed the policy to grant greater flexibility and discretion to the private prison industry. In its Congressional Budget Justification for Fiscal Year 2018, DHS made a request to increase the number of beds to over 51,000. In September 2017, only months after the Trump administration issued an executive order titled "Enhancing Public Safety in the Interior of the United States," which called for the cancellation of federal funds to "sanctuary cities" that refuse to cooperate with ICE in the prolonged detention of immigrants, ICE launched a four-day raid in major cities across the country, arresting 498 immigrants. Spurred by the Trump administration's loosening of arrest standards, ICE officers carried out 33,366 more administrative arrests in FY2017 (143,470) than in FY2016 (110,104), representing a 30% increase.

In order to influence immigration and criminalization policies, the private prison industry contributes significantly to political campaigns through donations as well as lobbying Congressional

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<sup>&</sup>lt;sup>18</sup> Center for Migration Studies New York, *Immigration Detention: Behind the Numbers* (Feb. 13,

<sup>2014),</sup> http://cmsny.org/immigration-detention-behind-the-record-numbers/.

<sup>&</sup>lt;sup>19</sup> Capitalizing on Mass Incarceration, supra note 6.

<sup>&</sup>lt;sup>20</sup> U.S. Dep't of Justice, Memorandum For The Acting Director Federal Bureau Of Prisons, "Reducing Our Use of Private Prisons" (2016), <a href="https://www.justice.gov/archives/opa/file/886311/download">https://www.justice.gov/archives/opa/file/886311/download</a>.
<a href="https://www.justice.gov/archives/opa/file/886311/download">https://www.justice.gov/archives/opa/file/886311/download</a>.

<sup>&</sup>lt;sup>22</sup> Bianca Padro Ocasio, *Justice Department reverses directive to phase out private prisons*, Politico (Feb. 23, 2017), <a href="https://www.politico.com/blogs/under-the-radar/2017/02/justice-department-private-prisons-235324">https://www.politico.com/blogs/under-the-radar/2017/02/justice-department-private-prisons-235324</a>.

<sup>&</sup>lt;sup>23</sup> U.S. Dep't of Homeland Sec., Congressional Budget Justification, FY 2018 (2017), https://www.dhs.gov/sites/default/files/publications/DHS%20FY18%20CJ%20VOL%20II.PDF.

<sup>&</sup>lt;sup>24</sup> White House Office of the Press Sec y, *Enhancing Public Safety in the Interior of the United States* (Jan. 25, 2017), https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united.

<sup>&</sup>lt;sup>25</sup> U.S. Citizenship and Immigration Services, *ICE Arrests over 450 on Federal Immigration Charges during Operation 'Safe City'* (Sept. 28, 2017), https://www.ice.gov/news/releases/ice-arrests-over-450-federal-immigration-charges-during-operation-safe-city.

<sup>&</sup>lt;sup>26</sup> Nick Miroff and Maria Sacchetti, *Trump Takes 'Shackles' Off ICE, Which is Slapping Them on Immigrants who Thought They Were Safe*, Wash. Post (Feb. 11, 2018), https://www.washingtonpost.com/world/national-security/trump-takes-shackles-off-ice-which-is-slapping-them-on-immigrants-who-thought-they-were-safe/2018/02/11/4bd5c164-083a-11e8-b48c-b07fea957bd5\_story.html?utm\_term=.4739fba76716.

<sup>&</sup>lt;sup>27</sup> U.S. Immigration and Customs Enforcement, *Fiscal Year 2017 ICE Enforcement and Removal Operations Report* (2017), https://www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf.

members.<sup>28</sup> GeoGroup spent upwards of \$1 million to lobby Congress in 2016, while CoreCivic spent \$10.6 million on immigration-related lobbying between 2008 and 2014—\$9,760,000 went directly toward lobbying members of the House Appropriations Committee's Homeland Security Subcommittee, which is responsible for funding immigration detention.<sup>29</sup> Both CoreCivic and GeoGroup contributed to Trump's presidential campaign and inauguration, and received \$985 million from their contracts with ICE in 2017.<sup>30</sup> By the end of February 2017, CoreCivic and GeoGroup stocks had increased by 137 percent and 98 percent, respectively.<sup>31</sup>

LACK OF OVERSIGHT AND ACCOUNTABILITY, COMBINED WITH PROFIT-II. MOTIVE, CONTRIBUTE TO PERSISTENT AND EGREGIOUS RIGHTS VIOLATIONS AGAINST IMMIGRANTS DETAINED IN FACILITIES OWNED AND OPERATED BY PRIVATE SECURITY COMPANIES.

Private security companies financially benefit from the detention of immigrants, as profit serves as their primary motivation at the expense of the rights of those whom they detain. In order to effectuate the punitive nature of current U.S. immigration policy, corporations (both publicly and privately held) take advantage of the expanding privatization of the immigration detention system and exploit the government's willingness to outsource its human rights obligations. In tandem with an increase in immigration enforcement and detention across the United States, privatization incentivizes private security companies with incomparable lobbying capacity to push for the increased criminalization of immigration, and the ensuing and prolonged detention of immigrants. The constellation of interests entangled in immigration detention has blurred the lines between private and public governance. The blatant disregard for the fundamental human rights of detained immigrants and their family members persists with impunity due to the U.S. government's failure to hold corporations responsible for rights violations in immigration detention, in some cases resulting in the death of immigrants. Fairness, transparency, accountability, and security are some of the fundamental pillars of good governance. Forprofit privately-owned security companies like CoreCivic and LaSalle Corrections that operate immigrant detention facilities, like Stewart and Irwin in the U.S. State of Georgia, are beholden to financial incentives and shareholder rights as opposed to safeguarding fundamental human rights that undocumented immigrants are entitled to as a matter of law. Furthermore, private facilities lack transparency and fail to provide information readily available for public scrutiny.<sup>32</sup>

> a. THE STEWART AND IRWIN DETENTION CENTERS IN THE U.S. STATE OF GEORGIA: CASE STUDIES DEMONSTRATING HOW PERSISTENT IMPUNITY DESPITE ONGOING CALLS FOR ACCOUNTABILITY AND THE PROTECTION OF FUNDAMENTAL HUMAN RIGHTS CONTRIBUTES TO ONGOING RIGHTS VIOLATIONS AND SOMETIMES FATAL HARM.

<sup>&</sup>lt;sup>28</sup> Livia Luan, Profiting from Enforcement: The Role of Private Prisons in U.S. Immigration Detention, Migration Policy Institute (May 2, 2018) https://www.migrationpolicy.org/article/profiting-enforcement-role-private-prisons-usimmigration-detention.

<sup>&</sup>lt;sup>29</sup> *Id*.

<sup>&</sup>lt;sup>30</sup> Glenn C. Altschuler, For-profit immigration detention centers are a national scandal, The Hill (Aug. 12, 2019) https://thehill.com/opinion/immigration/457067-for-profit-immigration-detention-centers-are-a-national-scandal <sup>31</sup> Livia Luan, Profiting from Enforcement: The Role of Private Prisons in U.S. Immigration Detention, supra note

<sup>&</sup>lt;sup>32</sup> Yuki Noguchi, Under Siege And Largely Secret: Businesses That Serve Immigration Detention, NPR (June 30, 2019) https://www.npr.org/2019/06/30/736940431/under-siege-and-largely-secret-businesses-that-serve-immigrationdetention.

Human rights advocates and lawyers continue to document the regular use of solitary confinement to punish immigrants detained at Stewart and Irwin, the denial of adequate physical and mental health care, deplorable living conditions, and obstruction of immigrants' access to legal resources. Their calls for action and accountability have gone unheeded. The treatment afforded to immigrants at these detention centers, and at privately-owned and operated detention centers across the country, fails to meet the ICCPR's underlying standard that the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." 33

i. Denial of Adequate Health Care, Use of Solitary Confinement, and Other Conditions of Detention Directly Imperiling the Life and Well-Being of Detained Immigrants.

In our May 2018 Communication to this Working Group, we detailed how Stewart and Irwin officials routinely use solitary confinement to punish detained immigrants, often with fatal results. In May 2017, Jeancarlo Jimenez-Joseph (27) died by suicide after having been put in solitary confinement by Stewart officers after a previous unsuccessful attempt at taking his own life.<sup>34</sup> Efrain De La Rosa (40), a Mexican national, died of apparent suicide after having been placed in solitary confinement.<sup>35</sup> His death came less than six months after the death of Yulio Castro Garrido (33) who died after contracting pneumonia at Stewart in January 2018. <sup>36</sup> Both De La Rosa and Jimenez suffered from known mental health conditions, yet were subjected to more than fifteen days of solitary confinement. Despite this Working Group's subsequent communication to U.S. government officials and officials at CoreCivic raising concerns about the use of solitary confinement and the lack of adequate health care, no remedial measures have been put in place. At the Stewart Detention Center, the results have been fatal. Most recently, Pedro Arriago-Santoya (44), a Mexican national detained at the Stewart Detention Center died of cardio-pulmonary arrest, secondary to multi-organ system failure, endocarditis, dilated cardiomyopathy with a low ejection fraction and respiratory failure. He is reported to have complained of abdominal pain before ultimately being transferred to a hospital, where he went into cardiac arrest two days later.<sup>37</sup> To date, the U.S. government has taken no action to address the persistent and ongoing rights violations directly contributing to these deaths.

Article 9 of the ICCPR guarantees all persons, including detained immigrants, the inherent "right to liberty and the security of [her or his] person." This inalienable right, which may only be "deprived ... on such grounds and in accordance with such procedure as are established by law," onfers an affirmative duty on all states to promote and preserve universal respect for each individual's intrinsic bodily integrity. The Covenant further articulates, "[a]ll persons deprived of their liberty shall be treated

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<sup>&</sup>lt;sup>33</sup> International Covenant on Civil and Political Rights preamble, Dec. 16, 1966, 999 U.N.T.S. 171, http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf [hereinafter, ICCPR].

<sup>&</sup>lt;sup>34</sup> Catherine E. Shoichet, *Immigrant detainee dies in ICE custody*, CNN (May 16, 2017) <a href="https://www.cnn.com/2017/05/16/us/ice-stewart-detention-center-death/index.html">https://www.cnn.com/2017/05/16/us/ice-stewart-detention-center-death/index.html</a>.

<sup>&</sup>lt;sup>35</sup> Id.

<sup>&</sup>lt;sup>36</sup> Catherine E. Shoichet, *ICE detainee facing deportation apparently kills himself*, CNN (July 12, 2018) <a href="https://www.cnn.com/2018/07/12/us/georgia-ice-detainee-dies/index.html">https://www.cnn.com/2018/07/12/us/georgia-ice-detainee-dies/index.html</a>.

<sup>&</sup>lt;sup>37</sup> BuzzFeed.News, "A Mexican Man Has Died in ICE Custody in Georgia" (July 25, 2019), https://www.buzzfeednews.com/article/hamedaleaziz/mexican-man-dies-ice-custody-georgia.

<sup>&</sup>lt;sup>38</sup> ICCPR art. 9(1).

<sup>&</sup>lt;sup>39</sup> *Id*.

with humanity and with respect for the inherent dignity of the human person."<sup>40</sup> Solitary confinement represents a violation of both Article 9 of the ICCPR and of the prohibition on the use of torture under the Convention Against Torture—"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as ... punishing him [or her]."<sup>41</sup> Yet Stewart and Irwin officials persist in imposing solitary confinement on immigrants without conducting proper hearings abiding by due process standards or attempting to find viable alternatives, often exacerbating the vulnerable physical and mental wellbeing of those already detained.<sup>42</sup>

In its January 2016 "Report and Recommendations Concerning the Use of Restrictive Housing," the U.S. Department of Justice (DOJ) articulated its agreement that solitary confinement "should be used rarely, applied fairly, and subjected to reasonable constraints." Solitary confinement, as ICE's Performance-Based National Detention Standards 2011 further stipulates, may only be imposed on detained immigrants after facility officials have conducted proper hearings and made careful determinations that no alternative dispositions exist. Operating in conflict with explicit provisions within ICE Det. Standards, officials at Stewart and Irwin persist in making no distinctions between administrative and disciplinary confinements, and employ the practice of solitary confinement as the default option for any detained immigrant they arbitrarily deem to be problematic. Detained immigrants at the two Georgia facilities reported being sent to segregation for minor, even trivial, reasons such as not tucking in a shirt, talking too much, and arguing during soccer matches. Immigrants who have resorted to participating in hunger strikes have also been subjected to prolonged solitary confinement, as well as forced feeding. Herwin, detained immigrants have, at times, been placed in administrative confinement upon arrival because the facility lacks enough housing units to accommodate all newcomers.

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<sup>&</sup>lt;sup>40</sup> ICCPR art. 10(1).

<sup>&</sup>lt;sup>41</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 85, http://www.ohchr.org/Documents/ProfessionalInterest/cat.pdf [hereinafter CAT].

<sup>&</sup>lt;sup>42</sup> Particularly for individuals who have endured trauma or have pre-existing medical conditions, solitary confinement should only ever be administered as an option of last resort. G.A. Res. 43/173, Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, principle 6 (Dec. 9, 1988),

http://www.ohchr.org/Documents/ProfessionalInterest/bodyprinciples.pdf [hereinafter U.N. Principles of Detention]. <sup>43</sup> U.S. Dep't of Justice, Report and Recommendations Concerning the Use of Restrictive Housing 1 (2016), https://www.justice.gov/archives/dag/file/815551/download.

<sup>&</sup>lt;sup>44</sup> U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011 (2016 rev.), § 2.12(V)(B), https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf [hereinafter ICE Det. Standards].

<sup>&</sup>lt;sup>45</sup> *Id.*, § 2.12(V)(A).

<sup>&</sup>lt;sup>46</sup> Imprisoned Justice: Inside Two Georgia Immigrant Detention Centers, Project South and Penn State Law Center for Immigrants' Rights Clinic (May 2017), <a href="https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned\_Justice\_Report-1.pdf">https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned\_Justice\_Report-1.pdf</a>, at 36, 49.

<sup>&</sup>lt;sup>47</sup> *Id*.

<sup>&</sup>lt;sup>48</sup> Press Release, Am. Civil Liberties Union, ACLU Sues to Expose Treatment of Hunger Strikers in ICE Detention (May 25, 2017), https://www.aclu.org/news/aclu-sues-expose-treatment-hunger-strikers-ice-detention.

<sup>&</sup>lt;sup>49</sup> Jeremy Redmon, *Judge: ICE May Force-Feed Ukrainian Detainee in Georgia*, Atlanta J. Const. (June 1, 2017), https://www.ajc.com/news/breaking-news/judge-ice-may-force-feed-ukrainian-detainee-georgia/7AWZuziX4EDrZSon1ntSEK/.

<sup>&</sup>lt;sup>50</sup> A Toxic Relationship: Private Prisons and U.S. Immigration Detention, Detention Watch Network (Dec. 2016), <a href="https://www.detentionwatchnetwork.org/sites/default/files/reports/A%20Toxic%20Relationship\_DWN.pdf">https://www.detentionwatchnetwork.org/sites/default/files/reports/A%20Toxic%20Relationship\_DWN.pdf</a>, at 5.

maximum of thirty days,<sup>51</sup> detained immigrants at the two facilities recalled many individuals being subjected to solitary confinement for over a month, with some confinements lasting up to six months.<sup>52</sup>

Of graver concern, solitary confinement has served as the default assignment for detained immigrants who manifest mental health issues and seek counseling.<sup>53</sup> Detained immigrants report that individuals who tell a staff member or nurse that they feel suicidal are regularly placed in a straitjacket and sent to solitary confinement.<sup>54</sup> While facility officials defend confinement as a solution to safeguard detained immigrants' wellbeing, the practice, as Special Rapporteur Mendéz identified in a 2016 report commissioned by the U.N. Committee Against Torture, worryingly expedites the deterioration of detained immigrants' mental well-being and could lead to the development of psychiatric symptoms and suicide.<sup>55</sup>

Officials at Stewart and Irwin, as well as officials at other detention centers across the United States, persist in the unlawful use of solitary confinement with seeming impunity. A report published by the Project on Government Oversight, an independent watchdog that investigates government abuses, revealed that the use of solitary in immigration detention jumped by nearly 400 in the first 15 months of the Trump Administration. Solvent As noted above, the results have been fatal. In 2020 alone, 10 adult immigrants have died in detention.

ii. FOR-PROFIT, PRIVATE PRISON COMPANIES OFTEN EXPLOIT IMMIGRANTS' LABOR REPRESENTING A VIOLATION OF CONTEMPORARY HUMAN RIGHTS NORMS AGAINST ALL FORMS OF SLAVERY

Stewart's abuse and exploitation of detained immigrants' labor as part of their profit-making schemes constitute a contemporary form of slavery. The ICCPR dictates, "slavery ... in all [its] forms shall be prohibited,"<sup>57</sup> and that no one, including detained immigrants, "shall be required to perform forced or compulsory labor."<sup>58</sup> In its mandate to the Special Rapporteurship on Contemporary Forms of Slavery, the Human Rights Council stressed a continuing desire for all States to "[t]ake immediate and effective measures to eradicate forced labor."<sup>59</sup>

<sup>&</sup>lt;sup>51</sup> ICE Det. Standards, *supra* note 44, at § 2.12(V)(B)(1).

<sup>&</sup>lt;sup>52</sup> Project South, Imprisoned Justice, *supra* note 46, at 49-50.

<sup>&</sup>lt;sup>53</sup> Project South, Imprisoned Justice, *supra* note 46, at 49

<sup>&</sup>lt;sup>54</sup> *Id*.

<sup>&</sup>lt;sup>55</sup> Seeing into Solitary: A Review of the Laws and Policies of Certain Nations Regarding Solitary Confinement of Detainees, UN special report in collaboration with UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Weil Gotshal & Manges LLP, Cyrus R. Vance Center for International Justice, and Anti-Torture Initiative, Center for Human Rights and Humanitarian Law, American University Washington College of Law, <a href="https://www.weil.com/~/media/files/pdfs/2016/un\_special\_report\_solitary\_confinement.pdf">https://www.weil.com/~/media/files/pdfs/2016/un\_special\_report\_solitary\_confinement.pdf</a>, at 11.

<sup>&</sup>lt;sup>56</sup> Spencer Woodman and Maryam Saleh, 40 Percent Of Ice Detainees Held In Solitary Confinement Have A Mental Illness, New Report Finds, The Intercept (Aug. 14, 2019), <a href="https://theintercept.com/2019/08/14/ice-solitary-confinement-mental-illness/">https://theintercept.com/2019/08/14/ice-solitary-confinement-mental-illness/</a>.

<sup>&</sup>lt;sup>57</sup> ICCPR art. 8(1).

<sup>&</sup>lt;sup>58</sup> ICCPR art. 8(3).

 $<sup>^{59}</sup>$  Human Rights Council, U.N. Doc. A/HRC/RES/33/1,  $\P$  7, n.3 (2016), https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/225/46/PDF/G1622546.pdf.

<sup>&</sup>lt;sup>59</sup> *Id.* at ¶ 19(c).

Stewart, which is contracted out to a for-profit, private prison company, subjects detained immigrants to forced labor and pays them nominal wages. The facility uses a deprivation system, in which officials provide immigrants with inadequate food and basic living supplies and require immigrants to purchase them at exorbitant costs at the commissary. While officials market the work as "voluntary" to avoid complications with the 13th Amendment of the U.S. Constitution, which prohibits slavery except as punishment for a crime, detained immigrants report that they are often penalized for refusing to work. Officials at Stewart continue to take advantage of immigrants for cheap labor and overuse solitary confinement to punish immigrants, oftentimes for the mere act of speaking up and demanding their rights. In January 2018, Stewart officials placed Shoaib Ahmed, a 24-year-old immigrant from Bangladesh, in solitary confinement for merely saying to another immigrant "no work tomorrow." Ahmed was only paid 50 cents per hour to work within the facility.

Supplementing the deprivation system, Stewart officials enforce unreasonably strict eating schedules and provide immigrants with inadequate food portions, forcing many immigrants to purchase additional food from overpriced commissaries. Almost all immigrants detained at Stewart report being provided an insufficient amount of food. As one detained immigrant assessed, Not enough food is given and detainees are not allowed to share food. I buy fish in a can, soup, etc. [from the commissary]. The prices are higher in here than on the outside. I spend \$20-30 per week on commissary. Irregular meal schedules further increase detained immigrants' need to purchase supplements. Dinner is usually served by 16:30 and leaves immigrants hungry again by 20:00 or 21:00. The Detained immigrants are often left to choose between going to sleep hungry and spending what little money they have on food from the commissary. Furthermore, immigrants are allotted only ten to fifteen minutes per meal and are forced to wait until the next meal if they are late or missed one meal. If detained immigrants were to tell officers about issues such as undercooked meals or foreign objects they find in their food, they would not be granted additional time to complete their meals.

On 17 April 2018, Project South, the Southern Poverty Law Center, Attorney Andrew Free, and the law firm Burns Charest LLP filed a federal class action lawsuit against CoreCivic. As a private contractor, CoreCivic is subject to the Performance-Based National Detention Standards (PBNDS), which require detention centers to provide compensation for the *voluntary* work that detained immigrants may perform and "shall not be required to work." Contrary to the required national standards, CoreCivic's coercive tactics—forcing detained immigrants to work for inconsequential pay, charging

<sup>&</sup>lt;sup>60</sup> Project South, Imprisoned Justice, *supra* n. 46, at 34.

<sup>&</sup>lt;sup>61</sup> "Neither slavery nor involuntary servitude, except as a punishment for crime ... shall exist within the United States. U.S. Const. amend. XIII.

<sup>&</sup>lt;sup>62</sup> Project South, Imprisoned Justice, *supra* note 46, at 33.

<sup>&</sup>lt;sup>63</sup> Spencer Woodman, *Private Prison Continues to Send ICE Detainees to Solitary Confinement for Refusing Voluntary Labor*, Intercept, Jan. 11, 2018, https://theintercept.com/2018/01/11/ice-detention-solitary-confinement/. <sup>64</sup> Project South, Imprisoned Justice, *supra* note 46, at 32.

<sup>&</sup>lt;sup>65</sup> *Id.* at 32.

<sup>&</sup>lt;sup>66</sup> Id.

<sup>&</sup>lt;sup>67</sup> *Id*.

<sup>&</sup>lt;sup>68</sup> *Id*.

<sup>&</sup>lt;sup>69</sup> *Id*.

<sup>70</sup> Id

<sup>&</sup>lt;sup>71</sup> Press Release, Project South, Private Prison Company Uses Forced Labor of Detained Immigrants in Georgia to Boost Profits (Apr. 17, 2018), https://projectsouth.org/private-prison-company-uses-forced-labor-of-detained-immigrants-in-georgia-to-boost-profits/.

<sup>&</sup>lt;sup>72</sup> ICE Det. Standards, *supra* n. 44, §§ 5.8(II)(2), 5.8(V)(C).

them for basic necessities at the facility's onsite commissary, requiring purchase of Talton phone cards to make outside calls – often the only means for maintaining contact with family and loved ones, and threatening criminal prosecution or solitary confinements to punish detained immigrants for their refusal to work—is also in violation of the Trafficking Victims Protection Act<sup>73</sup> and Georgia law.<sup>74</sup> That litigation is ongoing.

iii. Detained Immigrants' Legal Rights to Counsel and Right to Family Life Are Impeded by Stewart and Irwin's Remote Location, Arbitrary Visitation Procedures, and Profit-Driven Telephone Access Policies.

Stewart and Irwin's use of arbitrary visitation procedures severely hinders immigrants' ability to access proper legal resources. ICE's Detention Standards require that detention facilities clearly and fully communicate to detained immigrants their legal rights and facilitate their access to legal resources. Detention centers are obligated to operate properly-equipped law libraries and help detained immigrants prepare legal documents. During visitations with legal counsel, detention facilities must secure all communication channels so that consultations are afforded proper privacy, and provide interpreters or other language assistance personnel when necessary. But this is not the practice in detention centers such as Stewart and Irwin.

Meetings, conducted through glass partitions and oft-malfunctioning phones, lack privacy because attorneys and their clients are unable to hear each other without yelling, infringing on attorney-client privilege. An attorney who worked with an immigrant detained at Stewart detailed officers' general attitude as:

It seems clear that the staff at Stewart make an active effort to keep attorneys from visiting their clients. The delays in meeting with your client once you get to the facility are long, and if there are any visitation issues, you won't be alerted until you arrive at the facility. The guards at Stewart are incredibly unprofessional ... The front security actively tries to find issues with lawyer visitation. Once, even after their supervisor had approved my translator's admittance, front staff denied my translator admittance.<sup>79</sup>

At Irwin, detained immigrants reported being charged for making calls to legal counsel in order to set up meetings in advance of court hearings. <sup>80</sup> Furthermore, contrary to ICE's Det. Standards, neither Stewart nor Irwin provide adequate access to their respective law libraries. Libraries lack materials in languages other than English; staff are inattentive to immigrants' requests; and visits are limited. <sup>81</sup> The Irwin library has two old computers that often do not have internet access, and no printer was installed until 2016. <sup>82</sup>

<sup>&</sup>lt;sup>73</sup> 18 U.S.C. §§ 1589, 1594–95.

<sup>&</sup>lt;sup>74</sup> Barrientos v. CoreCivic, Inc., F.3d 2020 WL 964358 (11th Cir., Feb. 28, 2020).

<sup>&</sup>lt;sup>75</sup> ICE Det. Standards, *supra* note 61, at § 6.1(I).

<sup>&</sup>lt;sup>76</sup> *Id.* at § 6.3(II).

<sup>&</sup>lt;sup>77</sup> *Id.* at §§ 5.7(II)(2); 5.7(II)(10).

<sup>&</sup>lt;sup>78</sup> Project South, Imprisoned Justice, *supra* note 46, at 28, 41.

<sup>&</sup>lt;sup>79</sup> *Id.* at 30

<sup>80</sup> Id. at 41

<sup>81</sup> *Id.* at 30, 42.

<sup>&</sup>lt;sup>82</sup> *Id.* at 42.

Strained by Stewart and Irwin's relatively remote locations, detained immigrants' ability to communicate with family members is further hampered by the exorbitant costs of making phone calls from the facilities. Article 23 states, "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Principle 15 of the U.N. Principles of Detention expands, "communication of the detained ... person with the outside world, and in particular his [or her] family or counsel, shall not be denied for more than a matter of days." <sup>84</sup>

ICE's Detention Standards require that detained immigrants have "reasonable and equitable access to telephones" during all daytime hours. In addition to providing free and full telephone access to legal representatives, court authorities, and consular officials, facilities are expected to equip detained individuals with access to "reasonably priced telephone services," including international calling and collect calling services. Indigent persons, those who have less than \$15 in their account for ten days, should be "afforded the same telephone access and privileges as other detainees," and be allowed to place calls to immediate family members on an as-needed basis. 87

Coupled with a significant lack of lodging in Stewart and Irwin counties, <sup>88</sup> the remoteness of those two detention centers limit family members' ability to visit immigrants at the facilities. Detained immigrants often tell their loved ones not to visit because they believe the high costs of travel and accommodation are not worth the one-hour of visitation time they are permitted. <sup>89</sup>

While detained immigrants try, as much as possible, to stay in touch with family members and abreast of outside news, they are limited by the exorbitant costs of making phone calls. Costs for international calls, which are not listed in detained immigrants' handbooks, range from \$5 to \$15 for just fifteen minutes of phone time. <sup>90</sup> A detained immigrant from Ghana conveyed, "I spent 80 dollars a week on phone calls ... The calls drop frequently and the detainees are forced to pay again." <sup>91</sup>

## b. Detention Practices at Regional For-Profit Private Facilities Across the United States.

The rights abuses and degrading forms of human treatment documented at the Irwin and Stewart facilities are unfortunately not the exception when it comes to for-profit privately-owned immigration detention in the United States. In fact, the very corporations that operate Irwin and Stewart continue to receive lucrative contracts to detain immigrants despite reports of persistent rights violations and violations of ICE's own detention standards. A 2010 New York Times report on deaths in immigration detention attributed those deaths in part to the "culture of secrecy" and the failure to address fatal flaws of the system such as inadequate medical care. <sup>92</sup> A decade later, that culture of secrecy and lack of

<sup>83</sup> ICCPR art. 23(1).

<sup>&</sup>lt;sup>84</sup> U.N. Principles of Detention, *supra* n. 42, principle 15.

<sup>85</sup> ICE Det. Standards, *supra* note 44, at § 5.6(V)(D).

<sup>&</sup>lt;sup>86</sup> *Id.* at § 5.6(V)(A)(2).

<sup>&</sup>lt;sup>87</sup> *Id.* at § 5.6(V)(E)(3).

<sup>88</sup> Project South, Imprisoned Justice, *supra* note 46, at 26.

<sup>&</sup>lt;sup>89</sup> *Id.* at 27.

<sup>&</sup>lt;sup>90</sup> *Id.* at 30-31, 43.

<sup>&</sup>lt;sup>91</sup> *Id.* at 43.

<sup>&</sup>lt;sup>92</sup> Nina Bernstein, *Officials Hid Truth of Immigrant Deaths in Jail*, N.Y. Times (9 Jan. 2010), http://www.nytimes.com/2010/01/10/us/10detain.html? r=0.

accountability persists, and is exacerbated by federal agencies, like the U.S. Marshal Service in partnership with ICE, which underreport fatalities and rights abuses occurring in the private facilities they contract with for the pretrial detention of immigrants. In fact, a former employee at the U.S. Justice Department reported that the Marshals operated "with an attitude of indifference," by failing to monitor the prisons that hold detained individuals and refusing to release the records of those who died in their custody. <sup>93</sup>

The Detention Watch Network has detailed the national crisis associated with private corporations detaining immigrants in several reports over the past five years. The most recent report, ICE Lies: Public Deception, Private Profit (Feb. 2018, co-authored with the National Immigrant Justice Center), highlights the inflated detention cost estimates used by prison contractors, as well as the complete disregard for Congressional oversight and lack of transparency and accountability that pervades the industrial prison complex that literally profits off of the lives of immigrants detained in the system. This report builds off of Detention Watch Network's 2016 report, A Toxic Relationship: Private Prisons and U.S. Immigration Detention, highlighting the experiences of 42 individuals detained in privately-run detention centers, the 2015 report, Banking on Detention: Local Lockup Quotas & the Immigrant Dragnet, and the Banking on Detention 2016 Update, both co-authored by the Center for Constitutional Rights. These reports similarly highlight the complete lack of transparency about the operation of private prisons detaining immigrants, the "corrupting influence" of the Congressionally mandated quota system, and the profits that then run to the prison corporations.

## c. HEALTH AND WELL-BEING OF DETAINED IMMIGRANTS DURING THE COVID-19 PANDEMIC

The rights violations imperiling the health and safety of immigrants noted above are compounded by overall deplorable conditions of detention that include unsanitary living conditions and inedible and inadequate food and nutrition, as detailed in our May 2018 communication. This situation is now exacerbated by the COVID-19 pandemic, whereby detained immigrants are denied personal protective equipment, do not have regular access to soap and water for hand-washing, are kept in close quarters, and are not provided with testing or sufficient medical treatment. A recent report from Detention Watch Network, Courting Catastrophe: How ICE is Gambling with Immigrant Lives Amid a Global Pandemic, details the vulnerability of detained immigrants resulting from confinement within facilities that have a record of medical negligence, poor sanitation, inadequate or rotten food provisions, and denial of basic necessities. Nearly 800 groups across the country have called for the immediate release of all persons in immigration detention to ensure their safety and well-being. 50 organizations joined Project South in submitting a letter to all members of the Georgia delegation to the U.S. Congress to prioritize the immediate release of detained immigrants under ICE custody in light of the COVID-19 pandemic, detailing risks specific to the Stewart and Irwin detention centers.

Despite the 1073 confirmed cases of COVID-19 (as of May 18, 2020) at immigrant detention centers across the United States, 94 and the deaths of Carlos Esobar Mejia and Carlos Escobar Acosta who both contracted COVID-19 while in detention, ICE continues to detain immigrants in facilities that

<sup>94</sup> José Olivares, ICE's Immigration Detainees Protested Lack of Coronavirus Precautions – And SWAT-like Private-Prison Guards Pepper-Sprayed Them, The Intercept (May 5, 2020).

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<sup>&</sup>lt;sup>93</sup> Seth Freed Wessler, *Inside the US Marshals' Secretive, Deadly Detention Empire*, Mother Jones (Nov. 2019) <a href="https://www.motherjones.com/crime-justice/2019/10/inside-the-us-marshals-secretive-deadly-detention-empire/">https://www.motherjones.com/crime-justice/2019/10/inside-the-us-marshals-secretive-deadly-detention-empire/</a>. In June 2019, Congress allocated \$155 million to the Marshals for pretrial detention of immigrants in facilities with minimal oversight. *Id*.

are not equipped to handle an outbreak of the virus. <sup>95</sup> Immigrants in those facilities continue to have limited access to justice due to lock-downs, quarantines, and other restrictions on outside visitors, including legal representatives, and many immigrants are reporting that detention officials are taking punitive measures in response to their calls for protection and medical attention. At the Stewart Detention Center, a special unit of correctional officers employed by CoreCivic is reported to have used force on immigrants on at least two separate occasions in a span of just two weeks, which were followed by abusive social media posts by CoreCivic employees. <sup>96</sup> Similar reports of punitive actions taken by prison officials against immigrants seeking protection and adequate medical care have emerged from Irwin, <sup>97</sup> and from facilities across the country.

As of May 16, 2020, there were 16 confirmed cases of COVID-19 among the immigrants detained at Stewart, <sup>98</sup> and 44 employees had tested positive. This number is likely to be a significant undercount given the lack of testing for COVID across the facilities, where immigrants are not granted sufficient access to handwashing facilities or sanitizing material and proper protective gear. <sup>99</sup>

While the U.S. Department of Justice has not suspended hearings for detained cases on a national basis, several immigration courts with detained dockets are closed or are operating at a significantly diminished capacity, further prolonging detention, and increasing the risk to those detained.

## III. CONCLUSION

Project South and Detention Watch Network's research demonstrates that pervasive and continued systematic rights violations unaccounted for at Irwin and Stewart epitomize a nationwide practice of impunity. It is worth noting that these practices persist despite federally-mandated detention standards, and international calls on the United States to employ detention for civil immigration violations only as a matter of last resort. We encourage the Working Group members to:

- Strongly condemn the practice of detaining immigrants for profit;
- Urge States to eliminate the practice of incarceration through relying on community-based alternatives to detention;
- Urge that all detained immigrants are ensured full and equal access to due process, while highlighting the ways in which the punitive nature of the U.S. immigrant detention system violates fundamental human rights principles;
- Find that the privatization of deprivation of liberty is a violation of customary international law given the lethal and unconscionable effects profit-driven immigration policies have on human life;
- Convene member States and civil society organizations to strengthen the international legal framework regulating private military and security companies.

<sup>97</sup> Priyanka Bhatt and Azadeh Shahshahani, 'Please Help Us': Those on the Inside Are in Grave Danger, Colorlines Op-Ed (May 6, 2020), <a href="https://www.colorlines.com/articles/please-help-us-those-inside-are-grave-danger-op-ed">https://www.colorlines.com/articles/please-help-us-those-inside-are-grave-danger-op-ed</a>.

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<sup>&</sup>lt;sup>95</sup> Amy Zeidan, *Why Some People Can't Avoid Mass Gathering—Detention*, The Hill (March 2020) <a href="https://thehill.com/opinion/civil-rights/490071-why-some-people-cant-avoid-mass-gathering-detention">https://thehill.com/opinion/civil-rights/490071-why-some-people-cant-avoid-mass-gathering-detention</a>.

<sup>&</sup>lt;sup>96</sup> ICE's Immigration Detainees Protested Lack of Coronavirus Precautions, *supra* note 94.

<sup>&</sup>lt;sup>98</sup> US Immigration and Customs Enforcement, ICE Guidance on COVID-19: Confirmed Cases, available at <a href="https://www.ice.gov/coronavirus">https://www.ice.gov/coronavirus</a> (last updated May 16, 2020).

We welcome your attention to these important issues and the opportunity to engage in ongoing dialogue with the Working Group to address the rights violations endemic in the current system of immigrant incarceration.

Respectfully submitted,

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