



**United States' Compliance with the
International Covenant on Civil and Political Rights**

**American Civil Liberties Union
Update to the Shadow Report to the Fourth Periodic Report of the United States**

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Annex: ACLU Shadow Report from September 2013

Acknowledgments

ACLU staff from the following projects, departments, and affiliates researched, wrote, reviewed, and/or edited sections of the shadow report and the following update: Human Rights Program, Immigrants’

U.S.-Mexico Border Killings and Militarization of the Border

On September 25, U.S. Customs and Border Protection (CBP) released, in redacted form, a review regarding its use-of-force practices. This release followed an internal audit that began in October 2012, after increased fatalities caused by Border Patrol agents along the Southwest border prompted sixteen members of Congress to call for a review of these incidents and of CBP's policies regarding all uses of force along the border and at ports of entry.¹ A week earlier, the DHS Office of Inspector General (OIG) also released a report on an audit of CBP's use of force in response to this congressional request. The OIG concluded that many agents "do not understand use of force and the extent to which they may or may not use force."² Both

There has also been extensive recent media coverage of Operation Streamline, a joint DHS-DOJ “zero-tolerance” initiative aimed at prosecuting and incarcerating tens of thousands of border-crossers annually in designated sectors along the Southwest border.¹² These prosecutions are a disproportionate response to migration that, in a large number of cases, takes place for family unity or other reasons, posing no threat to public safety. They have contributed in significant part to prison overcrowding in the federal system and to deplorable conditions in often privately-contracted prison facilities.¹³ The Senate-

⁴ Ortega, Bob and O'Dell, Rob. Deadly border agent incidents cloaked in silence. THE AZ. REPUBLIC, Dec. 16, 2013, available at <http://www.azcentral.com/news/politics/articles/20131212arizona>

⁵ See Department of Justice, Statement of Charles E. Samuels, Jr., Director, Federal Bureau of Prisons Before the

The Death Penalty

As noted in the initial report, while the death penalty in the United States is predominantly practiced at the state level, the federal government still retains the authority to use it. On January 30, 2013, Attorney General Eric Holder announced that the government would seek the death penalty against Dzhokhar Tsarnaev, the young man accused of bombing the Boston Marathon. Holder stated, “The nature of the conduct at issue and the resultant harm compel this decision,”¹ even though under federal constitutional law, the death penalty is never required.

Executions and new death sentences continue to decline in the United States.² Only nine states carried out a total of 39 executions in 2013, most of which took place in Florida and Texas. In February 2014, the governor of the state of Washington issued a moratorium on the use of capital punishment³ and the state legislature of New Hampshire took the first step to repeal the penalty.⁴ Despite these encouraging national trends, there have been troubling developments in some jurisdictions. In 2013, the state of Florida passed the Timely Justice Act in order to speed up executions in the state and limit access to the courts. A similar bill is now pending in Alabama, and others have been introduced in other states. The death penalty continues to be applied in an arbitrary and discriminatory manner, based on race, geography, and quality of counsel. Two percent of counties in the United States produce the majority of new death sentences.⁵ Of the 80 new death sentences imposed in 2013, 40% of the people sentenced to death were white, 39% black, 19% Latino, and 2.5% other races.⁶

Prisoners with intellectual disabilities continue to face execution across the United States, despite the government’s assurance that no intellectually disabled person has been executed since the Supreme Court’s decision in *Atkins*. For example, though all experts agree that he is intellectually disabled, Warren Hill remains on Georgia’s death row. The Supreme Court recently declined to consider his case,⁷ and he may have a new execution date. The Supreme Court will soon decide the case of *Hall v. Florida*, which challenges Florida’s standards for identifying intellectually disabled defendants under *Atkins*.⁸

The risk that innocent people will be sentenced to death and executed remains strong. On October 25, 2013, Reginald Griffin became the 143rd person exonerated and released from death row in the U.S. since 1973, after 30 years awaiting the death penalty in Mississippi.⁹

Facing a shortage of drugs to use in lethal injection procedures, state departments of correction across the country have been experimenting with new methods of execution. On January 16, 2014, Ohio used a new, untested method to execute Dennis McGuire. It took nearly 25 minutes for Mr. McGuire to die, and witnesses described him gasping for air and writhing for up to 15 minutes. Several states are now seeking to return to former methods of execution, like the firing squad and the electric chair.¹⁰

On January 22, 2014, the state of Texas executed Edgar Arias Tamayo, a 46 year-old Mexican national in violation of the United States' obligations under the Vienna Convention on Consular Relations (VCCR).¹¹ The U.S. Congress has failed to pass the Consular Notification Compliance Act, which would provide an additional mechanism for the United States to meet its international obligations under the VCCR and the 2004 Avena decision of the International Court of Justice.¹²

Additional Recommended Question

1. What measures will the United States take to ensure that it will not subject persons under sentence of death to cruel, inhuman, and degrading treatment?

Additional Suggested Recommendation

1. The federal government, through the Food and Drug Administration, should ensure that state departments of correction do not acquire drugs to use in lethal injection procedures illegally.

¹Adam Goldman and Sari Horwitz, U.S. to Seek Death Penalty in Boston Bombing Case, WASH. POST (Jan. 30, 2014), available at <http://www.washingtonpost.com/archive/local/localnews/2014/01/30/localnews/2014-01-30/>

bombing/2014/01/30/localnews/2014-01-30/

⁴ K [5.1(h)[5.1(e)-7.8(e)-19.9(n R)-1.7(o)-.1ana)-19.8(yn)-.1ae,

¹² Julian Pecquet, State: Mexican's execution puts Americans at risk, GLOBAL AFFAIRS: THE HILL'S INTERNATIONAL RELATIONS BLOG, (Jan. 23, 2014, 1:13PM), <http://thehill.com/blogs/global-affairs/americas/196236-state-mexicans-execution-puts-americans-at-risk>

Accountability for Torture and Abuse during the Bush Administration

Debate over the human rights costs and consequences of the Central Intelligence Agency's (CIA) past torture of prisoners in its custody continues both in the United States and abroad. Continuing U.S. government transparency failures cripple that debate. Therefore, since the ACLU's last submission, we filed a Freedom of Information Act (FOIA) lawsuit seeking the release of three key documents concerning the CIA's now-discontinued rendition, detention, and torture program. Those documents are: the Senate Select Committee on Intelligence's 6,000-page investigative report on the CIA program; the CIA's response to that report, in which it defends its unlawful practices; and an earlier report commissioned by former CIA Director Leon Panetta that reportedly conflicts with the CIA's response to the Senate report.¹ Full disclosure of each of these documents is necessary for a more complete public record, a truly meaningful public debate, and accountability.

In response to the ACLU's lawsuit, the CIA has agreed to review the two reports authored by the agency and consider releasing them publicly by May 22, 2014. If the CIA seeks to keep all or any portion of those reports secret, it will provide its asserted justifications at that time. The CIA continues to challenge its obligation to release the Senate investigative report in court.

Separately, the Senate Intelligence Committee is expected to vote in February or March to seek declassification and the release of a lengthy summary version of the investigative report.² The chairman of the committee, Senator Dianne Feinstein, has publicly stated her support for the declassification and release of the summary report.

Additionally, the ACLU has recently renewed its request in another FOIA lawsuit for the release of 2,000 photos of detainee abuse that the U.S. Department of Defense has fought to keep secret since 2006.³

2. The U.S. government should release critical documentation of torture and other abusive forms of treatment sought under the Freedom of Information Act (FOIA). All U.S. government records should be made public to the fullest possible extent, with minimal redactions made only to protect legitimate secrets, and not unlawful conduct.

¹ Amended Complaint for Injunctive Relief, at 1, *Am. Civil Liberties Union v. Central Intelligence Agency*, 1:13-cv-01870 (JEB) (D.D.C. filed Jan. 27, 2014), available at <https://www.aclu.org/national-security/senate-torture-report-and-cia-reply-aclu-v-cia-amended-complaint-injunctive-relief>.

² Hina Shamsi, *CIA Considers Releasing Its Torture Reports to ACLU*, [ACLU](#) 2

official stated that the administration would not provide even members of Congress with the Justice Department legal opinions on the lawfulness of killing foreign nationals away from a battlefield.

The U.S. government continues to fall far short of its international legal obligations under human rights law, and it must begin to make serious efforts to remedy those failures by increasing transparency about the scope of the lethal-force authority it claims and by limiting that scope so that the government's uses of lethal force comports with its legal obligations.

¹ See Amnesty International USA, *Between a Drone and Al-Qaeda: The Civilian Cost of US Targeted Killings in Yemen* (2013), available at <http://www.hrw.org/reports/2013/10/22/betweendrone-and-al-qaeda-0>; Human Rights Watch, "Will I Be Next?": US Drone Strikes in Pakistan (2013), available at <http://www.amnestyusa.org/research/reports/will-i-be-next-us-drone-strikes-in-pakistan>. The United States has not publicly responded to either of these reports. See Sarah Knuckey, *State Department Concludes Review of Drone Strike Reports, Offers Public Response (Sort of)* SECURITY (Nov. 19, 2013, 9:30 AM), available at <http://justsecurity.org/2013/11/19/state-department-concludes-review-ngo-drone-strike-reports/>.

² See Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, U.N. Doc. A/68/382 (Sept. 13, 2013) (by Christof Heyns), available at <http://daccessdds-ny.un.org/doc/UNDOC/GEN/N13/473/63/PDF/N1347363.pdf?OpenElement>; Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, U.N. Doc. A/68/389 (Sept. 18, 2013) (by Ben Emmerson), available at <http://daccessdds-ny.un.org/doc/UNDOC/GEN/N13/478/77/PDF/N1347877.pdf?OpenElement>.

³ White House, *President Barack Obama's State of the Union Address* (Jan. 28, 2014), available at <http://1.usa.gov/Mvx7E>.

⁴ See *U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities* (May 23, 2013), available at <http://1.usa.gov/1cVVOc8>.

⁵ See generally *Letter from ACLU et al. to President Barack Obama* (Dec. 4, 2013), available at <http://www.hrw.org/news/2013/12/05/joint-letter-president->

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Introduction

This report supplements and updates the submission of the American Civil Liberties Union (ACLU) to the UN Human Rights Committee (“the Committee”) in December 2012.¹ Together, these submissions address issues raised by the government of the United States in its 4th periodic report on compliance with the International Covenant on Civil and Political Rights (ICCPR), a treaty which the United States ratified in 1992. Their aim is to highlight for the Committee key areas in which the U.S. government has failed to uphold its human rights commitments under the ICCPR.

Last April, the Committee asked the United States a number of detailed questions on its
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militarization and killings on the U.S.

“Secure Communities” is a program under which everyone arrested and booked into a local jail has their fingerprints checked against ICE's immigration database, regardless of the state or locality's assent to the practice. Under this program, some police engage in unjustified stops and arrests in order to put people through the screening process, actions for which DHS has failed to develop sufficient oversight mechanisms.⁵ “Secure Communities” has been shown to foster racial profiling, undermine community policing, and harm public safety.⁶ The loud public outcry against this federal program has translated into state and local advocacy efforts to push back against excessive deportations. The outcry has included the California TRUST Act and over a dozen municipal ordinances or resolutions passed to curb the impact of “Secure Communities” and immigration detainers, the latter of which are frequently issued without sufficient evidence that the person is subject to deportation, without judicial approval, and without due process protections.⁷

In its most recent report to the Human Rights Committee, the U.S. government mentioned concerns about all six of the state laws mentioned above, and described lawsuits it filed through the Department of Justice to block those laws in Arizona, Alabama, South Carolina, and Utah, and explained that the laws in Georgia and Indiana were under re4(1)-2(a)-6(w)u

Communities program, and 287(g) agreements, to determine whether they result in racial profiling. Please provide information on the number of complaints regarding racial profiling received annually by the Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties against DHS personnel, as well as the results of the investigations and disciplinary action undertaken.

III. U.S. Government Response

In the U.S. government replies to the list of issues, the U.S. concedes that racial profiling is premised on erroneous assumptions, is ineffective, negatively impacts affected communities, and runs afoul of the U.S. Constitution and other laws and regulations of the United States. The U.S. notes its efforts to train law enforcement from the Federal Bureau of Investigation and the Department of Homeland Security's U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement to refrain from engaging in racial profiling, and states that immigration law enforcement agencies are subject to strict rules regarding profiling. The government also mentions efforts it has taken to investigate profiling, citing a statistic that between October 2011 and May 2013 the DHS Office for Civil Rights and Civil Liberties

civil and political rights violations which have emerged in 287(g

3. Collect and make public data regarding the race, national origin, and religion of individuals stopped, apprehended, or detained pursuant to the 287(g) and “Secure

⁷ Some civil society advocates are predicting that such state and local measures will increase in the next term as communities, in the face of unrelenting DHS enforcement, will stop waiting for reform and choose to establish limits to their entanglement with federal immigration enforcement programs.

⁸ Human Rights Comm., Fourth Periodic report: United States of America, ¶¶ 636-640, U.N. Doc. CCPR/C/USA/4 (May 22, 2012), [hereinafter "Fourth Periodic Report"] available at <http://www.state.gov/j/drl/rls/179781.htm>.

⁹ ACLU Suggested List of Issues to U.N. Country Report Task Force on U.S. Compliance with the International Covenant on Civil and Political Rights (Dec. 10, 2012), available at <https://www.aclu.org/human-rights/aclu-suggested-list-issues-un-country-report-task-force-us-compliance-international>.

¹⁰ United States Written Responses to Questions from the United Nations Human Rights Committee Concerning the Fourth Periodic Report of the United States on the International covenant on civil and Political Rights (ICCPR), ¶¶ 13, 14 (July 3, 2013), available at <http://www.state.gov/j/drl/rls/212393.htm>.

¹¹ *Id.*, ¶ 14.

¹² *Id.* The CERD Report (June 12, 2013) is available at http://www.state.gov/j/drl/rls/cerd_report/210605.htm

U.S.-Mexico Border Killings and Militarization of the Border

I. Issue Summary

In the last decade, the United States has relied heavily on enforcement-only approaches to I.

- widespread abuses in short-term Border Patrol custody;
- traumatic family separations in border communities;
- arbitrary and invasive searches and seizures of individuals and their property;
- suppression of video recordings of enforcement officers; and
- racial profiling and harassment of Native Americans, Latinos, and other people of color.⁵

Many victims of these violations are U.S. citizens or lawful permanent residents; some have lived in the border region for generations.

At least nineteen people have died since January 2010 as a result of alleged excessive use of force by CBP officials; five of these individuals were U.S. citizens and six were in Mexico when fatally shot.⁶ There have been no transparent investigations of these incidents that release the details of the events—including government video-recordings—to the public.⁷

Among the most shocking incidents of excessive force is the killing of 16-year-old José Antonio Elena Rodríguez, who was shot eleven times by a CBP agent (seven times in the back) on October 10, 2012. The CBP agent was in Nogales, Arizona, firing into Mexico when he killed the teenager, and Border Patrol's initial claims that the boy was throwing rocks over the wall were later contradicted by forensic evidence and eyewitnesses.⁸ When he was shot and killed, José Antonio Elena was carrying nothing other than the cell phone his grandmother had purchased for him.⁹

In another incident, reported by the Public Broadcasting Service (PBS) in April 2012, forty-two-year-old Anastacio Hernández Rojas, a father of five, was killed in an encounter with CBP officials on May 28, 2010.¹⁰ CBP officials maintain that Hernández was combative and resisting arrest; however, the PBS program featured video footage of a dozen CBP agents surrounding Mr. Hernández and repeatedly Taser and beating him while he was handcuffed, hog-tied, and lying prostrate on the ground.¹¹ The San Diego coroner classified Mr. Hernández's death as a

- Thirty-six-year-old Guillermo Arévalo Pedroza, who was killed by a bullet fired from a U.S. Border Patrol boat while picnicking with his wife and two young girls on the south side of the Rio Grande, near Nuevo Laredo, Tamaulipas, on September 3, 2012;¹⁵
- Thirty-year-old Juan Pablo Pérez Santillán, who was killed by a U.S. Border Patrol agent while standing on the banks of the Rio Grande in Matamoros just across from Brownsville on July 9, 2012;¹⁶
- Nineteen-year-old U.S. citizen Carlos La Madrid, who was killed after being shot in the back four times by Border Patrol agents while allegedly trying to flee to Mexico at the border fence near Douglas, Arizona, on March 21, 2011;¹⁷ and
- Fifteen-year-old Sergio Adrián Hernández Guereca, who was shot and killed by Border Patrol while standing in Juarez, Chihuahua, on June 7, 2010.¹⁸

In three of the nineteen cases, the U.S. Department of Justice has closed its review of the incidents with a press release announcing the agency's decision not to prosecute.¹⁹

Currently, little information is available as to what, if any, internal investigation or disciplinary action CBP undertakes in response to allegations of abuse. The DHS Office of Civil Rights and Civil Liberties (CRCL) receives and investigates civil rights complaints but has no authority to impose discipline or compel policy changes at CBP. The DHS Office of the Inspector General (DHS OIG), another oversight body, has itself been the subject of allegations of falsifying investigative reports.²⁰ Moreover, in recent years, the DHS OIG has had a backlog of complaints, causing it to transfer cases back to CBP for investigation, raising significant conflict of interest concerns.²¹

At this time, two independent reviews of CBP's use of force are being conducted: one by the DHS OIG that was announced more than a year ago and another internal report contracted from an independent, outside agency that was announced in December 2012. The reports are expected to be completed this fall, though.

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Though the question was meant to address police brutality and abuse in federal immigration enforcement agencies, the U.S. response emphasized enforcement efforts against local police. The first three paragraphs (57, 58, and 59) focused on the Department of Justice's Civil Rights Division (DOJ/CRT) investigations of complaints against local police for excessive use of force, profiling, and abuse of power.

Later discussion of allegations against federal agents was general and lacked the detail necessary to fully understand the scope of the problem. In paragraph 60, the U.S. writes: "[S]ince

human rights abuses? How many officials have been disciplined in recent years for improper use of force or violations of civil or human rights?

- f. Collect and make public data on all use-of-force incidents
- g. In consultation with the Department of Justice, develop procedures for investigating complaints and disciplining CBP officers, including on use-of-force incidents.
- h. Provide annual, public reports to Congress on training, complaints, disciplinary actions, and other information and data relating to use of force by all DHS

Labor Trafficking of Domestic Workers Employed by Diplomats and of Guestworkers

I. Issue Summary

Across the U.S., domestic workers and foreign nationals employed on a temporary basis (“guestworkers”) are subjected to numerous civil and human rights violations including trafficking and forced labor. These migrant workers are especially prone to such abuse, due in part to the exploitation of visa application processes by duplicitous employers and recruiters and because of serious defects in the structure of the guestworker program. The

worker's ability to obtain and retain status entirely dependent on their remaining on good terms with their employer. This precarious legal situation renders workers disposable commodities of the employer, so, for example, if workers should complain about any aspect of their position, educate other workers about their legal rights, or protest about their compensation, their employer can very easily send them back to their country of origin, irrespective of the conditions of their employment. This power imbalance is exacerbated by the fact that guestworkers frequently arrive saddled with debt after paying the exorbitant

1. What concrete measures has the government adopted to better regulate the issuance of A-3 and G-5 visas to prevent exploitation, trafficking, forced labor, and other abuses of domestic workers by diplomats and personnel of international organizations? For example, d

the presence of employers, with domestic workers in the United States seeking to extend their employment to screen for possible abuse.

2. The United States should prevent and vigorously prosecute and punish all acts of trafficking and forced labor by diplomats and international organization employees. This includes fully investigating all credible allegations of these abuses. Where the allegations against diplomats are credible, the U.S. government should seek waivers of immunity from sending countries. In appropriate cases, the U.S. should withdraw credentials from diplomatic perpetrators of these crimes and bar them from further diplomatic service in the United States.
3. The U.S. should hold diplomats and their sending countries criminally, civilly, and administratively accountable for trafficking and forced labor. The United States government should assist in the enforcement of civil judgments obtained by victims pursuing cases against their traffickers, and in appropriate cases demand that diplomats' sending countries make *ex gratia* payments to victims of trafficking and forced labor.

Trafficking Pursuant to the U.S. Guestworker Program

1. The U.S. should ensure that in any temporary visa program, workers have the ability to leave abusive U.S. employers and seek employment with other U.S. employers without having to leave the U.S. and return to their country of origin, and that employers bear the recruitment, visa processing, and travel costs of workers.
2. The U.S. should ensure that in any temporary visa program, workers have a path to permanent residency and citizenship (with their families).
3. The U.S. should ensure that in any temporary visa program, there exists robust governmental oversight of labor conditions, and enforcement mechanisms verifying that employers comply with the terms of the contract. The U.S. government should also

physical attack, but her life is often up-ended. Frequently, she must move out of her home in order to escape the dangerous situation, which could impact her ability to maintain housing and employment. She may be raising minor children, who are frightened or traumatized from being exposed to violence or experiencing it themselves; they must also move homes, and may need to transfer to new schools. It is for these reasons that domestic violence is, sadly, a primary cause of homelessness among women. In order to ensure that housing does not become a barrier for women experiencing domestic violence, the U.S. government must work to provide access to both short-term, emergency housing, as well as permanent housing options. The Department of Housing and Urban Development should ensure that the new housing protections in the recently reauthorized Violence Against Women Act are vigorously enforced, and that all relevant grant programs are fully funded.⁵

Finally, access to counsel and judicial remedies for domestic violence survivors are necessary to break the cycle of violence.⁶ Ending an abusive relationship may implicate a variety of civil matters, including divorce, child custody, and immigration status – any of which could be used by the abusive partner to manipulate the domestic violence survivor and prolong the situation of abuse. Legal counsel for domestic violence survivors not only ensure that their clients obtain access to appropriate legal relief and benefits, they also guarantee that survivors are not forced to negotiate directly with their abusive former partners. The Department of

- b. to ensure that acts of domestic violence are effectively investigated and that perpetrators are prosecuted and sanctioned.
- c. Please clarify what steps have been taken to improve the provision of emergency shelter, housing, child care, rehabilitative services and legal representation for women victims of domestic violence.

III. U.S. Government Response

In its response to this question, the U.S. government focused on the expanded legal jurisdiction and law enforcement tools provided through the 1994 Violence Against Women Act (VAWA), which was most recently reauthorized this year. While VAWA has significantly improved the investigation and prosecution of domestic violence nationally, it remains a highly under-reported, under-investigated, and under-prosecuted crime, and the U.S. government's response failed to address the Committee's inquiry about the measured impact of its efforts in this area.⁹

The U.S. government also described its key priorities in this area as ensuring safety for victims and holding offenders accountable, but domestic violence will only be effectively prevented and addressed if the government adopts a holistic approach. Such an approach would require, at a minimum, the elements mentioned in the inquiry from the Human Rights Committee – emergency shelter, housing, child care, and access to medical care, counseling, and legal representation. While the U.S. government response mentions grant programs and community partnerships in this area funded by VAWA, the Family Violence Prevention and Services Act (FVPSA), and the Department of Health and Human Services (HHS) Centers for Disease Control and Prevention (CDC), it does not specifically address whether the funding for these programs is

1. What specific measures has the United States adopted at the national, state, and local levels through laws, policies, and practices to incorporate human rights laws and standards into law enforcement operations to ensure that agencies adopt a “due diligence” approach to preventing and redressing domestic violence and other forms of gender-based violence?
2. What steps has the U.S. taken to ensure that survivors of domestic violence are afforded access to an effective remedy at the federal, state, and local levels for violations of their rights?
3. What steps has the U.S. taken to inform and train state and local government and law enforcement about their human rights obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Inter-American Declaration on the Rights and Duties of Man and the American Declaration of the Rights and Duties of Man?

Against Women art. 4(c), Dec. 18, 1979, 1249 U.N.T.S. 13; Comm. On the Elimination of Discrimination Against Women, Gen. Rec. No. 19, ¶ 9, U.N. Doc. A/47/38 (Jan. 29, 1992).

³ U.S. DEP'T OF STATE, UNITED STATES STRATEGY TO PREVENT AND RESPOND TO GENDER-BASED VIOLENCE GLOBALLY (2012), available at <http://www.state.gov/documents/organization/196468.pdf>.

⁴ Press Release, U.S. Dep't of Justice, Justice Department Announces Consent Decree with City of New Orleans to Resolve Allegations of Unlawful Misconduct by New Orleans Police Department (July 24, 2012), available at <http://www.justice.gov/opa/pr/2012/July/12-ag-917.html>; Press Release, U.S. Dep't of Justice, Justice Department Files Lawsuit Against the Puerto Rico Police Department for Race, Color and Religious Discrimination (July 22, 2013), available at <http://www.justice.gov/opa/pr/2013/July/13-crt-826.html>; U.S. Dep't of Justice, Justice Department Reaches Settlement to Reform the Missoula, Mont. Police Department's Response to Sexual Assault (May 15, 2013), available at <http://www.justice.gov/opa/pr/2013/July/13-crt-826.html>.

⁵ Violence Against Women Reauthorization Act of 2013, S. 47, 113th Cong. 1A326.5(l)17.4(e)4.2(a)0.5(t)2.4(j)JTJ EkeC BT 02.7(/).1(CT 0.00i/3-5(v)19.5)-8.8yo(e)4.2

Solitary Confinement

I. Issue Summary

Recent decades have seen an explosion in the use of solitary confinement in detention facilities in the United States. Solitary confinement takes many forms, including physical and social isolation by administrative transfer to “supermaximum” security facilities, which can stretch on for decades, as well as punitive, protective, or medical isolation 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.¹

increasing monitoring of the use of solitary confinement, and setting important limits on its use, especially for vulnerable populations such as individuals with mental disabilities and alleged victims of sexual assault.¹¹

- In March, the Inter-American Commission on Human Rights (IACHR) convened a thematic hearing on solitary confinement in the Americas. This hearing included testimony on solitary confinement in the United States, including by the United Nations Special Rapporteur on Torture.¹² In its concluding statement, the IACHR stated:

[b]ased on the fact that the prohibition of torture and cruel, inhuman, and degrading treatment may not be abrogated and is universal, the OAS Member States must adopt strong, concrete measures to eliminate the use of prolonged or indefinite isolation under all circumstances ... [T]his practice may never constitute a legitimate instrument in the hands of the State. Moreover, the practice of solitary confinement must never be applied to juveniles or to persons with mental disabilities.¹³

- In May, the United States Government Accountability Office (GAO) issued a report on the use of solitary confinement in the U.S. BOP. The report criticized the BOP for failing to conduct any research to determine whether the practice has an adverse effect on prisoners or contributes to facility safety.¹⁴

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Article 24 (right of children to measures of protection as required by their status as minors) are also widespread.¹⁷

These statements also acknowledge that there is no comprehensive federal ban (in statute or regulation or by judicial decree) on the prolonged solitary confinement of persons deprived of their liberty, the solitary confinement of persons with disabilities, or the solitary confinement of children. There is also very little publicly available data or policies and procedures regarding the use of solitary confinement in local, state, and federal detention facilities in the United States, including the BOP.

IV. Recommended Questions

1. Please provide data regarding the use of solitary confinement in the Federal Bureau of Prisons, including:
 - A. State the number of prisoners in the custody of the Federal Bureau of Prisons who have been continuously held in solitary confinement for more than 15 days.
 - B. For those prisoners identified in question 1A, state the following:
 - a. The institutions where the prisoners are held and the number of prisoners in solitary confinement in each facility;
 - b. The mean and median length of stay in solitary confinement in each facility where prisoners are so confined;
 - c. 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 "Psychology Services Manual" (pp. 12-13);
 - d. The reason for placement in or classification to solitary confinement for each prisoner so held; and
 - e. The number of suicides or other incidents of "self harm" in the last 24 months for prisoners held in solitary confinement.
 - C. Please provide such data for detainees held in solitary confinement in federal civil detention in connection with their immigration status (or held under contract in facilities that hold such detainees) and in federal juvenile facilities (or held under

Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Judiciary Comm., 112th Cong. (2012), available at <http://solitarywatch.com/wp-content/uploads/2012/06/transcript-of-the-hearing.pdf>.

¹⁰ Ian Urbina, **Officials to Review Immigrants' Solitary Confinement**, N.Y. TIMES, Mar. 27, 2013, at A16, available at <http://www.nytimes.com/2013/03/27/us/immigrants-solitary-confinement-to-be-reviewed.html>; Ian Urbina, Catherine Rentz, **Immigrants Held in Solitary Cells, Often for Months**, N.Y. TIMES, Mar. 24, 2013, at A1, available-

The Death Penalty

I. Issue Summary

Since 1976, when the modern death penalty e

While the government notes that federal capital defendants have a conditional right to post-conviction DNA testing, this right is not absolute, and many states do not guarantee capital defendants the right to post-conviction DNA testing.¹⁷ For instance, the State of Mississippi came dangerously close to executing Willie Manning, without giving him the opportunity to conduct DNA testing of critical evidence in his case, even though the Federal Bureau of Investigation supported the testing. Fortunately, at the last minute, his execution was stayed by the Mississippi Supreme Court, though Manning remains on Mississippi's death row.¹⁸

Issue 8(e). While the federal government has provided some resources to improve capital defense programs across the country as noted in its reply, these resources still fall far short of what is necessary for competent and constitutional representation in capital cases. There remains a huge disparity between the modest grants to capital defenders and thTm (710(a)4(t)-2m(o i)-uc)4(onvi)-2(.0

3. Congress should amend the habeas-related provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) so that federal courts are more accessible to prisoners asserting claims of constitutional violations.
4. The U.S. should create and adequately fund state defender organizations that are independent of the judiciary and that have sufficient resources to provide quality representation to indigent capital defendants at the trial, appeal, and post-conviction levels. States must ensure that capital defense lawyers have adequate time, compensation, and resources for their work on each case to ensure the enhanced fair trial rights guaranteed under the ICCPR are protected for each individual threatened with a death sentence.
5. Congress should implement the Avena decision by passing appropriate legislation.

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 As of July 26, 2013. Executions by Year Since 1976. DEATH PENALTY INFORMATION CENTER (last visited Sept. 9, 2013), <http://www.deathpenaltyinfo.org/executions-year>.

³ NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, DEATH ROW U.S.A. (Winter 2013), available at http://www.naacpldf.org/files/publications/DRUSA_Winter_2013.pdf.

⁴ ACLU Suggested List of Issues to U.N. Country Report Task Force on U.S. Compliance with the International Covenant on Civil and Political Rights (Dec. 10, 2012), available at <https://www.aclu.org/human-rights/aclu-suggested-list-issues-un-country-report-task-force-us-compliance-international>.

⁵ DEATH ROW U.S.A., *supra* note 3.

⁶ See generally John Blume, Of Atkins and Men: Deviations from Clinical Definitions of Mental Retardation, 18 CORNELL J. L. & PUB. POL'Y 689 (2009); John Blume, An Empirical Look at Atkins v. Virginia and its Application in Capital Cases, 36 TENN. L. REV. 625 (2009).

⁷ Editorial, Mentally Retarded and on Death Row, N.Y. TIMES (Aug. 3, 2012), available at http://www.nytimes.com/2012/08/04/opinion/mentally-retarded-and-on-death-row.html?_r=2&

Finally, the U.S. government continues to withhold from the public key documents relating to the CIA's rendition, detention, and interrogation program. Chief among them is a 6,000-page report of the Senate Select Committee on Intelligence, which, according to the Chairwoman of

2. Congress should pass legislation that creates procedures to prevent the abuse of the state secrets privilege and to protect the rights of those seeking an opportunity to be heard, and potentially seek redress, through the U.S. court system.
3. The U.S. government should release critical documentation of torture and other abusive forms of treatment sought under the Freedom of Information Act (FOIA).
4. The U.S. should establish a fund for reparations to persons who were subjected to torture and other forms of cruel, inhuman or degrading treatment while held under U.S. custody or control.

¹ Scott Shane, Portrayal of C.I.A. Torture in Bin Laden Film ~~Reopens~~ a Debate, N.Y. TIMES, Dec. 12, 2012, available at <http://www.nytimes.com/2012/12/13/us/zero-dark-thirty-torture-scenesreopendebate.html?pagewanted=all>.

² Press Release, American Civil Liberties Union, Supreme Court Denies Request to Hear Torture Victim's Lawsuit (June 11, 2012), available at <https://www.aclu.org/national-security/supreme-court-denies-request-hear-american-torture-victims-lawsuit>.

³ See Jose Padilla and Estella Lebron v. United States-Am. Comm'n H.R. (2012); Thahe Mohammed Sabar and others v. United States-P-417-12, Inter-Am. Comm'n H.R. (2012); Binyam Mohamed and others v. United States-Am. Comm'n H.R. (2011); Khaled El Masri v. United States-P-419-08, Inter-Am. Comm'n H.R. (2008).

⁴ Press Release, Senator Dianne Feinstein, Feinstein Statement on CIA Detention, Interrogation Report (Dec. 13, 2012), available at <http://www.feinstein.senate.gov/public/index.cfm/2012/12/feinstein-statement-on-cia-detention-interrogation-report>.

⁵ See Mark Mazzetti & Scott Shane, Senate and C.I.A. Spar over Secret Report on Interrogation Program, N.Y. TIMES, July 19, 2013, available at <http://www.nytimes.com/2013/07/20/us/politics/senate-and-cia-spar-over-secret-report-on-interrogation-program.html?pagewanted=all>.

⁶ ACLU Suggested List of Issues to U.N. Country Report Task Force on U.S. Compliance with the International Covenant on Civil and Political Rights (Dec. 10, 2012), available at <https://www.aclu.org/human-rights/aclu-suggested-list-issues-un-country-report-task-force-us-compliance-international>.

⁷ United States Written Responses to Questions from the United Nations Human Rights Committee Concerning the Fourth Periodic Report of the United States on the International Covenant on Civil and Political Rights (ICCPR), ¶ 44 (July 3, 2013), available at <http://www.state.gov/j/drl/rls/212393.htm>.

⁸ Id., ¶ 46.

threat involves a concrete and known plot. If true, the government's elastic definition of "imminence" is a clear departure from international standards, and from plain English.⁶ Additionally, though the Presidential Policy Guidance states that the government will conduct targeted killings only where capture is not feasible and no reasonable alternatives to the use of lethal force exist, the document contains no explanation of what those purported constraints mean in practice. In short, while we appreciate these efforts to explain U.S. government policy standards to the public, those explanations provoke more concerns and questions than provide answers, and do nothing to inspire confidence that the U.S. government is adhering to its international legal obligations.

Concern about the government's actual implementation of new policies was heightened when, just days after the Presidential Policy Guidance was released, officials confirmed that the government would continue to carry out so-called "signature strikes"—the targeting of unidentified individuals based on apparent behavioral patterns.⁷ On its face, the Presidential Policy Guidance appeared to have constrained the practice of signature strikes. That the U.S. government carved out an exception to an apparent restriction so soon after it was announced calls into question the extent to which the government is relying on other loopholes in its own policy constraints.

II. Relevant Questions in the Human Rights Committee's List of Issues

The use of so-called targeted killings by the U.S. outside

issues - is explicitly a government policy; it is not an expression of the government's view of the law. In the context of the government's targeted killings practices, that is a key discrepancy.

Furthermore, the government has not disclosed its selection process or evidentiary criteria for targeted killing decisions. Although the government has finally acknowledged responsibility for killing four U.S. citizens, it refuses to disclose the identity or number of non-citizens, including civilian bystanders, who have been killed. In the absence of that information, neither the Committee nor the international community at large can have confidence that the U.S. government's targeted killing actions actually adhere to the legal requirements.

Crucially, while the U.S. government continues to publicly insist that its targeted killing program complies with its international obligations to protect the right to life, it has maintained an unwavering opposition to judicial review and accountability.

For example, in March 2013, a federal appeals court in Washington, D.C., ruled in an ACLU Freedom of Information Act lawsuit that the Central Intelligence Agency could no longer refuse to confirm or deny whether it had information about the government's use of drones to carry out targeted killings.⁹

provide an explanation of why it distinguishes between citizens and non-citizens when it comes to releasing this basic information.

2. Describe with specificity whether and how the U.S. government may depart from the Presidential Policy Guidance and how any such departure complies with international human rights law.
3. Describe with specificity how the U.S. government's claimed "signature strike" authority

⁷ Peter Baker, In Terror Shift, Obama Took a Long Path, N.Y. TIMES, May 27, 2013, <http://nyti.ms/11t06mz>.

⁸ United States Written Responses to Questions from the United Nations Human Rights Committee Concerning the Fourth Periodic Report of the United States on the International Covenant on Civil and Political Rights (ICCPR), ¶ 34 (July 3, 2013), available at <http://www.state.gov/j/drl/rls/212393.htm>.

⁹ American Civil Liberties Union v. CIA, 10 F.3d 422 (D.C. Cir. Mar. 15, 2013).

¹⁰ Memorandum of Points and Authorities in Support of Defendant CIA's Motion for Summary Judgment, American Civil Liberties Union v. CIA, No. 1:10-cv-00436-RMC (D.C. Cir. Aug. 9, 2013).

¹¹ Press Release, American Civil Liberties Union, Court Hearing Friday in Lawsuit Challenging U.S. Drone Killings of Three Americans (July 18, 2013), available at

NSA Surveillance Programs

I. Issue Summary

Over the last two months, it has become clear that the National Security Agency (NSA) is engaged in far-reaching, intrusive, and unlawful surveillance of telephone calls and electronic communications both within and outside the United States. Through media reports as well as U.S. government declassifications, we have recently learned about two such forms of NSA surveillance.¹ Through one, the NSA is collecting the “telephone metadata” of every single phone call into, out of, and within the United States. Through another, which includes programs

the government scans the content of nearly all emails and other text-based communications that enter or leave the United States for particular keywords “about” its foreign-intelligence targets.

The PRISM and UPSTREAM programs are authorized by section 702 of the FISA. That statute authorizes the “targeting” of non-U.S. persons reasonably believed to be located outside the United States for foreign-intelligence purposes.

Even though the law requires judicial approval before the government can engage in this kind of surveillance, in practice, there is little judicial involvement in the program. By making an application to the FISC, the U.S. government may obtain a mass-acquisition order that authorizes, for an entire year, whatever surveillance the government may choose to engage in, within broadly drawn parameters.³ Additionally, the government’s definition of “foreign intelligence” sweeps so broadly that it potentially encompasses almost any foreign person at all—not just individuals who are foreign agents, engaged in criminal activity, or connected even remotely with terrorist activities. Finally, the U.S. government’s targeting procedures allow the pro Fcti pron t

there was probable cause to believe that its surveillance target was an agent of a foreign power, such as a foreign government or terrorist group. It was also

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