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15 May 2018

Felipe González Morales  
Special Rapporteur on the Human Rights of Migrants  
Office of the United Nations High Commissioner for Human Rights  
Palais des Nations  
CH-1211 Geneva 10, Switzerland  
migrant@ohchr.org

**RE: Communication Addressing U.S. Violations of International Law at Immigration Detention Facilities in the U.S. State of Georgia and Calling for a Coordinated Site Visit and International Condemnation.**

CC: Working Group on Detention;

Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Rights of People to Self-Determination;

Nils Melzer, Special Rapporteur on Torture and Other Inhuman, or Degrading Treatment or Punishment;

Urmila Bhoola, Special Rapporteur on Contemporary Forms of Slavery, Including its Causes and its Consequences;

E. Tendayi Achiume, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance;

Ahmed Shaheed, Special Rapporteur on Freedom of Religion or Belief;

David Kaye, Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression

Dear Special Rapporteur González Morales:

We, the Transnational Legal Clinic at the University of Pennsylvania Law School, submit this communication on behalf of Project South, an organization working extensively with immigrant communities in the U.S. South to end abusive and inhumane immigration detention practices. We are joined by 70 other human rights and immigrants' rights civil and immigration rights organizations across the U.S. South and throughout the country. In this communication, we

address ongoing human rights violations committed by the U.S. government at the Stewart Detention Center (Stewart) and the Irwin County Detention Center (Irwin), two immigrant detention centers located in remote areas in the U.S. state of Georgia. Privately run by for-profit prison companies, the two detention facilities lack sufficient government oversight and typify the abusive and inhumane nature of immigrant detention throughout the United States in the present day. Taking into consideration the extensive human rights violations occurring at Stewart and Irwin, we encourage members of the different rapporteurships and working groups to issue a statement calling on the United States to respect the rights and dignity of all detained immigrants and request the U.S. government to grant a site visit to Stewart and Irwin detention centers.

## I. BACKGROUND AND CONTEXT

### A. CONTEMPORARY TRENDS IN U.S. IMMIGRATION DETENTION

Although immigration violations are supposed to be treated as civil, and not criminal, infractions, the U.S. government has increasingly adopted a punitive approach towards immigrants. The government's employment of heavy-handed practices to police and detain immigrants in recent years threatens international and domestic legal norms prohibiting the use of immigration detention as a general deterrent to migration. In *Zadvydas v. Davis*, the U.S. Supreme Court correctly articulated, "Government detention violates [the Due Process] Clause [of the Fifth Amendment] unless the detention is ordered in a criminal proceeding with adequate procedural protections . . . or, in certain special and 'narrow' non-punitive 'circumstances.'"<sup>1</sup> 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."<sup>2</sup> Immigration advocates have particularly been alarmed by the privatization of Immigration and Customs Enforcement's (ICE) detention system wherein the maximization of profit seemingly takes priority over fundamental human rights such as health, safety, and access to justice.<sup>3</sup>

Between 2009 and 2015, Congress authorized appropriations bills that required the Department of Homeland Security (DHS) to maintain 34,000 detention beds on a daily basis,<sup>4</sup> a practice derisively called a "bed quota." In its Congressional Budget Justification for Fiscal Year 2018, DHS has made a request to increase the number of beds to over 51,000.<sup>5</sup> In September 2017, only months after the Trump administration issued an executive order titled, "Enhancing Public

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<sup>1</sup> *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001).

<sup>2</sup> Press Release No. 53/09, Inter-Am. Comm'n on Human Rights, *IACHR Visits U.S. Immigration Detention Facilities*, <https://www.cidh.oas.org/Comunicados/English/2009/53-09eng.htm>.

<sup>3</sup> DET. WATCH NETWORK, *BANKING ON DETENTION: 2016 UPDATE* (2016), [https://www.detentionwatchnetwork.org/sites/default/files/reports/Banking%20on%20Detention%202016%20Update\\_DWN%2C%20CCR.pdf](https://www.detentionwatchnetwork.org/sites/default/files/reports/Banking%20on%20Detention%202016%20Update_DWN%2C%20CCR.pdf); DET. WATCH NETWORK, *A TOXIC RELATIONSHIP: PRIVATE PRISONS AND U.S. IMMIGRATION DETENTION* (2016), [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).

<sup>4</sup> Department of Homeland Security Appropriations Act, 2015, Pub. L. No. 114-4, 129 Stat. 39, <https://www.congress.gov/114/plaws/publ4/PLAW-114publ4.pdf>.

<sup>5</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>.

Safety in the Interior of the United States,”<sup>6</sup> 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.<sup>7</sup> Spurred by the Trump administration’s loosening of arrest standards,<sup>8</sup> ICE officers carried out 33,366 more administrative arrests in FY2017 (143,470) than in FY2016 (110,104), representing a 30% increase.<sup>9</sup>

ICE’s aggressive targeting of immigrants has continued in 2018. During a six-day campaign in April 2018, ICE officers arrested 225 immigrants in New York City and Long Island.<sup>10</sup> Describing multiple incidents in which ICE agents stormed private property without warning, without identifying themselves, and without warrants to arrest undocumented immigrants, Governor Andrew Cuomo of New York issued a cease-and-desist letter to ICE and threatened to sue the federal agency over its propensity to conduct illegal arrests.<sup>11</sup> ICE’s increasingly aggressive, and, at times illegal, tactics include separating young immigrants from their families while they await legal proceedings,<sup>12</sup> ending the automatic release of pregnant women,<sup>13</sup> targeting immigrants’ rights activists,<sup>14</sup> and arresting and detaining U.S. citizens.<sup>15</sup> The Trump administration’s actions have prompted activists to label the present moment an “open season on undocumented

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<sup>6</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>7</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>8</sup> Nick Mirossoff 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](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>9</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>.

<sup>10</sup> U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *ICE Arrests 225 during Operation Keep Safe in New York* (Apr. 17, 2018), <https://www.ice.gov/news/releases/ice-arrests-225-during-operation-keep-safe-new-york>.

<sup>11</sup> Meagan Flynn, *New York Gov. Cuomo Sends ICE Cease-and-Desist Letter, Calls Arrests ‘Illegal’*, WASH. POST (Apr. 26, 2018), [https://www.washingtonpost.com/news/morning-mix/wp/2018/04/26/that-is-un-american-new-york-gov-cuomo-sends-ice-cease-and-desist-letter-calls-arrests-illegal/?noredirect=on&utm\\_term=.fd447665658b](https://www.washingtonpost.com/news/morning-mix/wp/2018/04/26/that-is-un-american-new-york-gov-cuomo-sends-ice-cease-and-desist-letter-calls-arrests-illegal/?noredirect=on&utm_term=.fd447665658b).

<sup>12</sup> Liz Robbins, *Young Immigrants are Being Held Illegally, Lawsuit Claims*, N.Y. TIMES (Feb. 20, 2018), <https://www.nytimes.com/2018/02/20/nyregion/ms-13-immigrants-lawsuit.html?rref=collection%2Ftimestopic%2FImmigration%20Detention>.

<sup>13</sup> Maria Sacchetti, *Trump Administration Ends Automatic Release from Immigration Detention for Pregnant Women*, WASH. POST (Mar. 29, 2018), [https://www.washingtonpost.com/local/immigration/trump-administration-ends-automatic-release-from-detention-for-pregnant-women/2018/03/29/8b6b1bc0-3365-11e8-8abc-22a366b72f2d\\_story.html?utm\\_term=.7939737edcdf](https://www.washingtonpost.com/local/immigration/trump-administration-ends-automatic-release-from-detention-for-pregnant-women/2018/03/29/8b6b1bc0-3365-11e8-8abc-22a366b72f2d_story.html?utm_term=.7939737edcdf).

<sup>14</sup> Jacqueline Thomsen, *ICE Sued for Allegedly Targeting Immigration Activists for Deportation*, HILL (Feb. 9, 2018), <http://thehill.com/latino/373140-ice-sued-for-targeting-immigration-activists>.

<sup>15</sup> Paige St. John and Joel Rubin, *ICE Held an American Man in Custody for 1,273 Days. He’s Not the Only One Who Had to Prove His Citizenship*, L.A. TIMES (Apr. 27, 2018), <http://www.latimes.com/local/lanow/la-me-citizens-ice-20180427-htmlstory.html>.

immigrants”<sup>16</sup> and label ICE as a “vast, cruel bureaucracy.”<sup>17</sup>

Despite some judicial pushback, such as recent court directives for the Trump administration to reinstate the Deferred Action for Childhood Arrivals (DACA) program<sup>18</sup> and to cease its use of expedited deportation procedures that subvert immigrants’ due process rights,<sup>19</sup> the Trump administration has staked out a wide-ranging, anti-immigrant platform and has sought to exploit the high degree of deference traditionally given to the executive branch on matters related to immigration.<sup>20</sup> Claiming that “[t]he system is being gamed,” Attorney General Jeff Sessions underscored the Trump administration’s approach during an October 12, 2017 speech delivered to the Executive Office for Immigration Review, highlighting the administration’s intentions to “expand the use of expedited removal” because “[w]e...have dirty immigration lawyers who are encouraging their otherwise unlawfully present clients to make false claims of asylum providing them with the magic words needed to trigger the credible fear process.”<sup>21</sup>

These developments point to an environment in which immigrant detention is the norm, and not the exception, in the U.S. government’s treatment of immigrants, regardless of their real or perceived threat to public safety.

## B. ARBITRARY ARRESTS, LOW RELIEF RATES, AND ABUSIVE CONDITIONS IN DETENTION CENTERS IN THE U.S. STATE OF GEORGIA

Following the loosening of arrest guidelines, the immigrant community living in Georgia, especially in the metropolitan area of Atlanta, has been among the worst off in its interactions with ICE officers. In a *N.Y. Times* article titled, “‘Please, God, Don’t Let Me Get Stopped’: Around Atlanta, No Sanctuary for Immigrants,” journalist Vivian Lee reports that “Atlanta’s immigrants can do little but hide” in the face of rampant ICE arrests.<sup>22</sup> The regional ICE office in Atlanta made nearly 80 percent more arrests in the first half of 2017 than it did in the same period the previous year, representing the largest increase of any field office in the country. As Lee highlights, ICE officers, working with the close help of local sheriffs and police, book immigrants into county jails

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<sup>16</sup> Deborah Sontag and Dale Russakoff, *No Sanctuary: In Pennsylvania, It’s Open Season on Undocumented Immigrants*, PROPUBLICA (Apr. 12, 2018), <https://www.propublica.org/article/pennsylvania-ice-undocumented-immigrants-immigration-enforcement>.

<sup>17</sup> Laila Lalami, *Under Trump, ICE Has Become a Vast, Cruel Bureaucracy*, NATION (Mar. 22, 2018), <https://www.thenation.com/article/under-trump-ice-has-become-a-vast-cruel-bureaucracy/>

<sup>18</sup> Miriam Jordan, *U.S. Must Keep DACA and Accept New Applications, Federal Judge Rules*, N.Y. TIMES (Apr. 24, 2018), <https://www.nytimes.com/2018/04/24/us/daca-dreamers-trump.html>.

<sup>19</sup> Liz Robbins, *Not So Fast on Deportations, Judges Tell Immigration Agency*, N.Y. TIMES (Feb. 9, 2018), <https://www.nytimes.com/2018/02/09/nyregion/federal-courts-deportation-ragbir-indonesians-stays-ice.html?rref=collection%2Ftimestopic%2FImmigration%20Detention>.

<sup>20</sup> Julie Hirschfeld Davis, *Trump’s Immigration Tweets Followed by Policy Plans to Match*, N.Y. TIMES (Apr. 2, 2018), <https://www.nytimes.com/2018/04/02/us/politics/trump-immigration-mexico-daca.html?rref=collection%2Ftimestopic%2FImmigration%20Detention>.

<sup>21</sup> Jeff Sessions, Att’y Gen., U.S. Dep’t of J., Remarks at the Executive Office of Immigration Review (Oct. 17, 2017), <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review>.

<sup>22</sup> Vivian Lee, *‘Please, God, Don’t Let Me Get Stopped’: Around Atlanta, No Sanctuary for Immigrants*, N.Y. TIMES (Nov. 25, 2017), <https://www.nytimes.com/2017/11/25/us/atlanta-immigration-arrests.html?rref=collection%2Ftimestopic%2FImmigration%20Detention>.

on charges “as minor as failing to signal a right turn.”<sup>23</sup> Sean Gallagher, the Atlanta ICE field office director, openly flaunted the agency’s newfound authority and warned immigrants, “If you’re in this country illegally, you should be scared. We’re probably going to come knocking at some point.”<sup>24</sup>

Coupled with the surge in ICE arrests, Georgia-based immigration courts grant immigration relief at some of the lowest rates throughout the country. In contrast to immigration courts in New York, which grant relief at nearly an equal rate as they issue removal orders, courts in Georgia grant relief and issue removal orders at a 1:34 ratio, representing a mere 3% grant rate on cases that immigration judges decide on the merits.<sup>25</sup>

This communication comes after an especially gruesome start of the year at Stewart and Irwin. On 30 January 2018, Yulio Castro-Garrido, a 33-year-old immigrant from Cuba, died from pneumonia while in the custody of immigration officials at the Stewart Detention Center. His death, which is currently subject to a Freedom of Information Act (FOIA) request, is shrouded in mystery. ICE initially released a statement saying Mr. Castro-Garrido had refused medical treatment and died because of his refusal. However, after Mr. Castro-Garrido’s brother and immigration advocates refuted ICE’s characterization of Mr. Castro-Garrido and pressured ICE for more information,<sup>26</sup> ICE released a revised statement saying that Mr. Castro-Garrido did not refuse treatment but died because he “was resistant to some forms of medical intervention.”<sup>27</sup> Mr. Castro-Garrido’s death, and ICE’s handling of it, epitomizes, yet again, the concerning treatment of immigrants at Stewart, including immigrants’ lack of access to proper healthcare and officials’ general disregard for immigrants’ wellbeing. Mr. Castro-Garrido is the third immigrant to die in a Georgia detention center in the past year, following the deaths of Jeancarlo Alfonso Jimenez Joseph, a 27-year-old immigrant from Panama, and Atul Kumar Babubhai Patel, a 58-year-old immigrant from India, both in May 2017.<sup>28</sup>

Within this backdrop of increasing rates of immigration detention and worsening detention practices, Project South conducted a year-long investigation of Stewart and Irwin along with the Penn State Law School Center for Immigrants’ Rights Clinic,<sup>29</sup> and is in the process of conducting a similar study at the Atlanta City Detention Center. Their findings, explored in further detail below, reveal that Stewart and Irwin are “rife with human rights violations,”<sup>30</sup> and demonstrate that the

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

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

<sup>25</sup> TRAC Immigration, *Details on Deportation Proceedings in Immigration Court*, <http://trac.syr.edu/phptools/immigration/nta/> (last updated March 2018).

<sup>26</sup> Jeremy Redmon, ATLANTA J. CONST., *Brother: Cuban was Healthy Before Dying of Pneumonia in ICE Custody*, POL. GA., Feb. 20, 2018, <https://politics.myajc.com/news/state--regional-govt--politics/brother-cuban-was-healthy-before-dying-pneumonia-ice-custody/9TNpiI95CYQPyiGPoSyzmJ/>.

<sup>27</sup> Press Release, U.S. Immigration and Customs Enforcement, *ICE Detainee Passes Away* (Jan. 31, 2018), <https://www.ice.gov/news/releases/ice-detainee-passes-away>.

<sup>28</sup> Jeremy Redmon, *Second ICE Detainee in Georgia Dies in Space of Two Days*, ATLANTA J. CONST. (May 17, 2017) <https://www.ajc.com/news/breaking-news/second-ice-detainee-georgia-dies-space-two-days/bMmIp9itISFFKHG4JhRXRL/>.

<sup>29</sup> PROJECT SOUTH, IMPRISONED JUSTICE: INSIDE TWO GEORGIA IMMIGRANT DETENTION CENTERS (May 2017), [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).

<sup>30</sup> Azadeh Shahshashani, *Do Immigrants in ICE Detention Centers Have Any Human Rights at All?* SALON (Apr. 24, 2018), <https://www.salon.com/2018/04/24/do-immigrants-in-ice-detention-centers-have-any-human-rights-at-all/>.

U.S. government is failing to uphold its international obligations under the International Covenant on Civil and Political Rights (ICCPR); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). As Project South articulated to members of the Georgia Delegation of the U.S. Congress, detained immigrants at Stewart and Irwin are commonly “detained for years without any opportunity to plead their case before a judge, denied access to lawyers, discriminated against on the basis of their gender, religion, or national origin, treated inhumanely, and forced to labor without just compensation.”<sup>31</sup>

## II. PROVIDING LITTLE OVERSIGHT OVER DETENTION PRACTICES AT STEWART AND IRWIN, THE UNITED STATES VIOLATES DETAINED IMMIGRANTS’ FUNDAMENTAL RIGHTS AND FAILS TO UPHOLD CORE OBLIGATIONS UNDER THE ICCPR, CAT, AND CERD.

Through regular punishment of detained immigrants using solitary confinement, providing grossly inadequate physical and mental health care, furnishing deplorable living conditions, and obstructing immigrants’ access to legal resources, Stewart and Irwin officials violate a multitude of internationally recognized human rights principles and epitomize the United States’ contemptible immigration detention policy. The treatment afforded to immigrants at the three detention centers fails to uphold the ICCPR’s underlying ideal 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.”<sup>32</sup>

### A. STEWART AND IRWIN’S RAMPANT USE OF SOLITARY CONFINEMENT AS A FORM OF PUNISHMENT IN CIVIL IMMIGRATION DETENTION VIOLATES DETAINED IMMIGRANTS’ RIGHTS TO THE SECURITY OF THEIR PERSONS UNDER THE ICCPR AND CAT.

Article 9 of the ICCPR guarantees all persons, including detained immigrants at Stewart and Irwin, the inherent “right to liberty and the security of [her or his] person.”<sup>33</sup> This inalienable right, which may only be “deprived . . . on such grounds and in accordance with such procedure as are established by law,”<sup>34</sup> confers 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 with humanity and with respect for the inherent dignity of the human person.”<sup>35</sup>

In addition to violating Article 9 of the ICCPR, solitary confinement represents a violation of the CAT’s prohibition on the use of torture—“any act by which severe pain or suffering, whether

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<sup>31</sup> Letter from Project South et al to Members of the Georgia Delegation to the 115th U.S. Congress (Nov. 21, 2017), <https://projectsouth.org/wp-content/uploads/2017/11/Letter-to-Congress-Georgia-Detention-Centers.pdf>.

<sup>32</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>33</sup> ICCPR art. 9(1).

<sup>34</sup> ICCPR art. 9(1).

<sup>35</sup> ICCPR art. 10(1).

physical or mental, is intentionally inflicted on a person for such purposes as ... punishing him [or her].”<sup>36</sup> Stewart and Irwin officials impose solitary confinement on immigrants without conducting proper hearings abiding by due process standards or attempting to find viable alternatives. Representing a form of cruel and unusual punishment that can exacerbate the physical and mental wellbeing of those already detained, 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.<sup>37</sup>

In October 2016, then-U.N. Special Rapporteur on Torture, Juan E. Méndez concluded that “[w]hen prolonged or indefinite, solitary confinement per se violates the right to personal (physical and mental) integrity.”<sup>38</sup> Special Rapporteur Méndez further explained, “solitary confinement for fewer than 15 days may ... amount to ill-treatment or even torture in certain circumstances”<sup>39</sup> and emphasized that “[s]olitary confinement may only be used under exceptional circumstances, as a measure of last resort, and for as short a time as possible.”<sup>40</sup> When solitary confinement is administered, “the reasons for its application must be communicated to the individual, and minimum due process guarantees, including access to counsel and the right to challenge the decision, must be afforded.”<sup>41</sup> In its observations on the third to fifth periodic reports of the United States, the Committee Against Torture expressed concerns about persistent “reports of substandard conditions of detention in immigration facilities and use of solitary confinement.”<sup>42</sup> The Committee urged the U.S. government to “[e]nsure compliance with [its] 2013 Directive on the appropriate use of segregation in ... ICE detention facilities.”<sup>43</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.”<sup>44</sup> Solitary confinement, as ICE’s Performance-Based National Detention Standards 2011 (ICE Detention Standards) 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.<sup>45</sup>

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<sup>36</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>37</sup> 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>38</sup> WEIL ET AL., SEEING INTO SOLITARY: A REVIEW OF THE LAWS AND POLICIES OF CERTAIN NATIONS REGARDING SOLITARY CONFINEMENT OF DETAINEES 2 (2016), [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).

<sup>39</sup> *Id.* at 3.

<sup>40</sup> *Id.* at 4.

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

<sup>42</sup> Comm. Against Torture, Concluding Observations on the Third to Fifth Periodic Reports of United States of America, U.N. Doc. CAT/C/USA/CO/3-5, ¶ 19 (2014), <https://www.state.gov/documents/organization/234772.pdf>.

<sup>43</sup> *Id.* at ¶ 19(c).

<sup>44</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>45</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].

Officials at Stewart and Irwin, however, abuse their power to administer solitary confinement and use it as a tool to keep detained immigrants from filing complaints. Operating in conflict with explicit provisions within ICE Detention Standards,<sup>46</sup> officials at Stewart and Irwin make no distinctions between administrative and disciplinary confinements and employ the practice as the default option for any detained immigrant they arbitrarily deem to be problematic.<sup>47</sup> Detained immigrants at the two Georgia facilities reported being sent to segregation for minor, even silly, reasons such as not tucking in a shirt, talking too much, and arguing during soccer matches.<sup>48</sup> Immigrants who have resorted to participating in hunger strikes have also been subjected to prolonged solitary confinement,<sup>49</sup> as well as forced feedings.<sup>50</sup> At Irwin, detained immigrants have, at times, been placed in administrative confinement upon arrival because the facility lacks enough housing units to accommodate all newcomers.<sup>51</sup>

Of graver concern, solitary confinement also represents the default assignment for detained immigrants who manifest mental health issues and seek counselling.<sup>52</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>53</sup> While facility officials defend confinement as a solution to safeguard detained immigrants' wellbeing, the practice, as Special Rapporteur Mendéz identified, worryingly expedites the deterioration of detained immigrants' mental well-being and adds more risk to the development of psychiatric symptoms and suicide.<sup>54</sup>

One male detained immigrant from Nigeria recounted, "Segregation is like hell. It is total isolation."<sup>55</sup> Within solitary confinement units at Stewart, detained immigrants reported being unable to tell day from night; being denied access to the commissary or showers; and being prohibited from using phones, obtaining medical attention, and engaging in recreational activities.<sup>56</sup> Immigrants detained at Irwin indicated that confinement units contain a plethora of dust, bugs, and flies; smell like toilets; and have no cold water.<sup>57</sup> Despite ICE instructions that confinement be limited to a maximum of thirty days,<sup>58</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>59</sup>

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<sup>46</sup> *Id.*, § 2.12(V)(A).

<sup>47</sup> PROJECT SOUTH, IMPRISONED JUSTICE, *supra* note 29, at 36, 49.

<sup>48</sup> *Id.*

<sup>49</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>50</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>51</sup> DET. WATCH NETWORK, A TOXIC RELATIONSHIP, *supra* note 3, at 5.

<sup>52</sup> PROJECT SOUTH, IMPRISONED JUSTICE, *supra* note 29, at 49.

<sup>53</sup> *Id.*

<sup>54</sup> WEIL ET AL., SEEING INTO SOLITARY, *supra* note 38, at 11.

<sup>55</sup> PROJECT SOUTH, IMPRISONED JUSTICE, *supra* note 29, at 49.

<sup>56</sup> *Id.* at 36.

<sup>57</sup> *Id.* at 50.

<sup>58</sup> ICE Det. Standards, *supra* note 45, at § 2.12(V)(B)(1).

<sup>59</sup> PROJECT SOUTH, IMPRISONED JUSTICE, *supra* note 29, at 49-50.



**B. THE UNITED STATES' USE OF FOR-PROFIT, PRIVATE PRISON COMPANIES THAT EXPLOIT IMMIGRANTS' LABOR REPRESENTS 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>60</sup> and that no one, including detained immigrants, "shall be required to perform forced or compulsory labor."<sup>61</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>62</sup>

Stewart, which is contracted out to a for-profit, private prison company, subjects detained immigrants to forced labor and pay 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.<sup>63</sup> 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,<sup>64</sup> detained immigrants report that they are often penalized for refusing to work.<sup>65</sup> Officials at Stewart continue to take advantage of immigrants for cheap labor and over use 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."<sup>66</sup> 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.<sup>67</sup> 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."<sup>68</sup> Irregular meal schedules further increase detained immigrants' need to purchase supplements.<sup>69</sup> Dinner is usually served by 16:30 and leaves immigrants hungry again by 20:00 or

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<sup>60</sup> ICCPR art. 8(1).

<sup>61</sup> ICCPR art. 8(3).

<sup>62</sup> Human Rights Council, U.N. Doc. A/HRC/RES/33/1, ¶ 7, n.3 (2016), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/225/46/PDF/G1622546.pdf>.

<sup>63</sup> *Id.* at ¶ 19(c).

<sup>64</sup> PROJECT SOUTH, IMPRISONED JUSTICE, *supra* note 29, at 34.

<sup>65</sup> "Neither slavery nor involuntary servitude, except as a punishment for crime ... shall exist within the United States. U.S. CONST. amend. XIII.

<sup>66</sup> PROJECT SOUTH, IMPRISONED JUSTICE, *supra* note 29, at 33.

<sup>67</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>68</sup> PROJECT SOUTH, IMPRISONED JUSTICE, *supra* note 29, at 32.

<sup>69</sup> *Id.* at 32.

<sup>69</sup> *Id.*

21:00.<sup>70</sup> Detained immigrants are often left to choose between going to sleep hungry or spending what little money they have on food from the commissary.<sup>71</sup> 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 miss one meal.<sup>72</sup> If detained immigrants want to complain about any cooking flaws or foreign objects they find in their food, they would not be granted additional time to complete their meals.<sup>73</sup>

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 (formerly the Corrections Corporation of America), the billion-dollar private prison corporation that owns and operates Stewart.<sup>74</sup> The lawsuit provides extensive details of CoreCivic's deprivation scheme in which it forces immigrants to work for inconsequential pay, charges them for basic necessities at the facility's onsite commissary, and threatens to punish detained immigrants for their refusal to work.<sup>75</sup>

C. STEWART AND IRWIN'S PROVISION OF ALARMLY INADEQUATE AND GENERALIZED MEDICAL CARE DEMONSTRATES THEIR FAILURE TO RESPECT DETAINED IMMIGRANTS' RIGHT TO HEALTH UNDER CERD.

The lack of attention paid by Stewart and Irwin medical personnel toward detained immigrants' specific needs constitutes a breach of Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). All persons, "without distinction as to race, colour, or national or ethnic origin," possess the "right to public health, medical care, social security, and social services."<sup>76</sup> The U.N.'s Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (U.N. Principles of Detention) further elaborate that "[a] proper medical examination shall be offered to a detained ... person as promptly as possible after his [or her] admission to the place of detention ... and thereafter medical care and treatment shall be provided whenever necessary ..., free of charge."<sup>77</sup>

ICE Detention Standards set forth that the right to health and medical care for all detained immigrants shall include "access to a continuum of healthcare services, including screening, prevention, health education, diagnosis, and treatment."<sup>78</sup> The standards also require that facilities "have a mental health staffing ... on call to respond to the needs of the detainee population 24 hours a day, seven days a week"<sup>79</sup> and "provide communication assistance to detainees ... who are limited

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</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>75</sup> *Barrientos v. CoreCivic, Inc.*, Case 4:18-cv-00070-CDL (M.D. Ga. Filed Apr. 17, 2018).

<sup>76</sup> International Convention on the Elimination of All Forms of Racial Discrimination art 5(e)(iv), Mar. 7, 1966, 660 U.N.T.S. 195, <http://www.ohchr.org/Documents/ProfessionalInterest/cerd.pdf> [hereinafter, CERD].

<sup>77</sup> U.N. Principles of Detention, *supra* note 41, at principle 25.

<sup>78</sup> ICE Det. Standards, *supra* note 45, at § 4.3(II)(1).

<sup>79</sup> *Id.* at § 4.3(II)(2).

in their English proficiency.”<sup>80</sup> Oral interpretations are expected to be supplied to all newly-admitted immigrants regarding each facility’s procedure for requesting and receiving medical services.<sup>81</sup>

With understaffed medical units, Stewart and Irwin fail to provide adequate medical care to detained immigrants. The standard wait time for immigrants at Irwin wanting to visit the medical staff is between two days and two weeks.<sup>82</sup> Once detained immigrants finally meet with medical personnel, their conditions are loosely diagnosed and their complaints are ignored. At Stewart, medical officers offer painkillers as a universal solution for all forms of pain.<sup>83</sup>

One person detained at Stewart, for example, was given pain pills to address a one-inch bump on his leg.<sup>84</sup> Despite the individual reporting continued pain and pleading to be taken to a hospital, Stewart officials remained unresponsive.<sup>85</sup> After two months, and only after the injury became severely infected, was the individual finally brought to a hospital and treated.<sup>86</sup> Detention facility doctors are quick to list people under their care as healthy, regardless of any pain reported, and prescribe rest as the treatment.<sup>87</sup> When immigrants insist on additional medical care, they are placed in solitary confinement and segregated from the general population.<sup>88</sup> An immigrant from Jamaica detained at Irwin revealed, “My prior medical records were not transferred correctly and Irwin has fought my request for medical treatment. I received some checkups, in which the doctor quickly listed me as healthy without doing any physical checkup. I believe Irwin is trying to avoid paying for my medical treatment.”<sup>89</sup>

Stewart and Irwin officials’ disregard for detained immigrants’ healthcare and wellbeing is perhaps most egregious when it affects the immigrants who need assistance most. Pregnant women at Irwin receive no prenatal care and are treated like all other detained immigrants. One woman from El Salvador being detained at Irwin underscored, “I know of pregnant detainees. The pregnant detainees are treated the same as everyone else and do not receive prenatal care.”<sup>90</sup>

#### D. DETAINED IMMIGRANTS’ RIGHT TO HEALTH IS INFRINGED UPON BY THE UNSANITARY FOOD AND WATER THEY ARE PROVIDED AT STEWART AND IRWIN.

Detained immigrants’ right to health under CERD is further violated by Stewart and Irwin officials’ failure to provide detained immigrants with edible food and sanitary drinking water.<sup>91</sup> Immigrants at the three facilities receive non-nutritious and unsanitary meals. Potatoes, white rice,

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<sup>80</sup> *Id.* at § 4.3(II)(3).

<sup>81</sup> *Id.*

<sup>82</sup> PROJECT SOUTH, IMPRISONED JUSTICE, *supra* note 29, at 48.

<sup>83</sup> *Id.* at 35.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 49.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 48.

<sup>90</sup> *Id.* at 49.

<sup>91</sup> CERD art 5(e)(iv).

and bread form the bulk of immigrants' diets in both facilities.<sup>92</sup> Fresh produce is neither available within general meals nor the commissaries.<sup>93</sup> Fruit, meanwhile, is reserved only for those few immigrants who qualify for special medical diets and is provided in the form of small fruit cups.<sup>94</sup> Meat, served only once or twice a week, is frequently reported to be undercooked, rancid, or otherwise inedible.<sup>95</sup> One detained immigrant from Honduras described, "The food is not good quality ... [It] looks like vomit. The undercooked beef looks like monkey brains. There was a worm in my food one time."<sup>96</sup> Along with worms, detained immigrants reported finding a myriad of other foreign objects in their food, including: hair, plastic, nails, rocks, teeth, maggots, cockroaches, and mice.<sup>97</sup>

Immigrants describe the drinking water at Stewart as green, non-potable, and smelling of feces.<sup>98</sup> During a visit with a detained immigrant, an attorney was instructed by security guards not to consume the water from the drinking fountain.<sup>99</sup> The immigrants who did drink from the fountain reported multiple headaches from consuming the unclean water.<sup>100</sup>

Despite ICE Detention Standards' provisions requiring detention centers to provide "[t]herapeutic medical diets and supplemental food ... as prescribed by appropriate clinicians,"<sup>101</sup> Stewart and Irwin officials offer very little meal variations to detained immigrants who have specific medical needs.<sup>102</sup> Immigrants diagnosed with diabetes, for example, receive the same general meal as all other immigrants, with the addition of a small cup of fruit.<sup>103</sup> A male detained immigrant from Somalia noted, "I have a medical condition requiring a dietary restriction. However, I still receive the same food as everyone except without desert."<sup>104</sup>

#### E. STEWART AND IRWIN OFFICIALS' GENERAL DISREGARD OF IMMIGRANTS' CULTURAL AND RELIGIOUS BELIEFS AND DISCRIMINATION AGAINST IMMIGRANTS BASED ON THEIR RACE VIOLATES IMMIGRANTS' RIGHTS UNDER THE ICCPR AND CERD.

Unresponsive to immigrants' religious-based food requests and generally derisive of immigrants for their religious and cultural differences, Stewart and Irwin officials infringe upon detained immigrants' ICCPR Art. 18 right to "freedom of thought, conscience, and religion."<sup>105</sup> In doing so, officials also fail to uphold ICE Detention Standards' requirements of accommodating all

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<sup>92</sup> PROJECT SOUTH, IMPRISONED JUSTICE, *supra* note 29, at 32, 44.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 31.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 31, 44.

<sup>98</sup> PROJECT SOUTH, IMPRISONED JUSTICE, *supra* note 29, at 32.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> ICE Det. Standards, *supra* note 45, at § 4.1(II)(10).

<sup>102</sup> PROJECT SOUTH, IMPRISONED JUSTICE, *supra* note 29, at 32.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 22-23.

<sup>105</sup> ICCPR art. 18(1).

“ethnic and religious diversity of the facility’s detainee population”<sup>106</sup> through specialized meals. At Stewart, many immigrants request vegan or vegetarian diets for religious reasons but do not receive them.<sup>107</sup> Instead, they must resort to buying diet-compliant food from the commissary.<sup>108</sup>

Detained immigrants who practice Islam and request Halal food are notably constricted by officials’ indifference and lack of respect for religious tolerance. Numerous Muslims report that the guards told them that all the food being served to them was Halal, only to find out later that it was not.<sup>109</sup> One male detained immigrant from Somalia indicated that he had to wait almost three months without hearing from facility officials whether they would supply him Halal meals.<sup>110</sup>

In addition to religious dietary conflicts, immigrants report facing a number of additional challenges with religious intolerance at Stewart and Irwin. Several detained immigrants, including Catholics, Hindus, and Muslims, note an inability to access religious texts.<sup>111</sup> As one female detained immigrant from El Salvador at Stewart indicates, “I have asked for a bible in Spanish many times but I still have not received it. All the bibles they have are in English.”<sup>112</sup> Muslim immigrants, meanwhile, report that they are often interrupted during prayer time with facility count times, are required to buy prayer rugs from the commissary to do their prayers, and are not provided supplementary meals after fasting for religious reasons.<sup>113</sup> A Muslim detained immigrant from Nigeria at Irwin recounts:

There is Juma’ah prayer every Friday, which is run by the detainees. But, officers burst into Friday prayer and interrupt us on two occasions. Female officers attempted to enter the room during prayer, but based on our religious beliefs and practices, it is not appropriate for women to enter the male prayer room while we are in the middle of prayer. I have never seen an officer interrupt a Christian gathering.<sup>114</sup>

Detained immigrants at Stewart and Irwin also commonly cite prejudicial racial treatment from facility guards. Article 2 of CERD instructs all State Parties to “condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.”<sup>115</sup> Furthermore, CERD requires all State Parties to provide everyone the enjoyment of core rights “without distinction as to race, colour, or ethnic origin.”<sup>116</sup>

Guards at the three facilities take advantage of detained immigrants’ lack of English-proficiency and ignore their requests for clarifications. One man detained at Stewart from Guatemala describes, “The language barrier is a real problem here. ... The guards treat detained immigrants very disrespectfully and do not communicate the rules to Spanish speakers, but yell if

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<sup>106</sup> ICE Det. Standards, *supra* note 45, at § 4.1(II)(9).

<sup>107</sup> PROJECT SOUTH, IMPRISONED JUSTICE, *supra* note 29, at 22.

<sup>108</sup> *Id.* at 32.

<sup>109</sup> *Id.* at 34.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 47.

<sup>113</sup> *Id.* at 34.

<sup>114</sup> *Id.* at 47.

<sup>115</sup> CERD art. 2(1).

<sup>116</sup> CERD art. 5.

we do not comply exactly.”<sup>117</sup> Meanwhile, a Chinese-speaking immigrant discloses, “The staff’s attitude towards Chinese immigrants is very bad and rude. People who can speak English are treated better. Chinese people are treated worse, maybe because we cannot speak English.”<sup>118</sup>

#### F. STEWART AND IRWIN OFFICIALS HINDER DETAINED IMMIGRANTS’ RIGHTS TO PROPER DUE PROCESS UNDER THE LAW.

Stewart and Irwin officials obstruct detained immigrants’ rights to due process by taking advantage immigrants’ lack of fluency in English and unfamiliarity with the legal workings of U.S. removal proceedings. Article 9 of the ICCPR asserts that any person who is “deprived of his [or her] liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his [or her] detention and order his [or her] release if the detention is not unlawful.”<sup>119</sup> Furthermore, detained immigrants are expected to “be informed promptly and in detail in a language which he [or she] understands of the nature and cause of the charge against him [or her]”<sup>120</sup> and “[t]o have the free assistance of an interpreter if he [or she] cannot understand or speak the language used in court.”<sup>121</sup>

While the Immigration and Naturalization Act (INA), U.S.C. 8 § 1225, grants plenary power to the federal government over matters of immigration, the U.S. Supreme Court has affirmed that noncitizens retain several distinct rights and protections under the U.S. Constitution. In *Zadvydas v. Davis*, a case involving the Immigration and Naturalization Service’s (INS) indefinite detention of noncitizens past the statutory 90-day post-removal-period, the Court made clear that “alien status itself can[not] justify indefinite detention.”<sup>122</sup> Once a noncitizen enters the United States, he or she is entitled to the legal protection of the Fifth Amendment’s Due Process Clause.<sup>123</sup> The Court further affirmed that “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”<sup>124</sup> Government detention may only be used in criminal proceedings or in civil proceedings that consist of “certain special, . . . narrow and nonpunitive circumstances.”<sup>125</sup> The burden lies on the government to show that a special circumstance—with the understanding that “detention is reserved for the most serious of crimes”<sup>126</sup>—exists to justify detention. Moreover, the Court has determined that even in those limited cases where a special circumstance exists, detained persons “are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.”<sup>127</sup>

In a surprising and disappointing turn away from *Zadvydas*, the Court decided in *Jennings v. Rodriguez*, a February 2018 case, that under statutory grounds, detained immigrants are not

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<sup>117</sup> PROJECT SOUTH, IMPRISONED JUSTICE, *supra* note 29, at 38.

<sup>118</sup> *Id.*

<sup>119</sup> ICCPR art. 9(4).

<sup>120</sup> ICCPR art. 14(3)(a).

<sup>121</sup> ICCPR art. 14(3)(f).

<sup>122</sup> *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001).

<sup>123</sup> *Id.* at 690.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*, 691 (citing *U.S. v. Salerno*, 481 U.S. 739, 739 (1987)).

<sup>127</sup> *Carlson v. Landon*, 342 U.S. 524, 537 (1952).

entitled to regular bond hearings while they await their immigration hearings. The Court chose not to address the case on constitutional grounds and remanded the case to the 9th Circuit. However, considered within the context of the Trump administration’s increasing use of immigration detention, the Court’s decision gives the U.S. government an additional tool to deter immigrants from fighting for and exercising their legal rights. As Justice Breyer points out in his dissenting opinion in *Jennings*, “No one can claim ... that persons held within the United States are totally without constitutional protection. Whatever the fiction, ... how can the [U.S.] Constitution authorize the Government to imprison arbitrarily those who ... are in reality right here in the United States? ... Freedom from arbitrary detention is as ancient and important a right as any found within the Constitution’s boundaries.”<sup>128</sup>

In addition, Stewart immigration judges issue deportation orders at some of the highest rates among immigration courts nationwide,<sup>129</sup> and routinely deny bond or set bond at inconceivable amounts that, practically, subject detained immigrants to prolonged detention.<sup>130</sup> Immigration officers have been accused by attorneys and detained immigrants of not only failing to uphold their international legal duties of informing immigrants of their full legal rights in a language they understand, but also taking advantage of language deficiencies in order to coerce detained immigrants into waiving their legal rights. A male detained immigrant from Nicaragua explained, “105 days after being detained, I was about to speak with a judge when an immigration officer told me I needed to sign some forms before I could see the judge. I didn’t know what it said, but it turns out I was accepting all charges as stated.”<sup>131</sup>

In 2008, immigration officers detained Mark Daniel Lyttle, a U.S.-born citizen with mental disabilities, at Stewart.<sup>132</sup> Symbolic of officials’ apathy and lack of due care for proper legal procedure, immigration officers, despite having Mr. Lyttle’s Social Security number and other identifying information, ignored this evidence and pursued his deportation.<sup>133</sup> Mr. Lyttle, who was born and raised in North Carolina, was deported to Mexico after spending fifty-one days at Stewart.<sup>134</sup> After being flown down to Hidalgo, Texas in his Stewart-issued jumpsuit, Mr. Lyttle was transported to the Mexican border, forced to disembark, and sent off on foot into Mexico with only three dollars in his pocket.<sup>135</sup> Mr. Lyttle, not knowing any Spanish, wandered through Mexico, Honduras, and Nicaragua for 125 days—sleeping in the streets, staying in shelters, and being imprisoned and abused—before finally reaching the U.S. Embassy in Guatemala.<sup>136</sup> An Embassy employee ultimately helped him regain contact with his family and arranged for his return home.<sup>137</sup>

## G. DETAINED IMMIGRANTS’ LEGAL RIGHTS TO COUNSEL, AS WELL AS THE ENJOYMENT OF FAMILY LIFE, ARE IMPEDED BY STEWART AND

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<sup>128</sup> *Jennings v. Rodriguez*, 138 S. Ct. 830, 863 (2018).

<sup>129</sup> TRAC Immigration, *Details on Deportation Proceedings in Immigration Court*, *supra* note 23.

<sup>130</sup> PROJECT SOUTH, IMPRISONED JUSTICE, *supra* note 29, at 28.

<sup>131</sup> *Id.*

<sup>132</sup> Sam Ritchie, *ICE Deports Non-Spanish Speaking American Citizen to Mexico*, AM. CIVIL LIBERTIES UNION (Oct. 13, 2010), <https://www.aclu.org/blog/speakeasy/ice-deports-non-spanish-speaking-american-citizen-mexico>.

<sup>133</sup> *Id.*

<sup>134</sup> *Lyttle v. United States*, 867 F. Supp. 2d 1256, 1266 (M.D. Ga. 2012).

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

## 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 Detention Standards require that detention facilities clearly and fully communicate detained immigrants' legal rights to them and facilitate their access to legal resources.<sup>138</sup> Detention centers are obligated to operate properly equipped law libraries and help detained immigrants prepare legal documents.<sup>139</sup> 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.<sup>140</sup>

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.<sup>141</sup> 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>142</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>143</sup> Furthermore, contrary to ICE Detention Standards requirements, 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>144</sup> The Irwin library has two old computers that often do not have internet access, and no printer was installed until 2016.<sup>145</sup>

In April 2018, the Southern Poverty Law Center, Kilpatrick Townsend & Stockton LLP and the Law Office of Melissa Crow filed a lawsuit against the Department of Homeland Security, U.S. Immigration and Customs Enforcement, and individual high-level federal officials for violating the constitutional rights of detained immigrants at Stewart and Irwin by systematically denying their access to legal counsel.<sup>146</sup> The lawsuit alleges that the remote placement of the centers itself is an

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<sup>138</sup> ICE Det. Standards, *supra* note 45, at § 6.1(I).

<sup>139</sup> *Id.* at § 6.3(II).

<sup>140</sup> *Id.* at §§ 5.7(II)(2); 5.7(II)(10).

<sup>141</sup> PROJECT SOUTH, IMPRISONED JUSTICE, *supra* note 29, at 28, 41.

<sup>142</sup> *Id.* at 30

<sup>143</sup> *Id.* at 41

<sup>144</sup> *Id.* at 30, 42.

<sup>145</sup> *Id.* at 42.

<sup>146</sup> Press Release, Southern Poverty Law Center, SPLC Sues DHS for Unconstitutionally Blocking Detained Immigrants' Access to Lawyers (Apr. 4, 2018), <https://www.splcenter.org/news/2018/04/04/splc-sues-dhs-unconstitutionally-blocking-detained-immigrants-access-lawyers>.



intentional act on the part of the government to limit detained immigrants' access to legal counsel and details the numerous ways in which the centers' staff obstructs lawyers' ability to meet with clients<sup>147</sup> including interrupting attorney-client meetings and frequently and arbitrarily changing visitation rules.<sup>148</sup>

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."<sup>149</sup> 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>150</sup>

ICE Detention Standards require that detained immigrants have "reasonable and equitable access to telephones" during all daytime hours.<sup>151</sup> 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.<sup>152</sup> 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.<sup>153</sup>

Coupled with a significant lack of lodging in Stewart and Irwin Counties,<sup>154</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>155</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>156</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>157</sup>

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<sup>147</sup> Jennie Guilfoyle, *Horrifying and Inspiring: A Look Inside the Stewart Detention Center*, thinkImmigration, May 11, 2018, [http://thinkimmigration.org/blog/2018/05/11/horrifying-and-inspiring-a-look-inside-the-stewart-detention-center/?utm\\_source=AILA+Mailing&utm\\_campaign=f5ee082aea-AILA8\\_5\\_14\\_2018&utm\\_medium=email&utm\\_term=0\\_3c0e619096-f5ee082aea-287737661](http://thinkimmigration.org/blog/2018/05/11/horrifying-and-inspiring-a-look-inside-the-stewart-detention-center/?utm_source=AILA+Mailing&utm_campaign=f5ee082aea-AILA8_5_14_2018&utm_medium=email&utm_term=0_3c0e619096-f5ee082aea-287737661).

<sup>148</sup> *Southern Poverty Law Center v. U.S. Dep't of Homeland Security*, Case 1:18-cv-00760 (D.C. Cir. Filed Apr. 4, 2018).

<sup>149</sup> ICCPR art. 23(1).

<sup>150</sup> U.N. Principles of Detention, principle 15.

<sup>151</sup> ICE Det. Standards, *supra* note 45, at § 5.6(V)(D).

<sup>152</sup> *Id.* at § 5.6(V)(A)(2).

<sup>153</sup> *Id.* at § 5.6(V)(E)(3).

<sup>154</sup> PROJECT SOUTH, IMPRISONED JUSTICE, *supra* note 29, at 26.

<sup>155</sup> *Id.* at 27.

<sup>156</sup> *Id.* at 30-31, 43.

<sup>157</sup> *Id.* at 43.

### III. CONCLUSION

Project South's research demonstrates that serious ongoing and systematic violations of the ICCPR, CAT, and CERD are occurring at remote detention centers in the U.S. State of Georgia. We encourage the Special Rapporteurs and Working Group members to take any number of steps, including:

- issue a letter of allegation or other appropriate communication to the United States, with a copy to CoreCivic, Inc.;
- submit requests to the U.S. government for invitations to conduct site visits at Stewart and Irwin and issue a public report or statement with recommendations to the United States government for reform, or join with other Rapporteurships and Working Groups in a request for a Country Visit to the United States, and ensure the Stewart and Irwin Detention Centers are on the agenda for the visit, and include findings from that visit in a final official report;
- absent a formal site visit, organize an informal visit and meeting with immigrant' rights' defenders in the U.S. state of Georgia to obtain additional details of the rights violations; and,
- issue a public statement calling for a full and transparent investigation into the violations highlighted in this Communication with a strongly worded condemnation for the circumstances giving rise to the deaths in detention and other rights violations; and,
- call on the United States government to uphold its obligations under the various human rights treaties and conventions vis-à-vis immigrants detained at the Stewart and Irwin Detention Centers, and at sites of immigrant detention across the southern United States and the entire country.

We look forward to working with members of the Special Rapporteurships and Working Groups to ensure that the United States government honors its international commitments and provides just conditions to detained immigrants.

Sincerely,

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18MillionRising.org  
Alianza Americas

Alterna  
American-Arab Anti-Discrimination Committee  
American Immigration Council  
American Immigration Lawyers Association  
Asian Americans Advancing Justice - AAJC  
Asian Americans Advancing Justice - Asian Law Caucus  
Asian Americans Advancing Justice - Atlanta  
Athens Immigrant Rights Coalition  
Atlanta Grandmothers for Peace  
Austin Region Justice for Our Neighbors  
Black Alliance for Just Immigration  
CIMA-Compañeros Inmigrantes de las Montañas en Accion  
Columbia Law School Human Rights Institute  
Compassionate Atlanta  
Council on American-Islamic Relations Georgia Chapter  
Detention Watch Network  
DC-Maryland Justice for Our Neighbors  
Defending Rights & Dissent  
Dignidad Inmigrante en Athens  
El Refugio  
First Existentialist Congregation of Atlanta's Social Justice Guild  
Florida Coastal School of Law Immigrant and Human Rights Clinic  
Free Migration Project, Philadelphia, PA  
Freedom for Immigrants  
Friends of Broward Detainees  
Enlace  
Georgia Alliance for Social Justice  
Georgia Detention Watch  
Georgia Latino Alliance for Human Rights  
Georgia Peace & Justice Coalition  
Georgia Women (And Those Who Stand With Us)  
Human Rights Advocates  
Immigrant Defenders Law Center  
In the Public Interest  
Immigration Education Project  
Innovation Law Lab  
Interfaith Sanctuary Coalition of Athens  
International Action Center, Atlanta  
International Human Rights Clinic, Seattle University School of Law  
International Institute of Akron  
Jewish Voice for Peace-Atlanta Chapter  
Justice in Motion  
Justice Strategies  
Latino Commission on AIDS  
Latinos in the Deep South  
Lawyers for Good Government, Georgia Chapter

Migrant Center for Human Rights  
Muslim Advocates  
National Asian Pacific American Women's Forum (NAPAWF)  
National Asian Pacific American Women's Forum (NAPAWF)-Georgia chapter  
National Immigrant Justice Center  
National Immigration Law Center  
Northern Illinois Justice for Our Neighbors  
National Lawyers Guild-Georgia Chapter  
National Network for Immigrant and Refugee Rights  
Physicians for Human Rights  
Racial Justice Action Center  
Raksha, Inc.  
Refugio del Rio Grande, San Benito, Texas  
Reformed Church of Highland Park  
Rights and Democracy of Vermont and New Hampshire  
Sisters of Mercy South Central Community  
Southern Poverty Law Center  
T'ruah: The Rabbinic Call for Human Rights  
Unitarian Universalist Fellowship of Athens Social Action Committee  
Unitarian Universalist Fellowship of Athens Sanctuary Movement Team  
Urban Justice Center  
Women Watch Afrika, Inc.