



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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Committee against Torture

**Sixth periodic report submitted by the United  
States of America under article 19 of the  
Convention pursuant to the simplified reporting  
procedure, due in 2018\*, \*\***

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\* The present document is being issued without formal editing.

\*\* The annexes to the present report may be accessed from the web page of the Committee.



## I. Introduction

1. With great pleasure, the Government of the United States of America presents its Sixth Periodic Report to the United Nations Committee against Torture (“Committee”) concerning the implementation of the United States’ obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “Convention” or “CAT”), in accordance with Article 19 of the Convention. The organization of this Sixth Report follows the general guidelines for the preparation of reports by Member States.
2. The absolute prohibition of torture is of fundamental importance to the United States. The United States has long recognized that the prohibition of torture is a peremptory norm of international law, from which no derogation is permitted,<sup>1</sup> reflecting the condemnation of torture by the international community of States as a whole. The Convention is a means by which States party to it advance this end. As stated in its Preamble, the object and purpose of the Convention is “to make more effective the struggle against torture … throughout the world.” It has been observed that “[t]he States parties to the Convention have a common interest to ensure, in view of their shared values, that acts of torture are prevented and that, if they occur, their authors do not enjoy impunity.”<sup>2</sup> To this end, the United States is committed to performing its obligations under the Convention.
3. Treaty reporting is a way the Government of the United States can inform its citizens and the international community of its efforts to implement those obligations it has assumed, while at the same time holding itself up to the public scrutiny of the international community and civil society. In preparing this report, the United States has taken the opportunity to engage in a process of stock-taking and self-examination. The United States has instituted this process as part of its efforts to improve its communication and consultation on human rights obligations and policies. Thus, this report is not an end in itself, but an important tool in the development of practical and effective human rights strategies by the U.S. Government.
4. This report was prepared by the U.S. Department of State (“DOS”), with assistance from the U.S. Department of Justice (“DOJ”), the U.S. Department of Defense (“DoD”), the U.S. Department of Homeland Security (“DHS”), and other relevant components of the U.S. Government. Except where otherwise noted, the report covers the time period from 2014 through early 2021.
5. In the spirit of cooperation, the United States has provided detailed and thorough answers to the questions posed by the Committee, whether or not the questions or information provided in response to them bear directly on obligations arising under the Convention. For example, as the United States has previously stated, while “torture and ill-treatment can, under certain circumstances, involve acts by ‘private’ or ‘non-State’ actors … without the state action requirement found in Articles 1 and 16, such action is beyond the scope of the Convention.”<sup>3</sup> To the extent that certain of the Committee’s questions suggest that purely private conduct falls within the scope of the United States’ obligations under the Convention, this suggestion has no basis in the text of the Convention and does not reflect the agreement of the States Parties. As another example, information is provided regarding relevant U.S. practice regardless of whether the practice falls within the territorial scope of the Convention as a legal matter. The United States has also included information in response to issues that

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<sup>1</sup> See, e.g., Reply of the Government of the United States of America to the Report of the Five UNCHR Special Rapporteurs on Detainees in Guantanamo Bay, Cuba, March 10, 2006,” page 12, available at <https://2009-2017.state.gov/documents/organization/98969.pdf>; “Draft Articles on State Responsibility, Comments of the Government of the United States of America, March 1, 2001,” page 3, available at <https://2009-2017.state.gov/documents/organization/28993.pdf>; “Draft Articles on State Responsibility, Comments of the Government of the United States of America” (Oct. 22, 1997), page 6, available at <https://2009-2017.state.gov/documents/organization/65781.pdf>.

<sup>2</sup> Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012, p. 422, at 449, 68.

<sup>3</sup> Observations by the United States of America on Committee Against Torture General Comment No. 2: Implementation of Article 2 by States Parties (Nov. 3, 2008), 18.

have no substantive relation to the Convention, for example, with respect to refugee resettlement and asylum procedures.

6. This report responds to the 49 questions in the List of Issues (LOI) prepared by the Committee and transmitted to the United States on January 26, 2017 (CAT/C/USA/QPR/6) pursuant to the optional reporting procedure, and includes information on the matters noted by the Committee’s Rapporteur in the letter of August 29, 2016. The information in our responses supplements information included in the U.S. Initial Report (CAT/C/28/Add.5, February 9, 2000) (“Initial Report”), the Second Periodic Report (CAT/C/48/Add.3, June 29, 2005) (“2005 CAT Report”), and the Third, Fourth, and Fifth Periodic Reports (CAT/C/USA/3-5, August 12, 2013) (“2013 CAT Report”), as well as other information provided by the United States in connection with Committee meetings and communications. The information in our responses takes into account prior Concluding Observations of the Committee (CAT/C/USA/CO/2 and CAT/C/USA/CO/3-5). Throughout the report, the United States has considered carefully the views expressed by the Committee in its written communications and in its public sessions with the United States.

7. The United States also directs the Committee’s attention to the Fifth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights filed in January 2021 (“2021 ICCPR Report,” available at CCPR/C/USA/5 (15 January 2021)), the U.S. Periodic Report Concerning the International Convention on the Elimination of All Forms of Racial Discrimination filed in June 2021 (“2021 CERD Report,” available at CERD/C/USA/10-12 (8 June 2021)), and the 2011 Common Core Document (available at HRI/CORE/USA/2011 (30 December 2011, with update submitted to the Committee on the Rights of the Child (8 February 2016))).

## **II. Replies to the List of Issues**

### **Articles 1 and 4**

#### **Reply to paragraph 2 of the list of issues (CAT/C/USA/QPR/6)**

8. All acts of torture are offenses under criminal law in the United States. As indicated in prior U. S. reports, the Convention does not prescribe the precise manner in which a State Party implements its obligation to criminalize torture consistent with Article 1, and all acts of torture as understood in the Convention are already punishable under U.S. law.<sup>4</sup> The United States maintains its position with regard to all its reservations, understandings, and declarations concerning the Convention.

### **Article 2**

#### **Reply to paragraph 3 of the list of issues**

9. The United States again confirms its view that where the text of the CAT provides that obligations apply to a State Party in “any territory under its jurisdiction,” including Article 16 of the CAT, such obligations extend to “all places that the State Party controls as a governmental authority.”<sup>5</sup> We have concluded that the United States currently exercises such control at the U.S. Naval Station at Guantanamo Bay, Cuba, and over governmental proceedings conducted there, and with respect to U.S.-registered ships and aircraft.<sup>6</sup> Section

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<sup>4</sup> Initial Report, 45–50, 100–119; 2005 CAT Report, 11–19; 2013 CAT Report, 8–11.

<sup>5</sup> See One-Year Follow-up Response of the United States of America to Recommendations of the Committee against Torture on its Combined Third to Fifth Periodic Reports on Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Nov. 27, 2015), 4.

<sup>6</sup> The United States has informed the Committee of its views on the territorial scope of certain articles of the CAT on numerous occasions, including in its Observations on the Committee Against Torture’s Draft General Comment No. 1 (2017) on Implementation of Article 3 in the Context of Article 22

1045 of the National Defense Authorization Act for Fiscal Year (FY) 2016, enacted in November 2015, P.L. 114-92, 129 Stat. 978, restricts interrogation techniques to those found in the Army Field Manual 2-22-3, which requires humane treatment of all captured or detained personnel and explicitly prohibits cruel, inhuman, and degrading treatment. Section 1045 also provides that the International Committee of the Red Cross (“ICRC”) must be notified and given prompt access to any individual detained in any armed conflict in the custody or under the effective control of agents of the U.S. Government or held within a facility owned, operated, or controlled by a department, agency, contractor, or subcontractor of the U.S. Government, consistent with DoD regulations and policies. Officers, employees, and agents of the Federal Bureau of Investigation (FBI), DHS, and other Federal law enforcement agencies are limited to authorized non-coercive techniques.

**Reply to paragraph 4 of the list of issues**

10. All U.S. detention facilities are operated consistent with obligations under U.S. domestic and international law and policy. Individuals are in all circumstances to be treated humanely, consistent with U.S. domestic law, international legal obligations, and U.S. policy whenever such individuals are in the custody or under the effective control of an officer, employee, or other agent of the U.S. Government or detained within a facility owned, operated, or controlled by a department or agency of the United States; and such individuals are not to be subjected to any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by and listed in the Army Field Manual, 2-22.3, without prejudice to authorized non-coercive techniques of Federal law enforcement agencies. U.S. domestic law further provides that this Army Field Manual must remain publicly available and comply with the legal obligations of the United States. All of the techniques listed in the Army Field Manual must be applied in accordance with the requirements for humane treatment.

11. Individuals pending Federal criminal prosecution may be detained after a hearing conducted in a United States District Court, with the assistance of counsel. Individuals who are detained are registered, and their identities are public. Federal detained individuals are permitted to inform family members and have subsequent contact with the community through visitation, letters, email, and telephone calls. Individuals detained after Federal criminal conviction in order to serve a sentence are also registered, named publicly, and are afforded community contact in similar fashion.

12. The United States is aware of the concerns expressed concerning the Chicago Police Department’s Homan Square facility.

13. On December 7, 2015, the DOJ Civil Rights Division, Special Litigation Section, and the U.S. Attorney’s Office for the Northern District of Illinois jointly initiated an investigation of the City of Chicago’s Police Department (CPD) and the Independent Police Review Authority. Based on a comprehensive investigation of CPD’s force practices and a close analysis of hundreds of individual force incidents, DOJ found that CPD had engaged in a pattern or practice of force in violation of the Constitution.<sup>7</sup> Since the issuance of the DOJ’s letter of findings in 2017, the City of Chicago and the CPD have implemented a number of reforms.

**Reply to paragraph 5 of the list of issues**

14. As noted in 257 of our 2013 CAT Report, although the United States does not have a single independent national human rights institution as contemplated by the Paris Principles, multiple complementary protections and mechanisms serve to reinforce the ability of the United States to guarantee respect for human rights, including through its domestic laws and independent judiciary at both Federal and state levels.

15. The United States strongly condemns violence against women and takes aggressive action to prosecute alleged perpetrators and provide services to victims. In 2020, the U.S.

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(Apr. 5, 2017); its One-Year Follow-Up Response to the Committee dated November 27, 2015; and its presentation to the Committee on its Third-Fifth Periodic Report on November 12–13, 2014.

<sup>7</sup> See <https://www.justice.gov/opa/file/925846/download>.

Congress passed legislation to amend and strengthen the law criminalizing female genital mutilation, which became law in January 2021. The DOJ Office on Violence Against Women (DOJ/OVW) administers 19 grant programs, authorized by the Violence against Women Act (VAWA) and subsequent legislation, designed to reduce domestic violence, dating violence, sexual assault, and stalking by strengthening services to victims and holding offenders accountable.<sup>8</sup> Grants are available to states, territories, units of local government, Tribal governments, local Tribal and territorial courts, victim service providers, state and Tribal coalitions, and governmental rape crisis centers. These grants support training and services to end violence against women; improve criminal justice responses to domestic violence, dating violence, sexual assault and stalking; promote outreach and services to underserved populations; and improve training and services to end violence against individuals with disabilities. For FY 2020, OVW awarded over \$489,000,000 in Federal funding. Grants to Tribal governments also assist their exercise of special domestic violence criminal jurisdiction. For FY 2020, OVW awarded \$3,266,458 under the Grants to Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction Program. Since 2015, DOJ has implemented the Tribal Access Program, which provides Federally-recognized Tribes direct access to Federal databases, enabling Tribes to submit orders of protection and therefore potentially disqualify domestic violence offenders from obtaining firearms.

16. DOJ has funded the Wraparound Victim Legal Assistance Network Demonstration Project, which provides comprehensive legal services to all victims of crime, including survivors of domestic violence. Work is also ongoing to bring attention to violence against women on college campuses. Through the Legal Aid Interagency Roundtable, twenty-one Federal agencies work together to improve access to legal services for domestic violence victims.

17. Other agencies, including Housing and Urban Development (HUD), Health and Human Services (HHS), and DHS also have programs and offer grants to address violence against women in housing, health, and other specific aspects of life. Within DHS, the U.S. Citizenship and Immigration Services (USCIS) adjudicates requests for humanitarian protection under VAWA, which provides victims a pathway to citizenship. In 2019, DHS's agency-wide Council on Combating Violence against Women (CCVAW) oversaw the revision and release of new DHS-wide training on increased vulnerability of noncitizens without status to domestic violence; the immigration benefits provided to noncitizen victims of crime, including domestic violence, under U.S. immigration laws; and the special confidentiality laws that protect victims' information. From 2016–2020, the CCVAW also produced annual reports on DHS compliance with mandatory CCVAW training and the number of confidentiality incidents that occurred in the past year. In 2016, HUD issued guidance on the effects of local nuisance ordinances that may lead to discrimination under the Fair Housing Act against survivors of domestic violence and other persons in need of emergency services. In implementation of the 2013 reauthorization of VAWA, HUD also expanded and enhanced VAWA housing protections and options for victims of domestic violence, dating violence, sexual assault, and stalking. Work on services for victims has included actions such as the 2016 funding by DOJ and HUD of \$9.2 million for stable housing to victims of domestic violence, dating violence, sexual assault, and stalking, and a 2016 launch of a research and evaluation initiative for a peer support group model for persons who will not seek counseling.

18. Legislation to reauthorize VAWA, which was enacted in 1994 and last reauthorized in 2013, is now pending in Congress. On March 17, 2021, President Biden issued a statement welcoming passage of the Violence against Women Reauthorization Act of 2021 by the House of Representatives and calling for passage by the Senate as well. The statement emphasized support for particular provisions of the House bill, including those (1) reauthorizing funding for VAWA grant programs, (2) reducing intimate partner homicides committed by firearms by expanding protections for victims and enhancing support for law enforcement agencies and courts enforcing protection orders, (3) authorizing increased funding for culturally specific services for victims, and (4) expanding Tribal "special

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<sup>8</sup> See <https://www.justice.gov/ovw/reports-congress>.

domestic violence criminal jurisdiction” to hold accountable non-Native perpetrators of sexual violence, sex trafficking, domestic violence against child victims, stalking, elder abuse, and assault against law enforcement officers when they commit such crimes on Tribal territory. That statement noted that COVID-19 has exacerbated the threat of intimate partner violence, creating a pandemic within a pandemic for countless women at risk of abuse.

19. With regard to violence against women in education, on March 8, 2021, the President issued an Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, including Sexual Orientation or Gender Identity. Among the provisions of the order is a policy that all students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence.

#### **Reply to paragraph 7 of the list of issues**

20. The DoD FY 2018 Annual Report on Sexual Assault in the Military indicates that an estimated 20,500 service members were sexually assaulted in the year prior to the survey, up from 14,900 assaults reported in FY 2016, but approximately the same number as reported in 2014. According to the FY 2018 survey, the estimated past-year prevalence of sexual assault increased primarily for female service members ages 17 to 24. About 6.2 percent of active duty women indicated experiencing a sexual assault in the year prior to the survey, a rate that reflects a statistically significant increase compared to the 4.3 percent for women measured in FY 2016. The estimated rate for active duty men remained statistically unchanged at 0.7 percent. The proportion of service members who chose to report assaults was approximately 1 in 3, about the same as in 2016, but up from 1 in 4 in 2014 and from 1 in 14 in years prior to 2014. Active duty women in FY 2018 reported at a higher rate (38 percent) than active duty men (17 percent).

21. The FY 2018 annual report on Sexual Assault in the U.S. Coast Guard noted 265 reported victims of sexual assault, an increase from 200 in FY 2017. Sexual assault report trends from FY 2018 to the present remain relatively unchanged since FY 2014. In 2018, the Coast Guard released its Sexual Assault Prevention Response and Recovery Strategic Plan for 2018–2022. This plan included updates on ongoing efforts and new initiatives. Additionally, recovery was added as the fifth strategic goal to the original four goals of Climate, Prevention, Response, and Accountability.

22. Prevention of sexual assault remains a Service priority. The Coast Guard continues to collaborate with DoD’s Sexual Assault Prevention and Response Office to evaluate innovative field-level prevention efforts. The Coast Guard received invaluable support from the RAND Corporation and maintained momentum during COVID-19 in piloting the Getting to Outcomes (GTO) Bystander Training Initiative. GTO, developed in partnership with the Centers for Disease Control and Prevention (CDC) Violence Prevention Technical Assistance Center, is designed to measure outcomes of prevention programming. The Coast Guard’s goal is to develop training that is optimized to meet the unique demands of the Service’s mission and develop leaders of character who take a stand with skill, knowledge, and confidence against sexual violence.

23. DoD recognizes that it is critical to continue to emphasize a climate of dignity and respect in which both male and female victims are empowered to report sexual assault, and DoD is continuing to implement culture changes so that members of the U.S. military can operate in a command climate free of the crime. In 2016, the Secretary of Defense signed a Retaliation Prevention and Response Strategy, which standardized definitions of various types of retaliation across DoD, implemented a data-driven approach, created strong and standardized systems of investigation and accountability and a comprehensive system of support for those who report retaliation, and educated and prepared DoD personnel to create a culture intolerant of retaliation. In FY 2019, DoD issued a Prevention Plan of Action to optimize the Department’s prevention system with targeted efforts towards the young cadre of military service members at increased risk for sexual assault perpetration or victimization. DoD also ensures that supervisors of junior enlisted personnel receive improved preparation to promote and sustain respectful workplaces. In addition, the Army has piloted a Sexual Harassment Assault Response and Prevention (SHARP) Program Resources Center. To assist

victims, SHARP teams bring together medical providers, crime investigators, special victim's counsels, and military prosecutors.

24. On February 23, 2016, DoD announced establishment of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces. The Committee advises the Secretary of Defense and the Deputy Secretary on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces. On February 26, 2021, DoD announced creation of an independent review commission on sexual assault in the military to review Departmental policies and programs, as directed by President Biden. While not a military service within the DoD, the Coast Guard is an armed force at all times and subject to the Uniform Code of Military Justice.

#### **Reply to paragraph 8 of the list of issues**

25. The United States works actively to prevent and protect against human trafficking and to provide effective remedies when it does occur. Statistical information on trafficking – including prosecutions and convictions, investigations and arrests, sentences, and data on victims, as requested by the Committee – can be found in the Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons.<sup>9</sup>

26. Through legislation such as the Survivors of Human Trafficking Empowerment Act of May 29, 2015 (section 115 of the Justice for Victims of Trafficking Act of 2015), the Trafficking Victims Protection Act of 2017, the Abolish Human Trafficking Act of 2017, the Frederick Douglass Trafficking Victims Prevention and Protection Act of 2017, and the Trafficking Victims Protection Reauthorization Act of 2018, Congress has acted in recent years to strengthen prohibitions and protections for affected groups.

27. The President's Interagency Task Force to Monitor and Combat Trafficking in Persons (PITF) consists of senior officials from DOS, DoD, DOJ, DHS, Department of Agriculture, Department of Commerce, Department of Education, Department of the Interior, Department of Labor, HHS, and Department of Transportation, as well as the Office of Management and Budget, Office of the U.S. Trade Representative, Office of the Director of National Intelligence, National Security Council staff, Domestic Policy Council, U.S. Agency for International Development (USAID), Federal Bureau of Investigation, and U.S. Equal Employment Opportunity Commission. Through the Senior Policy Operating Group, PITF agencies convene regularly to advance and coordinate Federal policies and collaborate with stakeholders on areas such as enforcement of criminal and labor laws to end impunity for traffickers, victim-centered identification and trauma-informed assistance, innovations in data gathering and research, education and public awareness activities, and synchronization of strategically-linked foreign assistance and diplomatic engagement. In addition, agencies have adapted programs and launched initiatives to meet the challenges of the COVID-19 pandemic and have found innovative ways to work with tech companies to communicate with the public.

28. Priorities in recent years have included investigation and prosecution of traffickers and dismantling of the criminal networks that perpetrate trafficking; investigation and prosecution of the demand-side of trafficking; enhancing victim identification and the provision of relief and services for all victims; enhancing training of stakeholders, including civil society, law enforcement, and government officials; seeking and incorporating survivor input in government efforts; encouraging foreign governments to combat trafficking through international diplomacy and engagement; forging and strengthening international and national partnerships and other forms of collaboration; funding domestic and international anti-trafficking programs; integrating anti-trafficking components into relevant government programs; promoting public awareness and spurring innovation and capacity; and gathering and synthesizing actionable intelligence to increase the number of domestic and international trafficking prosecutions.

29. USCIS, a component within DHS, trains all incoming asylum officers on detecting potential victims of trafficking and referring those individuals to U.S. Immigration and

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<sup>9</sup> Available at <https://www.justice.gov/humantrafficking/attorney-generals-trafficking-persons-report>.

Customs Enforcement (ICE) Homeland Security Investigations (HSI) for law enforcement investigation and victim assistance. Individual USCIS asylum offices conduct trainings on detecting victims and trafficking trends throughout the year. Asylum officers work closely with their counterparts on trafficking cases in the field. USCIS maintains guidance on trafficking, which is required reading and reference material for asylum officers, refugee officers, and international adjudications officers.

30. The United States continues to extend protection to eligible individuals who are victims of crime and abuse, including human trafficking. T non-immigrant status (T visa) provides temporary immigration status to certain victims of severe forms of human trafficking, as defined by U.S. law, who cooperate with any law enforcement requests in the investigation or prosecution of the trafficking, or who are children or who are unable to cooperate due to serious trauma, and who would face extreme hardship if removed from the United States. Individuals with T visas can apply for permanent residency after three years or when any associated criminal cases are closed. U non-immigrant status (U visa) provides temporary immigration status to certain victims of qualifying crimes, including human trafficking, felonious assaults, domestic violence, and kidnapping, if the victim assists law enforcement in the detection, investigation, prosecution, sentencing, or conviction of those crimes and otherwise qualifies for the status. A victim's qualifying family members may also be eligible for T and U visas. On June 14, 2021, USCIS implemented a new process through which USCIS will issue employment authorization and grant deferred action to petitioners in the United States with pending U visa petitions that it determines are bona fide (made in good faith and without intention of deceit or fraud) and who merit a favorable exercise of discretion. To be considered bona fide, the petition must include a certification from law enforcement that the petitioner was a victim of a crime and that the victim has been, is being, or is likely to be helpful in the investigation or prosecution of that crime.<sup>10</sup> VAWA provisions also allow certain spouses, children, and parents of abusive U.S. citizens and certain spouses and children of abusive Lawful Permanent Residents (LPRs) to petition for immigration benefits without the abuser's participation or knowledge (self-petition).

31. USCIS continues to train officers in the adjudication of applications for T non-immigrant status, petitions for U non-immigrant status, and VAWA self-petitions. This unique training helps officers understand the dynamics associated with domestic violence and abuse, crime victimization, and human trafficking, as well as the role of immigration relief in victim safety, which is important in the context of preventing domestic terrorism.

32. In FY 2020, USCIS approved the largest number of T non-immigrant applications in the program's history. USCIS has also approved the statutory cap of 10,000 U visas since 2011 and has already met that cap in FY 2021. VAWA approvals totaled over 8,000 for FY 2020.<sup>11</sup>

33. U.S. officials have entered into agreements with and worked with a number of other countries to achieve these priorities, including launching the Safe Migration in Central Asia project, with the goal of strengthening and promoting mutual accountability of all stakeholders to prevent trafficking, protect survivors, and promote safe migration; working with Mexico through the U.S.-Mexico Bilateral Human Trafficking Enforcement Initiative to exchange leads and intelligence to strengthen bilateral investigations and prosecutions, restore victims and dismantle transnational trafficking enterprises; funding five training courses for 95 foreign law enforcement officials at International Law Enforcement Academies in Accra, Budapest, Bangkok, Gaborone, and San Salvador; USAID's providing specialized technological assistance, training and grants to Burma's judiciary, government ministries, and local organizations; and DOS's signing a Child Protection compact with Mongolia in April 2020.

34. Additionally, the Federal Law Enforcement Training Centers (FLETC) has developed and delivers a one-day introductory human trafficking awareness training program for Federal, state, local, Tribal, and territorial law enforcement agencies. Delivered virtually or

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<sup>10</sup> See <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5>.

<sup>11</sup> More information can be found at <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data>.

in-person, the training focuses on defining human trafficking, recognizing its indicators, and identifying human trafficking reporting protocols. It includes a facilitated panel of regionally selected human trafficking experts from agencies charged with combating human trafficking, such as ICE/HSI, the U.S. Attorney's Office, the FBI, and state and local prosecutors and victim services non-governmental organizations. The goal is to introduce students to resources useful to assist with suspected trafficking cases.

## Article 3

### Reply to paragraph 9 of the list of issues

35. Since January 20, 2021, the U.S. Government has been working to improve our immigration system, making it more orderly and humane. These improvements include seeking to provide greater opportunities for noncitizens to apply for any form of relief or protection for which they may be eligible, including asylum, withholding of removal, and protection from removal under the regulations implementing United States obligations under the CAT. On February 2, 2021, President Biden issued Executive Order (E.O.) 14010, Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border, which directs the Secretary of Homeland Security and the Director of the Centers for Disease Control and Prevention (CDC), in coordination with the Secretary of State, to resume safe and orderly processing at United States land borders. On February 19, 2021, DHS also began phase one in the effort to begin processing into the United States certain people who had been returned to Mexico under the Migrant Protection Protocols to await removal proceedings and had a pending case before the Executive Office for Immigration Review (EOIR).<sup>12</sup> The E.O. further directs actions to strengthen the U.S. asylum system, including conducting a comprehensive examination of current regulations, precedential decisions, policies, and internal guidelines governing the adjudication of humanitarian protection claims and determinations of refugee status to help ensure that the United States provides protection for those fleeing violence in a manner consistent with our domestic laws and international obligations. Further, DHS and EOIR are working on improving procedures for individuals placed in expedited removal proceedings at the U.S. border. Under the E.O., DHS is reviewing current procedures to formulate recommendations for a more efficient and orderly process that facilitates timely adjudications and adherence to standards of fairness and due process. DHS and EOIR are also working, both jointly and independently, on several regulations concerning asylum and other forms of relief.

36. The USCIS Asylum Division adjudicates certain asylum applications submitted by individuals who are in the United States and not in removal proceedings.<sup>13</sup> Because these individuals apply for asylum by presenting themselves to USCIS regardless of their immigration status, they are called "affirmative" asylum applications. In 1990, the Asylum Corps, a corps of specially trained professional officers, was created to adjudicate affirmative

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<sup>12</sup> On August 13, 2021, a Federal District Court in Texas ordered the United States government to "enforce and implement MPP in good faith" until certain conditions have been met. *See Texas & Missouri v. Biden*, No. 2:21-cv-00067-Z (N.D. Tex., filed Apr. 13, 2021). The United States appealed the order to the 5th Circuit Court of Appeals and sought a stay of its implementation until the conclusion of the related litigation. *See Texas v. Biden*, No. 21-10806 (5th Cir. 2021) petition for cert. filed, (U.S. Aug. 20, 2021) (No. 21A-). The 5th Circuit Court of Appeals denied the government's request on August 19, 2021 and the Supreme Court denied the same request on August 24, 2021. *See Order Den. Stay* (Aug. 19, 2021); *Order Den. Stay* (Aug. 24, 2021). As such, the United States is undertaking efforts to comply with the District Court order while continuing to pursue an appeal at the 5th Circuit.

<sup>13</sup> USCIS has initial jurisdiction over asylum applications filed by unaccompanied children in removal proceedings adjudicated by USCIS. INA § 208(b)(3)(C); 8 U.S.C. § 1159(b)(3)(C). The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110-457, provided asylum officers with "initial jurisdiction over any asylum application filed by" an unaccompanied noncitizen child (UC). INA § 208(b)(3)(C), 8 U.S.C. § 1158(b)(3)(C) (codifying TVPRA § 235(d)(7)). This means that UCs have an opportunity to file for asylum with USCIS in non-adversarial proceedings, even if the UC has been placed in removal proceedings.

asylum claims. There are nine asylum offices, one sub-office, and one pre-screening and vetting center in the United States.

37. If, after an in-person, non-adversarial interview, an asylum officer finds an applicant eligible for asylum and finds that the applicant merits a favorable exercise of discretion, asylum status is generally granted and the asylee may remain in the United States indefinitely, unless asylum status is terminated. An asylee who has been physically present in the United States for one year may apply to adjust status to become a legal permanent resident and subsequently apply for naturalization.

38. During the asylum interview, the asylum applicant has the right to be represented by an attorney or other representative at his or her own expense. In September 2020, USCIS published a temporary final rule that requires certain asylum applicants to use a USCIS-provided telephonic contract interpreter to keep the USCIS workforce and applicants safe during the COVID-19 public health emergency. Effective until September 18, 2021, asylum applicants who are unable to proceed with their interviews in English and who speak one of 47 common languages<sup>14</sup> are required to use a USCIS contract interpreter at the asylum interview instead of bringing their own interpreter. If an asylum applicant is not fluent in any of the 47 languages for which USCIS provides an interpreter, the applicant must bring an interpreter who is fluent in English and the applicant's native language or any other language in which the applicant is fluent. If the applicant is unable to provide an interpreter who meets these qualifications, the applicant may provide an interpreter fluent in the applicant's language and one of the 47 languages. USCIS will provide a relay interpreter to interpret between one of the 47 languages and English.

39. Applicants for asylum not in lawful immigration status who are not found eligible to be granted asylum by the USCIS Asylum Division are often placed in removal proceedings under section 240 of the Immigration and Nationality Act (INA), and their applications are referred to an immigration judge who will consider their asylum claims in a de novo hearing. Applicants in lawful immigration status who are denied asylum by USCIS can reapply for asylum either with USCIS or, if they are later placed in removal proceedings, with an immigration judge. USCIS does not adjudicate requests for protection pursuant to the regulations implementing U.S. obligations under the CAT.

40. All USCIS asylum officers receive training on how to interview children, which includes guidance on child-sensitive interview techniques and procedures, and legal analysis of the issues that commonly arise in children's cases. To the extent personnel resources permit, USCIS attempts to assign officers with relevant background or experience to interview children. All affirmative asylum applicants receive a non-adversarial interview with an asylum officer, either face-to-face or (due to COVID-19) via video connection. Child asylum applicants may have a trusted adult present at the interview. A trusted adult may help to bridge the gap between the child's culture and the environment of a USCIS interview. The function of the adult is not to interfere with the interview process or to coach the child during the interview but to serve as a familiar and trusted source of comfort. If needed, and with the child's permission, asylum officers may interview the child's parent or trusted adult about information the child may not be able to provide. It is not required that a witness or trusted adult be present at the child's interview.

41. All USCIS asylum officers also receive training on how to interview survivors of torture and other severe trauma. During training, asylum officers receive intensive instruction on various sensitive claims and techniques for handling them. Asylum officers engage in intense practice on those techniques via various scenarios throughout the year.

42. All USCIS asylum officers also receive training on how to interview survivors of domestic and sexual violence. The Consolidated Appropriations Act, 2021 requires that each individual performing asylum officer duties or reviewing the decisions of such personnel receive annual training on the dynamics of domestic and sexual violence and how such dynamics impact asylum seekers and their applications. The training, which must be

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<sup>14</sup> Common languages include some indigenous languages. The complete list is available at [www.uscis.gov/humanitarian/refugees-and-asylum/asylum/temporary-final-rule-asylum-interview-interpreter-requirement-modification-due-to-covid-19](http://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/temporary-final-rule-asylum-interview-interpreter-requirement-modification-due-to-covid-19).

conducted by individuals with documented expertise, covers interviewing trauma survivors who have experienced sexual, gender-based, and domestic violence, and also eliciting such testimony in the context of asylum law. Asylum officers are also provided with suggested lines of inquiry and other tips for adjudicators.

43. Generally immigration judges have exclusive jurisdiction over asylum applications of individuals in removal proceedings. Immigration judges may also consider an applicant's claim for withholding or deferral of removal under regulations implementing U.S. obligations under the CAT. Asylum applicants in removal proceedings are provided with a list of *pro bono* legal services. For individuals whose command of the English language is inadequate for them to fully understand and participate in proceedings, they may request an interpreter whom the government provides at its expense. For individuals in removal proceedings who present indicia of incompetency, the immigration judge holds a competency hearing to determine whether the individual lacks the competency without procedural safeguards and, if so, what procedural safeguards are necessary to ensure a fair hearing including, where appropriate, appointed counsel.

44. An individual who is encountered at the border and found inadmissible on one of two statutory grounds may alternatively be placed in expedited removal proceedings, which, if applicable, may include the credible fear process. A noncitizen who is subject to expedited removal but who indicates either an intention to apply for asylum or a fear of persecution or torture is provided a "credible fear" screening conducted by an asylum officer.<sup>15</sup> The non-citizen is also given a written disclosure on Form M-444, Information About Credible Fear Interview, describing the "credible fear" interview process, and advising of the right to consult with other persons prior to the interview and any subsequent review at no expense to the U.S. Government, the right to request review by an immigration judge of the asylum officer's negative credible fear determination, and the consequences of failure to establish a credible fear of persecution or torture. If the asylum officer finds the individual to have a credible fear of persecution or torture,<sup>16</sup> the individual is placed in removal proceedings for further consideration of the claim for asylum or withholding of removal.<sup>17</sup> If, on the other hand, the asylum officer finds the individual does not have a credible fear, the individual will indicate whether he or she desires immigration judge review. Failing to express a preference is considered a request for review.<sup>18</sup>

45. Federal regulations<sup>19</sup> require asylum officers to make reasonable fear determinations in two types of cases referred by other DHS officers: in the case of certain noncitizens convicted of an aggravated felony against whom a final administrative order of removal is issued pursuant to INA Section 238(b); or in the case of a noncitizen subject to reinstatement of a prior order of exclusion, deportation, or removal pursuant to INA Section 241(a)(5). These classes of noncitizens are ineligible for all forms of discretionary relief from removal and may be ordered removed without being placed in removal proceedings before an immigration judge although they may request that an immigration judge review a negative reasonable fear determination.

46. Although U.S. law provides for these special removal processes and "reasonable fear" review for certain noncitizens who are not eligible for any form of relief from removal, U.S. laws implementing non-refoulement obligations under the 1967 Protocol relating to the Status of Refugees and Article 3 of the CAT still apply in these cases and may preclude the execution of removal orders to certain countries. Therefore, withholding of removal under either section 241(b)(3) of the INA or under the regulations implementing the CAT may still

<sup>15</sup> See INA § 235(b)(1)(A), 8 U.S.C. § 1225(b)(1)(A).

<sup>16</sup> "Credible fear of persecution" is defined as "a significant possibility, taking into account the credibility of the statements made by the noncitizen in support of the noncitizen's claim and such other facts as are known to the officer, that the noncitizen could establish eligibility for asylum under section 208." INA § 235(b)(1)(B)(v), 8 U.S.C. § 1225(b)(1)(B)(v); see also 8 C.F.R. § 208.30(e) (describing a credible fear of persecution and a credible fear of torture).

<sup>17</sup> See 8 C.F.R. § 208.30(f). DHS/USCIS and DOJ are proposing to modify this in order to have USCIS asylum officers adjudicate the asylum claim of those with a positive credible fear finding in non-adversarial proceedings, <https://public-inspection.federalregister.gov/2021-17779.pdf>.

<sup>18</sup> See INA § 235(b)(1)(B)(iii), 8 U.S.C. § 1225(b)(1)(B)(iii).

<sup>19</sup> 8 C.F.R. 208.31; 64 Fed. Reg. 8478 (February 19, 1999).

be available to noncitizens in these cases. Withholding of removal under section 241(b)(3) of the INA and withholding or deferral of removal pursuant to the regulations implementing the CAT are not considered to be forms of relief from removal, because they still result in an order of removal against the individual, are specifically limited to the country where the individual is at risk, and do not prohibit the individual's removal from the United States to a third country.

47. The purpose of the "reasonable fear" determination is to ensure that a noncitizen will not be returned to a country where the person would be tortured or the person's life or freedom would be threatened on account of a protected characteristic in the refugee definition, while also adhering to U.S. domestic legal requirements to subject certain categories of noncitizens convicted of aggravated felonies as well as noncitizens subject to reinstatement of removal orders to streamlined removal proceedings.

48. Similar to credible fear determinations in expedited removal proceedings, reasonable fear determinations serve as a screening mechanism to identify potentially meritorious protection claims for further consideration by an immigration judge.

49. The U.S. Government generally does not fund legal representation to noncitizens in immigration court, although noncitizens have the right to legal representation at their own expense. Federal funding is available for legal assistance. Some types of legal assistance support are, however, provided by EOIR, as summarized below at 55–58.<sup>20</sup> The largest source of Federal funding for legal assistance comes through the Legal Services Corporation, a private, non-profit corporation established and funded through U.S. appropriations to fund legal aid programs.

50. After DHS charges a noncitizen (referred to in U.S. law as an "alien") with being inadmissible or deportable under the INA, immigration judges via removal proceedings decide whether the noncitizen is removable as charged from the United States and, if found removable under the INA, whether he or she qualifies for protection or relief from removal.

51. For otherwise removable noncitizens, U.S. law provides that asylum may be granted to eligible applicants, regardless of their country of origin, who are unable or unwilling to return to their country of nationality or, in the case of a noncitizen having no nationality, the country of the noncitizen's last habitual residence, because of persecution or a well-founded fear of future persecution on account of the noncitizen's race, religion, nationality, membership in a particular social group, or political opinion. An asylum application must generally be filed within one year of the applicant's arrival in the United States unless the applicant demonstrates changed circumstances that materially affect the applicant's eligibility for asylum or extraordinary circumstances related to the delay in filing the application.<sup>21</sup> Under U.S. regulations, an asylum application is construed as an application for withholding of removal if the asylum applicant is ineligible for asylum under section 208(a)(2) of the INA. Form I-589, Application for Asylum and Withholding of Removal, is also used to apply for relief under the CAT. Applicants often apply for asylum, withholding of removal, and CAT protection at the same time before an immigration judge.

52. When asylum applicants are granted relief, they have status to remain in the United States. Immigration judges may grant derivative asylum to family members who are also in removal proceedings before them. Asylum may also be granted to an applicant's spouse and children who are in the United States and who were included in the approved application. In time, asylees may apply for lawful permanent residence and, eventually, citizenship. Certain asylum applicants are eligible for work authorization after they file their asylum applications.

53. Certain non-citizens whom an immigration judge would otherwise find removable may qualify to have their removal withheld under the INA or withheld or deferred under the regulations implementing U.S. obligations under the CAT. This protection generally is not regarded as relief from removal, as the noncitizen is in fact ordered removed, and is different in many respects from asylum relief. For example, among other differences, protection under

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<sup>20</sup> See <https://www.justice.gov/eoir/office-of-legal-access-programs>.

<sup>21</sup> The one-year filing deadline does not apply to unaccompanied children. INA § 208(a)(2)(E); 8 U.S.C. § 1158(a)(2)(E) (added by the Trafficking Victims Protection Act of 2008).

U.S. regulations implementing the CAT does not permit recipients to become lawful permanent residents or provide the basis to petition for family members to come to the United States.<sup>22</sup>

54. Interpretation services in EOIR immigration court hearings are provided by in-house staff interpreters who work for EOIR or by a contract interpretation agency or telephonic interpretation services at U.S. government expense. Each EOIR courtroom is equipped with simultaneous interpretation equipment. Interpretation services in other Federal courts are provided in the same manner by in-house staff or contract interpreters. EOIR provides full and complete interpretation during all court hearings. Full and complete interpretation ensures the immigration judge is fully apprised of everything said in languages other than English, and conversely, enables a non-English-speaking respondent to hear and understand what is being said at all times during the hearing.

55. EOIR also operates a program from its headquarters to work to increase access to legal information and raising the level of representation for persons appearing before the immigration courts and the Board of Immigration Appeals (BIA). Further, EOIR oversees several legal orientation and capacity-building programs.

56. Legal orientation programs include the Legal Orientation Program (LOP) for detained adult respondents, the Immigration Court Helpdesk for non-detained respondents, and the Legal Orientation Program for Custodians of Unaccompanied Children for the caretakers of children in non-detained proceedings. EOIR also administers the National Qualified Representative Program to provide counsel for certain unrepresented detained respondents determined by an immigration judge or the BIA to lack mental competency to represent themselves. As of June 2021, the LOP was operational in 41 adult detention facilities as well as two of the family residential centers operated by U.S. Immigration and Customs Enforcement (ICE).

57. Capacity-building programs include the Recognition and Accreditation Program, which oversees the process for authorizing qualified non-attorneys to provide legal representation to low-income and indigent noncitizens, as well as the List of Pro Bono Legal Service Providers, which oversees the application process and dissemination of a list of *pro bono* providers that is provided to all noncitizens in immigration court proceedings. Further, the BIA Pro Bono Project assists in identifying case appeals for placement with *pro bono* representatives nationwide.<sup>23</sup>

58. Additional services are available to noncitizens through non-profit organizations, law school clinics, and private attorneys providing *pro bono* legal services. A number of cities have also begun funding local non-profit groups to provide legal assistance for noncitizens in immigration proceedings.

#### **Reply to paragraph 10 of the list of issues**

59. Requested statistics on asylum applications, to the extent they are available – including information on persons admitted to the United States as refugees, those who applied for asylum in the United States, and those granted asylum in the United States – can be found in the Refugees and Asylees Annual Flow Report.<sup>24</sup> Statistics on protection afforded under the CAT can be found in the DOJ Statistics Yearbook.<sup>25</sup> Statistics on removals can be found in the ICE Enforcement and Removal Operations Report.<sup>26</sup>

60. With regard to the applicable appeals processes, applications for withholding of removal or deferral of removal under the regulations implementing U.S. obligations under the CAT are heard by an immigration judge in an adversarial proceeding with evidence presented by both the applicant and the U.S. Government. If the applicant is found ineligible, and is not eligible for any other form of relief, the immigration judge orders the individual to

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<sup>22</sup> One kind of CAT protection (deferral of removal) can be extended to those who are barred from asylum and withholding because of certain criminal convictions or on national security grounds.

<sup>23</sup> See <https://www.justice.gov/eoir/office-of-legal-access-programs>.

<sup>24</sup> Available at <http://www.dhs.gov/immigration-statistics/refugees-asylees>.

<sup>25</sup> Available at <http://www.justice.gov/eoir/statistical-year-book>.

<sup>26</sup> Available at <http://www.ice.gov/features/ERO-2020>.

be removed from the United States. The immigration judge's decision may be appealed by either party to the BIA, and noncitizens may appeal an adverse decision to the appropriate Federal Circuit Court of Appeals and thereafter to the U.S. Supreme Court.

61. The specific procedures in a given case depend on whether the individual makes an affirmative or defensive asylum application. If an affirmative asylum application (by an applicant not in removal proceedings) is not granted by USCIS, and the applicant is not in legal immigration status, the applicant is often referred to EOIR, where an immigration judge adjudicates the asylum application. A defensive asylum application (filed for relief from removal) is filed for the first time before an immigration judge in an adversarial proceeding, where the parties consist of the applicant, who is known as a respondent in removal proceedings, and DHS, represented by attorneys from ICE. Although both EOIR adjudicators and DHS attorneys are employed by the U.S. Government, the EOIR adjudicator is a neutral arbiter over the proceedings, not a party. In proceedings before an immigration judge, the respondent has the opportunity to file for asylum or other forms of protection or relief from removal. The immigration judge rules on removability and any application for protection or relief from removal, including asylum. Either party has 30 days from the immigration judge's decision to appeal to the BIA. If the BIA denies the appeal, the respondent may appeal to the Federal Circuit Court of Appeals in the appropriate jurisdiction and may continue the appeal to the U.S. Supreme Court.

#### **Reply to paragraph 11 of the list of issues**

62. Statistics on removals can be found in the ICE Enforcement and Removal Operations Report.<sup>27</sup>

63. With regard to the substance of diplomatic assurances provided to the United States, we respectfully refer the Committee to our 2013 CAT Report, 81. The Committee may also wish to consider the Code of Federal Regulations implementing the Convention, 8 C.F.R. 208.18(c) and 8 C.F.R. 1208.18(c), and the testimony of the State Department Legal Adviser in 2008.<sup>28</sup> For reasons of privacy, the United States is not in a position to disclose the information sought with regard to Central Intelligence Agency (CIA) detained persons rendered to other countries.

#### **Reply to paragraph 12 of the list of issues**

64. During the period under review, there have been no legislative or regulatory measures taken with respect to the identification and determination of statelessness.

### **Articles 5–9**

#### **Reply to paragraph 13 of the list of issues**

65. Other than the legislation referenced above in the discussion of LOI 3, there has been no legislation during the period under review relating to the offenses referred to in Articles 4 and 5 of the Convention.

#### **Reply to paragraph 14 of the list of issues**

66. With regard to extradition treaties, we respectfully refer the Committee to 165–176 of our Initial Report, 32–43 of our 2005 CAT Report, 27–32, 39–43 and 46 of our 2006 Response to the Committee's List of Issues, and 68–69 of our 2013 CAT Report. No new extradition treaties have been concluded during the period under review.

#### **Reply to paragraph 15 of the list of issues**

67. The nations and organizations with which the United States has Mutual Legal Assistance agreements are listed in Annex B.

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<sup>27</sup> Available at <http://www.ice.gov/features/ERO-2020>.

<sup>28</sup> See <https://www.state.gov/documents/organization/138858.pdf>.

## Article 10

### Reply to paragraph 16 of the list of issues

68. Provisions of the Convention are reflected in and implemented by applicable agency-specific rules and regulations that govern their operations. Law enforcement officials, prison staff, and border guards are made aware by their respective agencies of these rules and regulations. They are aware that breaches are investigated and offenders may be prosecuted. For example, Federal Bureau of Prisons (BOP) policy provides that “[a]n employee may not use brutality, physical violence, or intimidation toward inmates, or use any force beyond that which is reasonably necessary to subdue an inmate.” All BOP staff members receive training on this policy as new staff members and yearly thereafter. BOP investigators also receive in-depth training on interviewing as part of the Investigative Intelligence course. Correctional staff members also are trained to report any injuries of inmates to the Operations Lieutenant immediately for investigation.

69. DHS/U.S. Customs and Border Protection (CBP) employees are required to conduct themselves in a professional manner in all interactions. All employees receive Anti-Corruption and Introduction into Law Enforcement Professionalism training. CBP’s professionalism standards, Pledge to Travelers, and expected conduct are presented during the trainings. Employees participate in a series of discussions that address what CBP officers and Border Patrol Agents should and should not do in various situations. In addition, they are trained to report any suspicious behavior and on the consequences of participating in corrupt behavior. All CBP training attendees are instructed on the requirement to treat interviewees humanely and professionally – training that is reinforced throughout the employee’s career. DHS/CBP further ensures that all claims of abuse and/or mistreatment are documented and immediately forwarded to the appropriate investigating office.

70. DHS/ICE mandates that all officers attend recurring quarterly training conducted by certified field instructors. Training routinely incorporates de-escalation scenarios as part of Integrated Scenario Base Training, and includes use of force training and policy review. ICE policy emphasizes an officer’s duty to intervene to prevent even the perceived use of excessive force by another officer and to report any such incident through the ICE Joint Intake Center (JIC) or the Office of Professional Responsibility (OPR). Failure to intervene and/or report such an incident would be considered misconduct and would result in adverse actions against the employee(s). Under ICE policy, a mandatory OPR fact-finding review is triggered for critical incidents and/or an investigation for any incidents involving an allegation of wrongdoing. ICE Enforcement and Removal Operations (ERO) employees receive training on ethical and professional behavior expected of an ICE law enforcement officer, as well as the reporting requirements for violations. ERO trainees are trained on the CAT and the responsibility for the application of law as part of all encounters regardless of the immigration status of the individual encountered.

### Reply to paragraph 17 of the list of issues

71. Not all Federal or other law enforcement organizations in the United States use electrical discharge weapons. Where they are used, policy on their use by local, state, and Federal officials is governed/set by the appropriate law enforcement agencies. Such policies may be revised periodically by those agencies.

72. In September 2018, DHS issued a Department-wide use of force policy, which articulates standards and guidelines related to use of force by DHS law enforcement officers and agents and affirms the duty of all DHS employees to report improper uses of force. Accountability and remedies for excessive use of force are addressed through the DHS Office of Inspector General (OIG), which receives information about all allegations of misconduct, including excessive use of force, involving DHS employees, contractors, and programs. OIG investigations may result in criminal prosecutions, fines, civil monetary penalties, administrative sanctions, and personnel actions. The OIG also maintains a 24-hour complaint hotline for this purpose. DHS also investigates complaints from the public alleging violations of civil rights or civil liberties by its personnel, programs, or activities.

73. In 2014, DHS established the CBP Integrity Advisory Panel tasked with benchmarking CBP's progress in response to CBP use of force reviews. Also in 2014, CBP issued a CBP Use of Force Policy, Guidelines, and Procedures Handbook. Based on the constitutional standard for reasonable application of force, Federal statutes, and applicable DHS and CBP policies, the Handbook reminded enforcement personnel that "respect for human life and the communities we serve shall guide all employees in the performance of their duties." CBP further established a Law Enforcement Safety and Compliance Directorate (LESC) to optimize the safety, readiness, accountability, and operational performance of CBP law enforcement personnel. The LESC develops use of force policy, maintains appropriate controls and standards, and supplies the highest quality use of force education and training. In 2021, CBP issued a new Use of Force Policy and Use of Force Administrative Guidelines and Procedures Handbook, which incorporates agency-wide training standards and continues CBP's commitment to law enforcement best practices through policies such as de-escalation, a duty to intervene and report improper use of force, and a prohibition on choke holds and neck restraints.

74. In February 2016, in response to recommendations from the CBP Integrity Advisory Panel, CBP launched a new Assaults and Use of Force Reporting System (AUFRS). The transition to a single, unified system allows CBP to more accurately collect information on assaults and uses of force without relying on different individual systems. In May 2017, CBP began tracking and publicly reporting assaults and uses of force using two metrics: the overall number of incidents, and the singular actions (assaults and uses of force) within those incidents.<sup>29</sup>

75. In 2018, ICE initiated training following the agency's authorization to use electrical discharge devices. The relevant guidelines and procedures are codified in agency policy. Certified ICE instructors provide training on the device via Integrated Scenario Base Training, which incorporates de-escalation during use of force encounters and associated medical interventions. ICE is also developing Incident Driven Video Recording Systems that will provide additional transparency and accountability for use of force incidents involving ICE officers.

76. On September 30, 2020, the DHS Office of Partnership and Engagement, Office for State and Local Law Enforcement, established a contract with the Homeland Security Systems Engineering & Development Institute, a DHS Federally Funded Research and Development Center, to conduct a Simulation Experiment focused on law enforcement's application of force. CBP, ICE, the FLETC Science and Technology Directorate and the U.S. Secret Service are supporting stakeholders. The goal of the Simulation Experiment is to deter and reduce arrest-related fatalities and injuries due to law enforcement use of force through an understanding of the factors that contribute to each officer's decision-making process and to provide law enforcement organizations evidence-based data to examine and evolve policies and procedures, develop Concept of Operations and Tactics, Techniques, and Procedures for operations, and examine current technologies and configurations.

77. FLETC's basic and advanced law enforcement training programs include lessons on use of force and de-escalation concepts and outcomes. FLETC integrates fundamental use of force principles throughout its basic training programs, delivered to more than 95 Federal participating organizations. FLETC also incorporates de-escalation concepts and outcomes in many advanced training programs, which Federal, state, and local officers attend, such as the Electronic Control Device Instructor Training Program. FLETC's use of force curriculum is grounded in U.S. Supreme Court rulings. Drawing on *Graham v. Connor* and *Scott v. Harris*, FLETC teaches students the reasonableness standard and teaches them to consider the totality of circumstances known to the officer at the moment that he or she considers force. In addition to specific use of force courses, FLETC integrates use of force principles and de-escalation concepts outcomes into its physical techniques, firearms, driving, tactics, criminal investigations, and behavioral sciences courses of instruction.

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<sup>29</sup> See <https://www.cbp.gov/newsroom/stats/assaults-use-force>.

#### **Reply to paragraph 18 of the list of issues**

78. EOIR conducts training for immigration judges, appellate immigration judges, attorney advisors, and Board of Immigration Appeals attorney advisors on persecution and torture, as relevant for adjudicating applications for asylum, withholding, and CAT. EOIR also provides comprehensive mental competency training to all new adjudicators, and further training for adjudicators who are assessing competency for self-representation for certain detainees, recognizing that certain mental disorders or conditions may be a result of past trauma. In addition, EOIR provides training on identifying and reporting evidence of human trafficking and child abuse, as well as trainings on religious freedom as required by the International Religious Freedom Act.

79. Training for DHS medical personnel is conducted as part of their regular and recurring refresher training in accordance with their licensing requirements. This training covers patient assessments and provides tools for the medical personnel to use in identifying physical trauma, regardless of the source of the trauma. Additionally, the DHS Blue Campaign provides information to help ensure that medical personnel are informed of key factors to look for regarding torture and ill-treatment while detained individuals are in transit or in custody. DHS medical providers also rely on contacts in their immediate area to refer patients for emotional and behavioral support, as needed.

80. In 2014, ICE updated and issued the Sexual Abuse and Assault Prevention and Intervention Directive. This Directive establishes policy and procedures for the prevention of sexual abuse or assault of individuals in ICE custody, and provides agency-wide policy and procedures requiring timely notification of sexual abuse and assault allegations, prompt and coordinated response and intervention, and effective monitoring of sexual abuse and assault incidents. The revised Directive incorporated additional requirements from DHS regulation, “Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities,” 79 Fed. Reg. 13100 (Mar. 7, 2014). Among other things, the revisions outline procedures by which ICE will make victim services available to victims of sexual assault and establish requirements relating to accommodation of detained persons with disabilities or limited English proficiency.<sup>30</sup>

## **Article 11**

#### **Reply to paragraph 19 of the list of issues**

81. Interrogation, custody, and treatment of persons by law enforcement entities throughout the United States is governed by Federal and state constitutions and laws, which provide comprehensive safeguards to help ensure that persons under detention or pre-trial detention are protected and provided due process and that allegations of mistreatment are addressed. For example, DHS ICE OPR acts as the agency’s internal investigative arm, conducting both criminal and administrative investigations on employees and contractors regarding alleged serious misconduct and other criminal matters affecting the safety, security, and integrity of ICE. The DHS OIG has the first right of refusal on allegations involving an ICE employee or contractor. If DHS OIG declines to investigate, the allegation will be referred to ICE OPR. The ICE Office of Detention Oversight inspects detention facilities to determine their compliance with detention standards that include ensuring safe and humane treatment of detained individuals. In 2019, ICE issued National Detention Standards requiring that detained individuals be treated humanely, protected from harm, provided appropriate medical and mental health care, and receive the rights and protections to which they are entitled. In 2020, ICE issued Family Residential Standards to describe the overall philosophy and goals of the family residential program and ensure that, along with abiding by Federal, state, and local laws, all policies, procedures, and practices adhere to the expected outcomes and expected practices outlined in these standards. The DHS Office for Civil Rights and Civil Liberties (CRCL) investigates complaints filed by the public regarding Department policies or activities, or actions taken by Department personnel. The DHS Office of the

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<sup>30</sup> See <https://www.ice.gov/doclib/detention-reform/pdf/saapi2.pdf>.

Immigration Detention Ombudsman also conducts inspections, audits, and investigations in DHS detention facilities.

82. Any suspected misconduct in BOP facilities must be reported to internal investigative staff and/or the DOJ Office of the Inspector General. BOP facilities are routinely audited to ensure compliance with detention standards that include ensuring safe and humane treatment of detainees.

**Reply to paragraph 20 of the list of issues**

83. With regard to the Committee's inquiry regarding the combined use of the separation technique with abusive sleep or sensory deprivation, and whether the field expedient method can be applied after detention at the initial facility, and if so under which conditions, the United States notes that separation is a restricted technique subject to detailed guidance and procedures in Appendix M of Army Field Manual 2-22.3. This technique, including the field expedient method, may not be combined with abuse, including abusive sleep or sensory deprivation.

**Reply to paragraph 21 of the list of issues**

84. The Biden Administration is committed to closing the detention facility at Guantanamo Bay. To that end, the Administration has engaged in a thorough review, involving all relevant departments and agencies, to develop an approach for responsibly reducing the detainee population and setting the conditions to close the facility. In the first five months of the Administration, an additional five detainees have been found eligible for transfer. Unless charged in or subject to a judgment of a military commission, any detainees transferred to Guantanamo Bay after the date of the E.O. are subject to the procedures for periodic review established in E.O. 13567 of March 7, 2011 (Periodic Review of Individuals Detained at Guantanamo Bay Naval Station Pursuant to the Authorization for Use of Military Force). E.O. 13823 of January 30, 2018 revoked section 3 of E.O. 13492 ordering closure of detention facilities at the U.S. Naval Station Guantanamo Bay, but provided that detention operations will continue to be conducted consistent with all applicable U.S. and international law, including the Detainee Treatment Act of 2005. The United States does not engage in "indefinite detention without charge or trial for individuals suspected of terrorism-related activities;" rather, the United States has detained individuals in the context of armed conflict consistent with the law of war, also known as international humanitarian law. Under the law of war, a State may detain enemy belligerents, whether privileged or unprivileged, without charge or trial, to prevent their further participation in hostilities. In addition, many persons detained at Guantanamo have been charged by military commission or have received habeas proceedings in which they have challenged the lawfulness of their detentions in U.S. Federal court.

85. There are currently 39 individuals detained in U.S. detention facilities at Guantanamo Bay, Cuba. Since the United States' 2015 One-Year Follow-up Response to the Committee's Recommendations, 68 individuals have been transferred from Guantanamo to other countries. Most recently, Abdul Latif Nasir was transferred to the Kingdom of Morocco as announced by DoD on July 19, 2021. In addition, 67 other detained individuals have been transferred from Guantanamo to various countries including: Cape Verde, Ghana, Italy, Kuwait, Mauritania, Montenegro, Oman, Senegal, Serbia, the Kingdom of Saudi Arabia, and the United Arab Emirates.

86. The United States is fully committed to ensuring that persons detained at Guantanamo are treated humanely and held in accordance with applicable law. All U.S. military detention operations, including those at Guantanamo Bay, must comply with all applicable domestic laws and applicable international legal obligations, and the United States takes very seriously its responsibility to provide for the safe and humane care of detainees at Guantanamo Bay.

87. The Joint Medical Group at Guantanamo (JMG) is committed to providing appropriate and exemplary medical care to all detained individuals. JMG providers take seriously their duty to protect the physical and mental health of detained persons and approach their interactions with such persons in a manner that encourages provider-patient trust and rapport and that is aimed at encouraging participation of detained persons in medical

treatment and prevention. The healthcare provided to the detained persons at Guantanamo is comparable to that which U.S. military personnel receive on island while serving at Joint Task Force-Guantanamo. U.S. practice is consistent with principle No. 2 of the non-binding Principles of Medical Ethics Relevant to the Role of Health Personnel in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

88. DoD physicians and healthcare personnel charged with providing care to detained individuals take their responsibility for the health of such persons very seriously.<sup>31</sup> Medical care is not provided or withheld based on a detained individual's compliance or noncompliance with detention camp rules or based on refusal to accept food or drink. With respect to enteral feeding, it is the policy of the United States to support the preservation of life by appropriate clinical means, in a humane manner, and in accordance with all applicable laws. To that end, DoD has established clinically appropriate procedures to address the medical care and treatment of individual detainees experiencing the adverse health effects of clinically significant weight loss, including those individuals who are engaged in hunger strikes. Enteral feeding is used only when a medical determination is made that immediate treatment or intervention is necessary to prevent death or serious harm, and is never used as a form of punishment. Once a decision has been made to approve a detained person for enteral feeding, JMG staff continues to perform an ongoing assessment of the person's medical condition (including laboratory tests if permitted by the detained individual) and the person's need to be enterally fed. The goal is always to restore a detained individual to a normal, healthy weight and foster eating habits that include regular meals.

89. The ICRC is provided with access to detained persons at Guantanamo and DoD has worked closely with the ICRC to facilitate increased opportunities for such persons to communicate with their families. The addition of near real-time communication is another step in DoD's efforts to assess continually and, where practicable and consistent with security requirements, improve conditions of detention for detained persons in its custody. Detained individuals are given the opportunity to send and receive letters, facilitated by the ICRC, and are able to talk to their families periodically via phone or video teleconference.

90. In response to the Committee's question on access to evidence in military commissions, the United States recalls that individuals detained at Guantanamo are held pursuant to the law of war. All current military commission proceedings at Guantanamo incorporate fundamental procedural guarantees that meet or exceed the fair trial safeguards required by Common Article 3 of the 1949 Geneva Conventions and other applicable law, and are consistent with those in the 1977 Additional Protocol II to the 1949 Geneva Conventions as well.

#### **Reply to paragraph 22 of the list of issues**

91. Please see the statistical tables in Annex C. At the end of 2019, U.S. prisons had 1,380,426 inmates with sentences of more than one year under their legal jurisdiction. Counts by sex, race, and Hispanic origin are provided in table 1. Data by nationality are not available. These counts exclude short-sentenced and unsentenced inmates held in prisons and inmates held in local jails. Overall, 6.3 million persons were under correctional supervision at the end of 2019, including 734,700 inmates held in local jails and 1,430,800 in prisons (including unsentenced and short-sentenced inmates). (See table 2.) Approximately 24 percent of all inmates in U.S. prisons and jails were unsentenced or awaiting trial. In 2015, when the last Census of Juveniles in Residential Placement was conducted, approximately 48,000 youth were held in state, local, or privately operated juvenile correctional facilities. (See table 3.) Based on the ratio of average daily population to rated capacity, locally operated jails were operating at 81 percent of their total capacity, down from 90 percent 10 years earlier. (See table 4.) The height of the population in the Federal Bureau of Prisons was in FY 2012, which averaged 218,687 inmates; the population at the end of FY 2020 averaged 155,562 inmates,

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<sup>31</sup> U.S. Department of Defense Instruction 2310.08E, Medical Program Support for Detainee Operations, September 5, 2019 ("DoD Instruction 2310.08E"), available at [https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/231008p.pdf?ver=Ct3g5JHEwN\\_kbTrXLkNoSA%3D%3D](https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/231008p.pdf?ver=Ct3g5JHEwN_kbTrXLkNoSA%3D%3D).

a decrease to approximately 71 percent. State prison systems varied between 68 percent and 176 percent of their lowest capacity figures (typically their design or rated capacities). (See table 5.)

**Reply to paragraph 23 of the list of issues**

92. In January 2016, DOJ announced the results of a review of use of restrictive housing in American prisons. The study concluded that there are occasions when correctional officials have no choice but to segregate inmates from the general population, typically when it is the only way to ensure the safety of inmates, staff, and the public. But as a matter of policy, the study noted that this practice should be used rarely, applied fairly, and subjected to reasonable constraints. The report includes a series of “Guiding Principles” for limiting the use of restrictive housing across the American criminal justice system, as well as specific policy changes that BOP and other DOJ components could undertake to implement these principles. Since the report was issued, the BOP has adopted the majority of the recommendations and continues to take steps to implement them and help ensure that inmates are housed in the least restrictive setting necessary to ensure their own safety and the safety of staff, other inmates, and the public.

93. ICE ERO provides several levels of oversight of ICE’s Special Management Units (SMUs) to help ensure that detained individuals in ICE custody reside in safe, secure, and humane environments, and under appropriate conditions of confinement. Placement of detained individuals in segregation requires careful consideration of alternatives, and administrative segregation placements for persons with special vulnerabilities should be used only as a last resort. In 2013, ICE issued Directive 11065.1: Review of the Use of Segregation for ICE Detainees (“Segregation Directive”). The Segregation Directive requires field office leadership to conduct reviews of segregation use and also requires mandatory reporting to ICE Headquarters, including any instance in which a detained individual identified as having a special vulnerability is placed in segregation, or instances in which a detained individual is segregated for a period of 14 consecutive days or 14 days out of a 21-day period. Special vulnerabilities, as defined by ICE policy, include persons with a mental or medical illness, disability, elderly, pregnant or nursing, those who would be susceptible to harm in the general population due in part to their sexual orientation or gender identity, or those who have been victims, both from in or out of custody, of sexual assault, torture, trafficking or abuse. The Segregation Directive also requires input of information into ERO’s Segregation Review Management System (SRMS) for review and concurrence by Headquarters personnel, who conduct daily reviews of segregation cases. The SRMS facilitates oversight and enables trend analysis to help identify potential issues and inform future policy decisions. ICE ERO works with representatives from the ICE Health Service Corps (IHSC), Field Operations, and the Office of Principal Legal Advisor to conduct a weekly review of cases in which detained individuals suffer from mental and medical illnesses and to evaluate whether their current housing placement is appropriate. Headquarters personnel provide guidance to field office leadership, and in coordination with IHSC, may help facilitate the transfer of cases to other locations better suited to their individual needs, when applicable. ICE Headquarters personnel also conduct training for field locations to facilitate understanding of responsibilities under applicable policy, as well as providing on-going guidance on an individual basis, when requested or needed. The Segregation Directive is intended to complement the requirements set forth in the national detention standards<sup>32</sup> and other applicable ICE policies, and all ICE approved detention facilities are inspected by a third-party inspection team to ensure these standards are met. The detention standards govern all aspects of detention operations, including the use and management of SMUs. Under the detention standards, a multi-disciplinary committee of facility staff, including facility leadership, medical and mental health professionals, and security staff, meets weekly to review all detained individuals currently housed in the facility’s SMU. During the meeting, the committee reviews each individual to ensure all staff members are aware of the individual’s status, current behavior, and physical and mental health, and to consider whether any change in status is appropriate. ICE also utilizes Detention Service Managers who are

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<sup>32</sup> 2011 Performance-Based National Detention Standards (PBNDS), 2008 PBNDS, or the 2000 National Detention Standards (NDS).

embedded within field offices and whose sole function is to provide daily detention oversight and to conduct on-going reviews of all aspects of detention operations. Finally, ICE/OPR conducts independent reviews of ICE/ERO's segregation practices and brings any discrepancies to the attention of facility management, local ICE/ERO field office personnel, and ICE Headquarters.

#### **Reply to paragraph 24 of the list of issues**

94. BOP monitors several factors to deter inter-prisoner violence, including, but not limited to, classifications based on previous criminal history, thorough intake screening, management of gangs and other disruptive groups, and separations of inmates from others that have specific motivations for harm. BOP responds to inter-prisoner violence through referrals for criminal prosecution and/or administrative action against the offender that would lengthen the time served on a sentence. Data concerning the rate of assaults within BOP is reported monthly.<sup>33</sup>

95. The Prison Rape Elimination Act of 2003 (PREA) requires the Bureau of Justice Statistics (BJS) to carry out, for each calendar year, a comprehensive statistical review and analysis of the incidence and effects of prison rape. To meet this requirement, BJS established the National Prison Rape Statistics Program. Recent data collection under this program is reported in BJS's annual report to Congress, PREA Data Collection Activities, 2021 (NCJ 300438), released in June 2021. Recently published analyses have come from the National Survey of Youth in Custody, 2018 and the annual Survey of Sexual Victimization.

96. The National Survey of Youth in Custody (NSYC) is a confidential survey administered to youth in juvenile justice facilities. The third iteration (NSYC-3) was conducted in 2018, and BJS has published three products based on it, including Victim, Perpetrator, and Incident Characteristics of Sexual Victimization of Youth in Juvenile Facilities, 2018 – Statistical Tables, NCJ 255446, November 2020; Sexual Victimization Reported by Youth in Juvenile Facilities, 2018 – Supplemental Tables, NCJ 254892, July 2020; and Sexual Victimization Reported by Youth in Juvenile Facilities, 2018, NCJ 253042, December 2019. NSYC results have shown a decrease over time in the percentage of youth reporting sexual victimization in the survey. The overall prevalence of sexual victimization was 12.1 percent of youth in the NSYC-1, 9.5 percent in the NSYC-2, and 7.1 percent in the NSYC-3. In NSYC-3:

- A higher percentage of male (6.1 percent) than female (2.9 percent) youth reported staff sexual misconduct;
- A higher percentage of female (4.7 percent) than male (1.6 percent) youth reported youth-on-youth victimization;
- In the most serious incidents of staff sexual misconduct, an estimated 91 percent of incidents involved only female staff, while 6 percent involved only male staff.

97. Through the Survey of Sexual Victimization, BJS collects annual statistics on sexual victimization in adult correctional and juvenile justice facilities. The adult survey is based on a complete enumeration of the Federal Bureau of Prisons, all state prison systems, U.S. military facilities, and dedicated ICE facilities, and on survey samples of public jails, private jails, Indian country jails, and private prisons. The juvenile survey is based on a complete enumeration of facilities within the juvenile justice system operated by states and the District of Columbia and Indian country facilities exclusively holding juveniles, and on survey samples of locally and privately operated juvenile justice facilities. Detailed data on allegations of sexual victimization and substantiated incidents from these surveys are reflected in Sexual Victimization Reported by Adult Correctional Authorities, 2016-18, NCJ 255356 (June 2021), and Sexual Victimization Reported by Juvenile Justice Authorities, 2013-18, NCJ 300029 (June 2021).

98. For additional information, please see LOI 18 above.

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<sup>33</sup> See [https://www.bop.gov/about/statistics/statistics\\_prison\\_safety.jsp](https://www.bop.gov/about/statistics/statistics_prison_safety.jsp).

**Reply to paragraph 25 of the list of issues**

99. Data from the DOJ BJS Mortality in Institutional Corrections collection (formerly Deaths in Custody Reporting Program) indicate that in 2018, 4,135 inmates died in state prisons, 378 in Federal prisons, and 1,120 in local jails. BJS regularly reports data on deaths in Federal, state, and local prisons. For example, among Federal prisoners, the mortality rate in 2019 was 250 per 100,000 Federal prisoners. From 2001 to 2018, 87% of state prison deaths and 90% of Federal prison deaths were due to illness.<sup>34</sup>

100. Regarding concrete measures taken to address concerns about immigration detention conditions, as noted in LOI 19 above, in 2019, ICE issued National Detention Standards to help ensure that detained individuals are treated humanely, protected from harm, provided appropriate medical and mental health care, and receive the rights and protections to which they are entitled.

**Reply to paragraph 26 of the list of issues**

101. The U.S. Constitution guarantees prisoners' rights to be protected from harm (see *Farmer v. Brennan*, 511 U.S. 825, 833 (1994)) and serious risk of harm (see *Helling v. McKinney*, 509 U.S. 25, 33–35 (1993)). In defining the scope of prisoners' Eighth and Fourteenth Amendment rights, the U.S. Supreme Court has held that corrections officials must take reasonable steps to guarantee inmates' safety and provide "humane conditions" of confinement. See *Farmer*, 511 U.S. at 832; *Bell v. Wolfish*, 441 U.S. 520 (1979). Conditions must satisfy prisoners' basic needs, including their needs for mental health care. See *Farmer*, 511 U.S. at 832–834; *Estelle v. Gamble*, 429 U.S. 97, 103–05 (1976). The responsibility to provide adequate mental health care is "no less serious than addressing prisoners' serious physical needs." See *Gates v. Cook*, 376 F.3d 323, 343 (5th Cir. 2004). The right to adequate mental health care includes the requirement for correctional facilities to provide adequate suicide precautions. See *Yellow Horse v. Pennington County*, 225 F.3d 923, 927 (8th Cir. 2000) and *Waldrop v. Evans*, 871 F.2d 1030, 1033 (11th Cir. 1989).

102. BOP is responsible for Federal prisons and recognizes the importance of providing treatment and services to inmates with mental illness.<sup>35</sup> Therefore, BOP has a national policy designed to help ensure standardized and appropriate treatment to inmates with mental illness. See BOP Program Statement 5310.16, Treatment and Care of Inmates with Mental Illness (implemented May 1, 2014).<sup>36</sup> The policy objectives include, among other things, identifying inmates with mental illness through screening; extending support for inmates with mental illness beyond traditional professional services through creation of supportive communities, specialized staff training, inmate peer support programs, care coordination teams, and institutions with specialized mental health missions; enhancing continuity of care through a network of accessible treatment providers when inmates transfer between institutions or to the community; and reducing the proportion of inmates with mental illness in restrictive housing settings.

103. U.S. law also provides for Federal oversight of state or locally run correctional facilities. Under the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997, the Special Litigation Section of DOJ's Civil Rights Division (CRD) can investigate complaints concerning conditions in state or locally operated prisons, jails, and correctional facilities. When a "pattern or practice" or systemic deprivation of constitutional rights exists, CRD has the authority to initiate civil action against state or local officials to remedy the unlawful conditions.<sup>37</sup>

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<sup>34</sup> See <https://bjs.ojp.gov/content/pub/pdf/msfp0118st.pdf> and <https://bjs.ojp.gov/content/pub/pdf/mlj0018st.pdf>.

<sup>35</sup> BOP intends the terms "mental illness" and "mental disorders" to be used synonymously with the term "psychosocial disability."

<sup>36</sup> BOP's internal policies implementing statutory mandates are referred to as "Program Statements." All referenced program statements are available, in full, on the BOP's website, [www.bop.gov](http://www.bop.gov).

<sup>37</sup> Authority under CRIPA does not extend to investigating incidents that affect only a single individual. Nor is the Special Litigation Section authorized to seek relief for, or to represent, a specific person under CRIPA. The Section does not have the authority to directly assist individuals with resolving their personal grievances. However, where the Section receives information that may implicate

104. DOJ CRD has conducted numerous investigations pursuant to CRIPA to remedy patterns or practices of failing to provide prisoners with mental illness with reasonable safety or adequate mental health care. When CRD conducts an investigation pursuant to CRIPA, it seeks remedies to ensure constitutional conditions of confinement for all prisoners. For example, in February 2020, the Division concluded its investigation of the South Carolina Department of Juvenile Justice Services concerning conditions at the Broad River Road Complex, South Carolina's long-term juvenile commitment facility. The Division concluded there was reasonable cause to believe the Department of Juvenile Justice failed to protect youth from physical abuse by other youth and by staff, and subjected youth to prolonged isolation. In November 2020, the Division concluded its investigation into the Massachusetts Department of Correction (MDOC), finding reasonable cause to believe that MDOC failed to provide constitutionally adequate supervision and adequate mental health care to prisoners in mental health crisis, and that MDOC's use of prolonged mental health watch under restrictive housing conditions, including its failure to provide adequate mental health care, violated the constitutional rights of prisoners in mental health crisis.

105. Between FY 2014 and FY 2020, CRD negotiated settlements with Ohio regarding juvenile correctional facilities; the Orleans Parish Sheriff's Office in New Orleans, Louisiana; the Hinds County Adult Detention Center and Leflore County Juvenile Detention Center in Mississippi; the Muscogee County Jail in Oklahoma; the Piedmont Regional Jail in Virginia; the Los Angeles County Jails in California; the Westchester County Jail in New York; and the Hampton Roads Regional Jail in Virginia. Some of the agreements referenced above include limitations on the use of solitary confinement for prisoners with mental illness. For example, the Hampton Roads Regional Jail consent decree, entered in 2020, included remedies to limit the use of restrictive housing, ensure that prisoners with serious mental illness placed in restrictive housing receive a heightened level of care, and provide alternatives to restrictive housing.

106. With regard to ensuring that juveniles are separated from adults during pre-trial detention and after sentencing, the PREA Youthful Inmate Standards call for persons under 18 to be housed separately in prisons, jails, and lockups. Over the past several years, a number of states have banned the use of solitary confinement in juvenile corrections. Under 18 U.S.C. § 5039, juveniles committed to the custody of the Attorney General in the Federal system are required to be separated from adults in detention.

107. Regarding juvenile life without parole, the U.S. Supreme Court held in *Miller v. Alabama*, 567 U.S. 460 (2012), that a mandatory term of life without parole is unconstitutional when imposed on a juvenile homicide offender. In *Montgomery v. Louisiana*, 577 U.S. – (2016), the Court held that the rule announced in *Miller* applies retroactively to defendants who were sentenced before *Miller* was decided. In *Jones v. Mississippi*, – U.S. – (April 22, 2021), the Court held that *Miller* and *Montgomery* do not require a separate factual finding of permanent incorrigibility before a defendant is sentenced to life without parole. Most Federal prisoners who were serving life-without-parole sentences for murders committed while they were juveniles have been resentenced to terms of imprisonment that will allow them an opportunity for eventual release. In some cases, offenders have been released from prison.

108. DHS ICE detention standards include requirements for the provision of mental health assessment and mental health care of all detained persons. Under the Biden Administration, DHS is taking swift action to address the health and safety of vulnerable children and has put into place policies and procedures to address the specific needs of unaccompanied children. The screening of unaccompanied children under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) is conducted under 8 U.S.C. 1232. Screening is required for unaccompanied children who are nationals or habitual residents of contiguous territory to determine if the unaccompanied child can: make an independent decision concerning possible withdrawal of the application for admission; does not have a fear of return; and/or is not a victim of a severe form of trafficking. On March 13, 2021, the DHS Secretary directed DHS' Federal Emergency Management Agency (FEMA) to coordinate a

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violations of Federal criminal law, it may refer the incident to the Criminal Section of the Civil Rights Division.

government-wide effort to safely hold and transfer unaccompanied children to the care of the HHS Office of Refugee Settlement (ORR) until release by HHS to a verified sponsor. FEMA is now integrated and co-located with HHS and other interagency partners as part of Operation Artemis, the operational hub for all interagency activities managing unaccompanied children from apprehension to release. All unaccompanied children are tested for COVID-19 upon being transferred to HHS custody.

109. In addition, CBP has implemented an at-risk determination process that covers persons with psychosocial disabilities and minors, among other populations, to identify individuals that may require additional care or oversight before placing them in a CBP holding facility. CBP has also created and issued training, job aids, and musters to educate its employees on providing effective communication and reasonable modifications to individuals with disabilities encountered during the course of their duties, including individuals with disabilities held in CBP holding facilities.

110. As noted above in the response to LOI 25, in 2019, ICE issued National Detention Standards to help ensure that detained individuals are treated humanely, protected from harm, provided appropriate medical and mental health care, and receive the rights and protections to which they are entitled. ICE's 2020 Revised Family Residential Standards provide specifics for family units in ICE custody to include the medical and mental health assessments and treatment.

#### **Reply to paragraph 27 of the list of issues**

111. The general situation regarding capital punishment in the United States, including applicable limitations, procedural protections, and the decline in use of the death penalty, is described in Part I B, section 3 of the Common Core Document. Since submission of the Common Core Document in 2011, the number of states that authorize capital punishment has been reduced to 30, in addition to the Federal Government and the U.S. military. As of December 31, 2019, 18 states and the District of Columbia did not authorize the death penalty. According to BJS, 2,570 persons were on death row in state and Federal prisons. There were 35 executions in 2014, 28 in 2015, 20 in 2016 and 23 in 2017, 25 in 2018, 22 in 2019, and 17 in 2020. As of 2019, the average time on death row prior to execution was 146 months, or approximately 12.2 years. The conditions in which death row prisoners are held vary. Generally, however, such prisoners may be isolated from other prisoners and restricted in terms of visitation and exercise. With regard to methods of execution, 30 states and the Federal Government authorize the use of lethal injection, with some states also having other methods as backup. Between 1977 and May 31, 2021, in addition to 1,353 executions carried out by lethal injection, there were 163 by electrocution, 11 by the gas chamber, and 3 each by hanging and firing. The various methods are reviewed by the courts and also by the jurisdictions imposing them with regard to pain and suffering.

112. On July 1, 2021, Attorney General Garland issued a memorandum ordering a review of DOJ's policies and procedures with regard to the Federal death penalty. The memorandum directs the Deputy Attorney General to lead a multi-pronged review of recent policy changes to DOJ's capital case policies and procedures. That review will include a review of the Addendum to the Federal Execution Protocol, adopted in 2019; a review to consider changes to DOJ regulations made in 2020 that expanded the permissible methods of execution and authorized the use of state facilities and personnel in Federal executions; and a review of recent changes to capital case provisions in DOJ's Justice Manual. The memorandum requires the reviews to include consultations with a wide range of stakeholders, including relevant DOJ components, other Federal and state agencies, medical experts, and experienced capital counsel, among others. No Federal executions will be scheduled while the reviews are pending.

113. With respect to the Committee's comment concerning a potential moratorium, there is vigorous public debate in the United States on the death penalty. However, the use of the death penalty is a decision left to democratically elected governments at the Federal and state levels. The U.S. Constitution grants states broad powers to regulate their own general welfare, including enactment and enforcement of criminal laws, public safety, and correction, and a number of states currently prohibit imposition of the death penalty either by law or by executive decision of their respective governors. Any further decisions concerning a

moratorium would have to be made separately at the Federal level and by each of the states that retain the death penalty.

**Reply to paragraph 28 of the list of issues**

114. As the United States engages in active immigration enforcement, DHS ICE seeks to ensure that immigration detention management policies and practices promote conditions of custody consistent with the unique civil, rather than penal, authorities and purpose of immigration detention. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001) and related cases, immigration detention subsequent to a final order of removal is limited to a presumptively reasonable period of 180 days unless there is a significant likelihood of removal in the reasonably foreseeable future. ICE ERO spearheads this process.

115. ICE detains noncitizens to secure their presence for immigration proceedings and/or removal from the United States, with detention resources focused on those who represent a threat to public safety, for whom detention is mandatory by law, or who may be a flight risk. ICE frequently reviews the detention or continued detention of individuals in ICE custody. Mandatory detention requirements include INA § 235(b)(1)(B)(iii)(IV) (8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (providing that noncitizens claiming credible fear “shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed,” and such noncitizens may only be paroled on a case-by-case basis for “urgent humanitarian reasons” or “significant public benefit,” requiring an individualized assessment); INA § 212(d)(5)(A) (8 U.S.C. § 1182(d)(5)(A)); 8 C.F.R. § 212.5(b). See also 8 C.F.R. §§ 235.3(b)(2)(iii) (limiting release during the expedited removal process or after final expedited removal order where it is “required to meet a medical emergency or is necessary for a legitimate law enforcement objective.”), 235.3(b)(4)(ii) (same for cases pending credible fear determination). INA § 236(c) (8 U.S.C. § 1226(c)) mandates the detention of certain categories of criminal and terrorist noncitizens during the pendency of removal proceedings. Noncitizens may not be released in the exercise of discretion during the pendency of removal proceedings even if potentially higher-risk for serious illness from COVID-19. INA § 236A (8 U.S.C. § 1226a) mandates detention of noncitizens certified as terrorists by the Attorney General; INA § 238(a)(2) (8 U.S.C. § 1231(a)(2)) mandates detention for the expedited removal (Administrative Removals) of noncitizens convicted of committing aggravated felonies; and INA § 241(a)(2), 8 U.S.C. § 1231(a)(2) dictates that certain criminal and terrorist noncitizens who are subject to a final order of removal may not be released during the 90-day removal period.

116. On March 5, 2021, ICE established its Case Review process, which offers another channel through which noncitizens and their representatives can request that ICE exercise prosecutorial discretion on a particular noncitizen’s behalf, and to resolve questions and concerns. The ICE ERO Senior Reviewing Official coordinates all requests received with the local ERO field office to determine what, if any, discretion will be exercised.

117. The ICE Alternatives to Detention Intensive Supervision Appearance Program (ATD – ISAP) offers case management techniques with technology monitoring support to individuals or heads-of-household who are not held in ICE detention. Participants who are assigned to ATD – ISAP receive case management assistance to help identify particular needs in areas where support can be provided, such as assessments to identify overall needs; cultural, language, and communication evaluations; family dynamics; food; community support; transportation; vocational; educational; and medical and mental health issues or concerns.

118. ICE is currently updating regulations to make its Post-Order Custody Review Process more efficient and align the regulations with ICE processes.

119. DHS CBP processes certain inadmissible applicants for admission to the United States under the process known as expedited removal, described in the response to LOI 9 above. Individuals in expedited removal who are referred to a USCIS asylum officer for a “credible fear” review are subject to mandatory detention pending a final determination of credible fear pursuant to Section 235(b)(1)(iii)(IV) of the INA. Where an individual is an applicant for admission, CBP may also refer the case to an immigration judge for proceedings under INA Section 240; such an individual may also be subject to detention. For individuals who are eligible for release, all relevant facts are considered and must be reviewed and approved by

a CBP manager or senior-level employee prior to release. CBP maintains short-term holding facilities that can accommodate intake from the time of apprehension or encounter through records checks and processing. CBP makes every effort to transfer individuals out of CBP custody to the appropriate agency (ICE for adults and family units and HHS ORR for unaccompanied children).

**Reply to paragraph 29 of the list of issues**

120. ICE considers the safety and well-being of individuals in its custody to be of the highest priority and has a zero-tolerance policy for all forms of sexual abuse. Accordingly, ICE has numerous oversight mechanisms to help ensure that detention facilities meet ICE's rigorous standards and requirements, including those outlined in DHS's 2014 regulation under PREA to prevent, detect, and respond to sexual abuse and assault in DHS custody. Facilities are required to provide each detained individual, upon admittance, a copy of the ICE National Detainee Handbook and local supplement, which informs detained individuals about their rights and grievance procedures, including their right at any point to call or file a complaint directly with DHS OIG about staff misconduct, physical or sexual abuse, or civil rights violations. Detained individual calls to OIG are provided toll-free via ICE's pro bono platform, which also allows detained individuals to contact their consulate officials, numerous non-governmental organizations, and legal assistance groups. ICE policy and DHS PREA standards require that alleged victims immediately be referred for medical and mental health evaluations and receive victim services information and access to contact relevant organizations. These requirements are intended to ensure that alleged victims' medical and mental health needs are addressed immediately post incident and continue to be addressed as appropriate.

121. DHS PREA standards and ICE policy require staff and contractors to immediately report any knowledge, suspicion or information regarding sexual abuse incidents. Regarding investigations of sexual abuse allegations, ICE policy and DHS PREA standards require an administrative or criminal investigation for all allegations of sexual abuse or assault that occur in ICE custody, whether committed by a staff member, contractor, volunteer, or another detained person or inmate. Detention facilities are required to notify ICE of all sexual abuse allegations, as well as to notify local law enforcement of any allegations involving potentially criminal behavior. When an allegation is reported to ICE, it is forwarded to the DHS OIG. At the same time, ICE OPR initiates oversight by coordinating with any local law enforcement investigation and/or DHS OIG investigation. If DHS OIG declines to investigate, the case is investigated or reviewed by ICE OPR. ICE OPR conducts a thorough assessment of the allegation and determines whether the agency will lead a criminal or an administrative investigation, monitor an investigation by Federal, state, and/or local law enforcement or refer the allegation to ERO for administrative review. All other detention-related allegations received by ICE OPR are reviewed, processed, and forwarded to DHS OIG, if applicable. All sexual abuse investigations are required to be prompt, thorough, objective, and conducted by specially trained, qualified investigators.

122. CRCL has worked with ICE and CBP to implement sexual abuse prevention and response policies and procedures in the Department's holding and detention facilities under the DHS PREA Standards. In addition, DHS CRCL receives, monitors, and, in some cases, opens investigations into sexual abuse allegations that occur in ICE custody.

123. All ICE holding and staging facilities and facilities that are contractually obligated to DHS PREA standards also are subject to regular independent third party audits, either every three years (immigration detention facilities) or every three or five years (ICE holding and staging facilities). During each audit, a third-party independent contractor auditor examines reported allegations and resulting investigations for the year prior to the audit among many other elements. If deficiencies are found, facilities have up to 180 days to correct them. The auditor reviews the corrective actions at the end of the corrective action period and makes a final determination whether the facility has achieved compliance with DHS PREA.

124. There have been significant changes and improvements in the provision of medical care at CBP facilities since 2016. On December 30, 2019, CBP issued Directive No. 2210-004, which provides for enhanced medical support for individuals in CBP custody along the Southwest Border. Under the Directive, CBP added contracted medical staff at certain

locations along the border, and refers noncitizens experiencing medical issues for a medical assessment and appropriate care after conducting an initial health interview.<sup>38</sup> Similarly, it is CBP policy to provide effective safeguards against sexual abuse and assault for individuals in CBP custody. In all of its holding facilities, CBP adheres to the requirements of Subparts B and C of the DHS Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 6 C.F.R. Part 115, and has a zero-tolerance policy for all forms of sexual abuse and assault of individuals in CBP custody, including in holding facilities, during transport, and during processing. On January 19, 2018, CBP issued Directive No. 2130-030, Prevention, Detection and Response to Sexual Abuse and/or Assault in CBP Holding Facilities, to establish procedures for prevention, detection, and response to sexual abuse and assault in CBP holding facilities and to coordinate efforts to implement the DHS Standards among offices and personnel. This directive represents CBP's institutional plan pursuant to 6 C.F.R § 115.165(a) for using a coordinated multidisciplinary team approach to respond to sexual abuse and/or assault.

125. CBP responds swiftly to allegations of sexual abuse of detained individuals in holding facilities. Agency personnel separate an alleged victim from the alleged abuser, preserve and protect any crime scene, and ensure that an alleged victim has timely, unimpeded access to emergency medical treatment and crisis intervention services. In addition, agency personnel are required immediately to report any knowledge, suspicion, or information regarding an incident of sexual abuse, retaliation for reporting or participating in an investigation about sexual abuse or assault, or any employee misconduct or neglect that may have contributed to any incident of sexual abuse, assault or retaliation. In all instances where sexual abuse and/or assault of a detained individual in a CBP holding facility is alleged, it is CBP's policy to provide timely notification to and work closely with appropriate local law enforcement agencies. CBP cooperates fully with external audits and corrective actions to assess compliance with Subpart B of the DHS PREA standards. Audits of CBP selected holding facilities during the agency's first audit cycle were conducted in FY 2019. Following the corrective action period, all facilities were assessed as "low risk."

126. With regard to the medical transfer of detained individuals, in accordance with the CBP National Standards on Transport, Escort, Detention, and Search (October 2015), upon a detained individual's entry into any CBP hold room, officers/agents must ask him or her about, and visually inspect for, any sign of injury, illness, or physical or mental health concerns, and must also question the detained individual about any prescription medications. Observed or reported injuries or illnesses are communicated to a supervisor, documented in the appropriate electronic system(s) of record, and appropriate medical care is provided or sought in a timely manner. Additionally, if officers or agents suspect that a detained individual has an observed or reported medical condition, such as a contagious disease, appropriate protective precaution must be taken, and any required notifications made in accordance with applicable policies and procedures. Any individual (i.e., detained individuals, the public, non-governmental organizations, legal counsel, and CBP employees) may report allegations of misconduct through various mechanisms, including the Joint Intake Center, the DHS OIG hotline, and the local CBP OPR Investigative Operations Directorate Special Agent-in-Charge Offices. CBP OPR takes all allegations of misconduct, including those related to violence and abuse, seriously and conducts investigations in coordination with applicable Federal, state, and local law enforcement authorities.

127. In FY 2020, DHS established the Office of the Immigration Detention Ombudsman (OIDO) under 6 USC § 205. OIDO conducts inspections, audits, and investigations; provides persistent presence in facilities; provides redress and resolution to individual and systemic matters; provides facilities with proposed immediate and targeted solutions; and solicits feedback from the public and nongovernmental organization community on redress and resolution performance. Ensuring that its functions are complementary to existing functions, OIDO works collaboratively with the DHS OIG, DHS CRCL, and DHS component-based Offices of Professional Responsibility to coordinate and deconflict operationally on all matters, including those relating to the rights and liberties of those in DHS custody, and including CRCL's expertise in all civil rights and civil liberties matters.

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<sup>38</sup> See <https://www.cbp.gov/document/directives/directive-2210-004-cbp-enhanced-medical-efforts>.

**Reply to paragraph 30 of the list of issues**

128. At the time of the 2010 Census, approximately 42,035 people (0.5 percent of the population) were living in mental hospitals and psychiatric units in other hospitals, and 139,420 people (1.7 percent of the population) were living in residential treatment centers (including, but not limited to psychiatric centers) for adults.<sup>39</sup> Conditions in these facilities vary, but most are under the direct jurisdiction of, and regulated by, local and state authorities. There are also hundreds of community-based rehabilitation services and outpatient treatment programs of different types and sizes throughout the United States, most of which are also under the direct jurisdiction of relevant local and state authorities. The Bureau of Justice documents the extent of mental health problems and treatment among prison and jail inmates.

129. A report, Indicators of Mental Health Problems Reported by Prisoners, NCJ 252643 (June 2021), provides data on mental health problems and treatment among prisoners.<sup>40</sup>

## **Articles 12–13**

**Reply to paragraph 31 of the list of issues**

130. DHS CRCL investigates complaints from the public alleging violations of civil rights or civil liberties by DHS personnel, programs, or activities. Such complaints may include allegations of discrimination or profiling on the basis of race, ethnicity, disability, sexual orientation, or religion; inappropriate conditions of custody while in DHS custody; discrimination or inappropriate questioning related to entry into the United States, complaints related to the Department's 287(g) and Secure Communities programs; and other civil rights or civil liberties violations related to a DHS program or activity.

131. Of the 4,884 complaints CRCL opened from 2014 to 2020, 447 alleged inappropriate conditions of detention, 136 alleged abuse of authority by DHS employees or contractors, 267 alleged excessive force, and 2,607 alleged inadequate medical/mental health care. Of these, 4,336 have since been closed, 520 are pending investigation by CRCL, and 28 were referred to DHS component agencies for factual investigation. Through its complaint investigations, CRCL provides senior leadership of the relevant DHS Components with its investigative conclusions and any applicable recommendations for improving policy, practice, or training. CRCL also notifies the complainant of the results of the investigation except in instances where CRCL is unable to contact the complainant.

**Reply to paragraph 32 of the list of issues**

132. The Prison Litigation Reform Act (“PLRA”) prevents the Federal court system from being bogged down by complaints best handled at the administrative, institutional level. While the PLRA establishes certain procedural requirements, it helps ensure that the system will be available for timely consideration of lawsuits raising significant issues. The requirement to exhaust administrative remedies also creates a record for review in matters filed in court. BOP policy concerning administrative remedies<sup>41</sup> allows inmates to grieve any aspect of their conditions of confinement, provides for expedited processing for emergency and sexual assault allegations, and deems a matter to be exhausted if responses are not received within established timeframes.

133. The PLRA, 42 U.S.C. § 1997e(e), originally provided that “[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.” This requirement prevented inmates from bringing suit solely for emotional damages as a result of incarceration without other demonstrable harm. The statute was amended in 2013 to add, “the commission of a sexual act (as defined in section 2246 of title 18, United States Code)” to the end of the provision. The amendment clarified that civil actions are

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<sup>39</sup> See <https://www.nap.edu/read/13387/chapter/4#25>.

<sup>40</sup> See <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/imhprpspi16st.pdf>.

<sup>41</sup> See [https://www.bop.gov/policy/progstat/1330\\_018.pdf](https://www.bop.gov/policy/progstat/1330_018.pdf).

allowed under the PLRA in cases of sexual assault, regardless of whether physical injury is demonstrated.

#### **Reply to paragraph 33 of the list of issues**

134. Numerous United States laws provide authority to conduct prompt, impartial, and effective investigations of allegations of torture or cruel, inhuman, or degrading treatment or punishment, whether committed within or outside the territory of the United States or when an alleged offender is present in the United States. The United States prohibits its personnel from engaging in acts of torture or cruel, inhuman, or degrading treatment of persons in its custody wherever they are held, and the United States takes vigilant action to prevent any such unlawful conduct by its personnel and to hold accountable any persons responsible for such acts. For a discussion of the laws and procedures involved, the United States refers the Committee to 12–25 of its One Year Follow-up Response of November 27, 2015 and 2–16 of the Concluding Observations on the Fourth Periodic Report of United States of America (ICCPR) – Addendum: Information received from United States of America on follow-up to the concluding observations (November 6, 2017). The Committee will recall that the Central Intelligence Agency's former detention and interrogation program was ended in 2009.

135. Prior to August 2009, career prosecutors at DOJ carefully reviewed a number of cases involving alleged detainee abuse. These reviews led to charges in several cases and the conviction of a CIA contractor and a DoD contractor. In 2009, the U.S. Attorney General directed a preliminary review of the treatment of 101 individuals alleged to have been in CIA custody subsequent to the 9/11 attacks. The inquiry was limited to a determination of whether prosecutable offenses were committed. The review considered all potentially applicable substantive criminal statutes as well as the statutes of limitations and jurisdictional provisions that govern prosecutions under those statutes. That review, led by a career Federal prosecutor and now known colloquially as the Durham Investigation, generated two criminal investigations. DOJ ultimately declined those cases for prosecution because the admissible evidence would not have been sufficient to obtain and sustain convictions beyond a reasonable doubt.

136. In addition to the DOJ, there are many other accountability mechanisms in place throughout the U.S. government aimed at investigating credible allegations of torture and prosecuting or punishing those responsible. For example, the CIA Inspector General conducted more than 25 investigations into misconduct regarding detainees after 9/11. The CIA also convened six high-level accountability proceedings from 2003 to 2012. These reviews evaluated the actions of approximately 30 individuals, approximately half of whom were held accountable through a variety of sanctions.

#### **Reply to paragraph 34 of the list of issues**

137. DoD performs investigations of deaths in custody to determine the cause and manner of death, regardless of the location or the status of the detained person. DoD also has processes in place to refer allegations for criminal investigation where warranted. DoD has conducted thousands of investigations since 2001, and it has prosecuted or disciplined hundreds of service members for misconduct, including mistreatment of detained individuals. Consolidated statistics on these proceedings are not available.

#### **Reply to paragraph 35 of the list of issues**

138. DoD Directives 2311.01, 2310.01E, and 3115.09, and DoD Instruction 2310.08E prescribe requirements and procedures for the reporting and investigation of incidents involving potential detainee abuse, and these policies apply to the detention operations at Guantanamo Bay. Under these policies, detainees at Guantanamo can report alleged abuse to the personnel at Guantanamo, and investigations of allegations are conducted, where appropriate. Detainees have also raised allegations of abuse in other fora, such as when arguing that evidence in military commissions proceedings must be excluded. Executive Order 13526 and other applicable U.S. law, regulations, and policies, including DoD Manual 5200.01 Volume 1, govern the classification, safeguarding, and declassification of information.

139. All persons detained at Guantanamo may challenge the lawfulness of their detentions in U.S. Federal court through a petition for a writ of habeas corpus. Detained individuals are provided with access to independent legal counsel and to appropriate evidence to mount such a challenge. The United States is fully committed to ensuring that individuals it detains in any armed conflict are treated humanely in all circumstances, consistent with applicable international legal obligations, U.S. domestic law, and U.S. policy.

#### **Reply to paragraph 36 of the list of issues**

140. The U.S. government is concerned about excessive use of force and takes measures to address such activity. There are more than 18,000 police departments in the United States, created and governed by local city, county, municipal, Tribal, and territorial governments and laws, but also subject to Federal law. Officials at all levels – Federal, state, and local – are engaged in conversations about improving trust and accountability between police and the communities they serve in order to promote public safety and ensure the well-being of officers and individual community members alike. In cases of misconduct that violate the Constitution or a Federal statute, DOJ CRD can investigate and prosecute individual officers under the color of law provisions of 18 U.S.C. § 242. From FY 2017 to FY 2020, CRD charged more than 240 defendants, including individual police officers, with offenses related to willfully violating constitutionally protected rights (or conspiring to do so) while acting under color of law. In that same time period, CRD obtained convictions of more than 200 defendants, including police officers, for these charges. In FY 2020, DOJ charged more than 45 defendants, including police officers, with color of law offenses, obtaining convictions of more than 50 defendants in that same time period. CRD may also investigate and bring civil suit against agencies that engage in a pattern or practice that violates the U.S. Constitution or laws of the United States. DOJ recently launched a pattern-or-practice investigation of the Minneapolis Police Department (MPD). The investigation will assess all types of force used by MPD officers, including use of force involving individuals with behavioral health disabilities and use of force against individuals engaged in activities protected by the First Amendment. DOJ also recently opened a pattern-or-practice investigation into the Louisville/Jefferson County Metro Government (Louisville Metro) and the Louisville Metro Police Department (LMPD). The investigation will assess all types of force used by LMPD officers, including use of force against individuals with behavioral health disabilities or individuals engaged in activities protected by the First Amendment.

141. With respect to the specific cases referenced by the Committee, please see Annex D.

## **Article 14**

#### **Reply to paragraph 37 of the list of issues**

142. U.S. law provides a range of potential civil remedies for alleged victims of torture and cruel, inhuman, or degrading treatment who seek redress. These include, as appropriate, injunctions, compensatory damages, punitive damages, and declaratory relief. In addition, the Federal Government is authorized to bring civil actions to enjoin acts or patterns of conduct that violate constitutional rights, including those that would amount to torture or ill-treatment. At the Federal level, the main avenues of compensation are administrative tort claims and civil litigation. State remedies include compensation and other effective remedies for victims. Examples of the types of remedies that have been provided are presented in 46 and 47 of the U.S. One-Year Follow-up Response of November 27, 2015 and in the discussion of LOI 36 above. The United States does not have consolidated statistics on the numbers of requests for compensation that have been made for acts that would amount to torture or cruel, inhuman, or degrading treatment, the number granted, and the amounts ordered and actually provided.

#### **Reply to paragraph 38 of the list of issues**

143. Claims for alleged abuse or maltreatment of detained persons made against DoD are resolved through the Military Departments, as described on pages 78–79 of the U.S. response regarding the list of issues to be considered during the examination of the second periodic

report of the United States of America. Although Article 14 of the Convention contemplates an enforceable right to fair and adequate compensation for victims of torture, the law of war does not provide detained persons with a judicially enforceable individual right to a claim for monetary compensation against the detaining power for alleged unlawful conduct. Customary international law and the Geneva Conventions of 1949 do not provide a private right for individuals to claim compensation directly from a State; rather, such claims are made by other States.

#### **Reply to paragraph 39 of the list of issues**

144. As discussed in the 2013 Periodic Report, the U.S. government has investigated allegations of torture or cruel treatment.<sup>42</sup> Details on measures undertaken by the CIA are discussed in 134–136 above. Avenues by which alleged victims of abuse may seek redress are described in 141 above. The Committee will recall that the CIA’s former detention and interrogation program was ended in 2009.

#### **Reply to paragraph 40 of the list of issues**

145. In May 2015, the Chicago City Council approved a \$5.5 million reparations package for victims of torture by former Chicago Police commander Jon Burge. The package also included provision of city services such as job training and tuition for victims and their families. Ninety-eight individuals sought financial reparations. As outlined in the local ordinance authorizing the city to pay reparations, claimants applied either through the Chicago Torture Justice Memorials or through Professor Daniel T. Coyne, a clinical professor of law at Chicago-Kent College of Law. Chicago Torture Justice Memorials and Professor Coyne reviewed the claims and referred the claims that they believed were entitled to reparations to the city’s Law Department for its review. The small number of referred claims that the Law Department did not approve were then arbitrated by David Coar, a former Federal district court judge. At the end of the process, 57 individuals were approved for financial reparations, and family members of two additional individuals, who are now deceased, were approved for non-financial reparations.<sup>43</sup> Payments were made beginning in January 2016. All but a few victims received the full \$100,000 amount; a few had received previous settlements and those amounts were deducted from their pro rata share. In May 2017, Chicago opened a new Center for Police Torture Victims. This Center provides individual and group therapy to anyone needing healing services or legal assistance resulting from policy misconduct. The Center is funded primarily by the Chicago Department of Public Health and also, in part, by two private foundations.<sup>44</sup>

## **Article 15**

#### **Reply to paragraph 41 of the list of issues**

146. As noted in 51 and 156 of our 2013 CAT Report, the Military Commissions Act of 2009 (“MCA 2009”) prohibits admission of any statement obtained by the use of torture or by cruel, inhuman, or degrading treatment, as defined by the Detainee Treatment Act of 2005, in a military commission proceeding, except against a person accused of torture or such treatment as evidence that the statement was made, 10 U.S.C. § 948r. No other exception to this prohibition on admissibility of such statements is permitted in the rules governing admission of hearsay evidence or otherwise. This prohibition is also incorporated into Rule 304(a)(1) of the Rules for Military Commissions. For any statement made by an accused that was not obtained by torture or cruel, inhuman, or degrading treatment, the MCA 2009 sets up a rigorous standard for determining admissibility that considers the voluntariness and reliability of the statement and whether the conduct of those taking the statement was lawful. Evidence obtained through torture is inadmissible in civilian courts by longstanding

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<sup>42</sup> 2013 United States Periodic Report, 135.

<sup>43</sup> [https://www.cityofchicago.org/city/en/depts/mayor/press\\_room/major\\_speeches/2016/january/Victims- Receive-Reparations.html](https://www.cityofchicago.org/city/en/depts/mayor/press_room/major_speeches/2016/january/Victims- Receive-Reparations.html).

<sup>44</sup> See <http://www.chicagotribune.com/news/local/breaking/ct-burge-torture-justice-center-met-20170526-story.html>.

precedent, *Brown v. Mississippi*, 297 U.S. 278, 286 (1936) (“the use of the confessions [thus] obtained as the basis for conviction and sentence [is] a clear denial of due process”) and progeny.

## Article 16

### Reply to paragraph 42 of the list of issues

147. The United States understands the Committee’s questions regarding the corporal punishment of children to refer to discipline in public schools and not individual choices made by parents or by other private caregivers. As noted in 226–27 of our 2013 CAT Report, corporal punishment is illegal in schools in 31 states, and U.S. courts have recognized a constitutional right of students to be free from corporal punishment that is excessive or arbitrary under the Due Process clause of the Fifth and Fourteenth Amendments.

### Reply to paragraph 43 of the list of issues

148. Agencies of the Federal Government, including DOJ and DHS, work together to prevent violence and threats meant to intimidate or coerce specific populations on the basis of their race, religion, ethnicity and other protected categories, or to influence the policy of a government by intimidation or coercion. DOJ aggressively prosecutes hate crimes through an array of Federal statutes barring violence, attempted violence, threats, and property damage based on racial, ethnic, religious, and other forms of bias. Most states have hate crime laws as well. The FBI is currently investigating over 200 hate crimes nationwide. Between January 2017 and March 2021, DOJ charged more than 105 defendants involved in committing bias-motivated crimes. During that same time, DOJ obtained convictions of more than 80 defendants involved in committing bias-motivated crimes. Please refer to Annex E for more information on hate crimes and related issues.

### Reply to paragraph 44 of the list of issues

149. As of 2021, 20 U.S. states, the District of Columbia, Puerto Rico, and a number of cities and counties have enacted bans or regulations on the use of conversion therapy for minors. Similar legislation is pending in other states and local jurisdictions.

### Reply to paragraph 45 of the list of issues

150. The United States respectfully observes that questions concerning private decisions on medical treatment for children in the United States appear to fall outside the scope of its reporting obligation under Article 19 of the CAT. The United States does not have comprehensive statistics on such surgeries in the United States.

### Reply to paragraph 46 of the list of issues

151. HUD, HHS, and other members of the U.S. Interagency Council on Homelessness (USICH) have worked closely and cooperatively on multiple fronts to reform practices that perpetuate poverty and result in unnecessary deprivations of liberty to the poor. For an overall description of Federal programs and recent legislation, see Homelessness: Targeted Federal Programs and Recent Legislation, Congressional Research Service.<sup>45</sup>

## Other Issues

### Reply to paragraph 47 of the list of issues

152. As indicated above, the United States finds the Committee’s broad questions on measures the United States has taken to counter terrorism and its compliance with United Nations Security Council Resolutions to stray beyond the Committee’s mandate. As it has confirmed many times, the United States firmly believes that all States must comply with

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<sup>45</sup> See <https://www.fas.org/sgp/crs/misc/RL30442.pdf>.

their international legal obligations in their efforts to combat terrorism, including, as applicable, their obligations under international human rights law, international refugee law, and international humanitarian law. The United States places great importance on complying with its legal obligations related to torture and cruel, inhuman, or degrading treatment or punishment, including its obligations under the CAT, and has done significant work to continue to ensure that U.S. detention and interrogation practices comply with such obligations.

153. The United States does not operate any secret detention facilities. In some contexts, the United States operates battlefield transit and screening facilities, the locations of which are often classified for reasons of military necessity. All such facilities are operated consistent with applicable U.S. law and policy and international law, including Common Article 3 of the 1949 Geneva Conventions, the Detainee Treatment Act of 2005, and DoD Directive 2310.01E. The ICRC and relevant host governments are informed about these facilities, and the ICRC has access to all individuals interned by the United States in the context of armed conflict, consistent with DoD policy.

154. The United States is fully committed to ensuring that individuals it detains in any armed conflict are treated humanely in all circumstances, consistent with applicable U.S. treaty obligations, U.S. domestic law, and U.S. policy. Detainees at Guantanamo Bay have the ability to challenge the lawfulness of their detentions in U.S. Federal court through a petition for a writ of *habeas corpus*. Such detainees have access to independent legal counsel and to appropriate evidence to mount such a challenge.

#### **Reply to paragraph 48 of the list of issues**

155. With regard to Article 22, as indicated in 163 of the 2005 CAT Report and 255 of the 2013 CAT Report, at the time of ratification, the U.S. Executive and Legislative Branches gave substantial thought to the question of whether to avail the United States of the procedure set forth in Article 22 and decided against doing so. The United States continues to believe that its legal system affords adequate opportunities for individuals to complain of abuse and to seek remedies. Therefore, the United States will continue to direct its resources to addressing such issues through its domestic procedures rather than making a declaration recognizing the competence of the Committee to consider communications made by or on behalf of individuals claiming to be victims of a violation of the Convention by the United States. With regard to the Optional Protocol, the United States continues to address and deal with any violations of the Convention primarily pursuant to operation of its own domestic legal system. The U.S. legal system affords numerous opportunities for individuals to complain of abuse by government actors, to have those claims investigated, and to seek redress as appropriate. Additionally, numerous mechanisms are employed by DOJ to ensure that the civil rights of persons in detention in the United States are protected. These tools are utilized effectively throughout the U.S. justice system. For these reasons, the United States has not taken steps to become a party to the Optional Protocol.

#### **Reply to paragraph 49 of the list of issues**

156. The United States continues to work in good faith with the Committee and domestically to ensure that legislative, administrative, judicial and other measures are in place to implement its obligations under the Convention. Our efforts, many of which are described above, are continuing, and we look forward to discussing them with the Committee.