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BRIDGING THE ACCOUNTABILITY GAP:
A CALL TO ACTION FOR MIGRANTS SUBJECTED TO
ABUSE IN U.S. CUSTODY

Sarah H. Paoletti and Azadeh Shahshahani

ABSTRACT

For years, immigrants held at the Irwin County Detention Center (ICDC) in the U.S. state of Georgia, and the advocates with whom they shared their experiences, raised complaints about the abusive detention conditions they were subjected to at ICDC with U.S. Immigration and Customs Enforcement (ICE), and with LaSalle Corrections, the ICE-contracted private, for-profit prison corporation that owns and operates ICDC. Those complaints went largely unaddressed. For years, immigrants and advocates called upon members of Congress and the international human rights community to safeguard the fundamental human rights of persons detained by ICE at ICDC, and other detention centers in rural Georgia, most notably the Stewart Detention Center, owned and operated by the GEO Group, and recognized as one of the deadliest ICE detention centers in the country. Those calls also went largely unheeded. Then, in the fall of 2020, a group of women locked up by ICE at ICDC, bravely stepped forward—joined by a whistleblower-nurse who worked at ICDC—to file a public complaint with the Department of Homeland Security Office of Inspector General addressing the ICE and LaSalle’s grievous medical neglect and denial of basic hygienic protections in the face of the then deadly COVID pandemic, and retaliatory use of disciplinary procedures—including solitary confinement—taken against anyone who spoke up. The complaint also contained documented allegations of non-consensual, invasive gynecological procedures carried out by a doctor contracted by the detention center. Those documented allegations of medical abuse are what ultimately garnered national and international media attention,

followed by Senate scrutiny, as well as attention from the international human rights community. The women at ICDC finally experienced a moment of validation: their fundamental human rights that had been so grievously violated were getting the recognition they had long been calling for.

The Senate Committee on Homeland Security and Governmental Affairs' Permanent Subcommittee on Investigations conducted an investigation culminating in a report and hearing that highlighted the failures of officials from LaSalle Corrections, as well as ICE, in the provision of medical care to women held in their custody—failures that directly resulted in women being subjected to non-consensual, contraindicated, and invasive gynecological procedures. The international human rights community issued communications expressing their grave concerns surrounding the documented allegations, noting the host of rights violations under international law. In the summer of 2021, at a hearing before the Inter-American Commission on Human Rights (“IACHR”), the women subjected to abuse at ICDC finally got their day of rights recognition. During that webcast hearing, members of the IACHR, representatives for the United States, and the public, heard the powerful and courageous testimony of Wendy Dowe, one of the women harmed by the documented medical neglect and abuse at ICDC. Members of the IACHR expressly recognized the experiences to which Ms. Dowe testified as torture, and noted the obligation of a state under whose authority torture is carried out to provide reparations. For its part, the U.S. Government, represented by the DHS Officer of Civil Rights and Civil Liberties, publicly apologized to Ms. Dowe for the abuses she endured. The DHS Officer also took personal responsibility for following-up on the investigation and ensuring measures were in place so that the abuses Ms. Dowe and those detained alongside her suffered were not repeated.

The IACHR's public hearing—together with the Communications from different United Nations human rights mechanisms—marked an important moment of rights recognition and an important moment of collaboration among the often-siloed rights-communities. But the women behind the ICDC complaint, and the thousands of other immigrants subjected to rights abuses at ICDC and Stewart, and in immigration detention sites across the country, have yet to receive redress or reparations for the rights violations they suffered, and in the absence of accountability, rights violations persist. This Article tells the story of efforts to achieve rights recognition, accountability, and

redress for individuals subjected to ICE detention, focusing on advocacy specific to rights abuses at ICDC and Stewart while placing that story in the national context of abusive systems of immigration detention across the United States. It shines a light on the opportunities for advancing rights recognition before the international human rights community, particularly the IACHR, the headquarters for which are housed in this country's capital, Washington, D.C. In noting the shortcomings and frustrations that come with international human rights advocacy, the Article makes the argument for continued engagement with international human rights mechanisms, and the norms they have established to protect and promote, and provides recommendations for moving from rights recognition to accountability, redress, and, ultimately, non-repetition.

ABOUT THE AUTHOR

Sarah H. Paoletti – Practice Professor of Law and Founding Director, Transnational Legal Clinic, University of Pennsylvania Carey Law School. The authors express gratitude and appreciation to Wendy Dowe and the numerous other individuals locked-up in ICE custody who have bravely shared their stories and experiences with us; we are humbled by their strength, their courage, and their resilience. We also thank the following individuals who provided invaluable research assistance, particularly: Sofia Verónica Montez, Legal Fellow at Project South; Divya Babbula, Legal Intern at Project South; Emily Gabos, University of Pennsylvania Carey Law School, JD 2023; and Saba Mengesha, University of Pennsylvania Carey Law School, expected JD 2025. In addition, we express our appreciation and gratitude to the JILFA editorial staff for their work in organizing the symposium at which the issues this article addresses were first presented, and for their patience and diligence throughout the editorial process.

Azadeh Shahshahani – Legal & Advocacy Director at Project South and a past president of the National Lawyers Guild.

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I. INTRODUCTION

In October 2020, a front-page story in the New York Times recounted how medical staff at the Irwin County Detention Center (ICDC) in Oscilla, Georgia, sent women held in the custody of the Department of Homeland Security Immigration and Customs Enforcement (DHS-ICE) to a gynecologist who performed invasive, non-consensual, and contraindicated gynecological procedures on the women.¹ The story followed from a whistleblower complaint detailing abusive conditions of detention, including numerous and specific allegations of medical neglect and abuse, focused primarily on ICDC officials' failure to take even the most basic precautions to protect those detained at ICDC from COVID.² As rates of infection and reports of detained immigrants' deaths were on the rise, women who raised their concerns about ICDC's callous medical neglect and other abusive conditions of confinement met retaliation at the hands of ICDC officials, often by being put in isolation units, or solitary confinement.³ But it was the allegations launched against the doctor with whom ICDC contracted to provide gynecological care that garnered the most attention from the media, members of Congress, the public, and the international human rights community.⁴ As attention became focused on the doctor

1. Caitlin Dickerson, *Inquiry Ordered Into Claims Immigrants Had Unwanted Gynecology Procedures*, N.Y. TIMES, Sept. 16, 2020, <https://www.nytimes.com/2020/09/16/us/ice-hysterectomies-whistleblower-georgia.html>; Caitlin Dickerson, Seth Freed Wessler, and Miriam Jordan, *Immigrants Say They Were Pressured Into Unneeded Surgeries*, N.Y. TIMES, Sept. 29, 2020, <https://www.nytimes.com/2020/09/29/us/ice-hysterectomies-surgeries-georgia.html>. Jose Olivares & John Washington, "*He Just Empties You All Out*": Whistleblower Reports High Number of Hysterectomies at ICE Detention Facility, INTERCEPT, Sept. 15, 2020, <https://theintercept.com/2020/09/15/hysterectomies-ice-irwin-whistleblower/>. The Intercept subsequently published several follow-up stories detailing the scope of abuses endured by women detained at ICDC. See, e.g., Joe Penney, *Pauline Binam Says She Never Gave ICE Doctor Consent to Remove Her Fallopian Tube*, INTERCEPT (Oct. 2, 2020, 12:56 PM), <https://theintercept.com/2020/10/02/ice-irwin-amin-obgyn-cameroon-women/>; John Washington & Jose Olivares, *Number of Women Alleging Misconduct by ICE Gynecologist Nearly Triples*, INTERCEPT (Oct. 27, 2020, 4:10 PM), <https://theintercept.com/2020/10/27/ice-irwin-women-hysterectomies-senate/>.

2. Letter from Project South to Inspector General Joseph V. Cuffari, Officer for Civil Rights and Civil Liberties Cameron Quinn, then-Acting Director of Atlanta ICE Field Office Thomas P. Giles, and then-Warden of ICDC David Paulk, (Sept. 14, 2020), <https://projectsouth.org/wp-content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf> (including by reference additional whistleblower retaliation complaint filed with Department of Homeland Security (DHS) Office of Inspector General (OIG) on behalf of Ms. Wooten by Government Accountability Project and Project South) [hereinafter *Cuffari Letter*].

3. *Id.*

4. See *Medical Mistreatment of Women in ICE Detention: Hearing Before the Permanent Subcomm. on Investigations of the Comm on Homeland Sec. and Governmental Affairs*, 105th Cong. 117–537 (2022), <https://www.hsac.senate.gov/wp-content/uploads/>

and his misdeeds, the underlying conditions at ICDC that created the opportunity for such egregious actions persisted at ICDC and sites of immigration detention across the country.⁵

In June 2021, a little more than six months following the filing of the Office of the Inspector General (OIG) complaint and the media coverage that ensued, Wendy Dowe bravely testified in a hearing before the Inter-American Commission on Human Rights (IACHR) about the rights abuses she and other women detained alongside her endured while held in DHS-ICE custody at ICDC.⁶ She shared the anxiety and fear she and other women at ICDC felt when their calls for personal protective equipment and meaningful access to hand-washing facilities and other basic safety protocols at the height of the COVID pandemic were met with retaliation by their jailers.⁷ She shared the confusion, fear, and ultimate trauma associated with being sent by prison officials to a gynecologist who conducted invasive gynecological procedures without obtaining meaningful consent, and the lasting harm that resulted from those procedures, procedures that were later proven to be medically contraindicated.⁸ She also shared the pain of being separated from her children while in detention, and the resulting trauma she and her children faced after ICE deported her in the aftermath of her joining in the public complaint against DHS-ICE, LaSalle Corrections, the private, for-profit prison corporation that owns and operates ICDC, and ICDC officials.⁹

The IACHR Commissioners responded to Ms. Dowe's testimony by recognizing that the harms she experienced violated her

CHRG-117shrg50238.pdf [hereinafter *Medical Mistreatment*]; Aviva Shen, *Why Did It Take a Sterilization Scandal to Retrigger Our Outrage Over ICE?*, SLATE, Sept. 18, 2020, <https://slate.com/news-and-politics/2020/09/ice-sterilization-scandal-outrage-abuse-hysterectomies.html>; USA: Reports of Forced Sterilisation of Women in Immigration Detention 'Deeply Alarming', AMNESTY INTERNATIONAL UK, Sept. 16, 2020, <https://www.amnesty.org.uk/press-releases/usa-reports-forced-sterilisation-women-immigration-detention-deeply-alarming>.

5. Adolfo Flores, *Despite Outrage Over Gynecological Procedures At An ICE Facility, A Detainee Says Conditions Haven't Changed*, BUZZFEED NEWS, Oct. 6, 2020, <https://www.buzzfeednews.com/article/adolfoflores/ice-detainee-fears-irwin-county-medical-procedures>. See also Sarah H. Paoletti and Azadeh Shahshahani, *Where Is The Accountability? Alleged Abuses Persist in ICE Detention*, THE HILL, Nov. 18, 2022, <https://thehill.com/opinion/immigration/3739781-where-is-the-accountability-alleged-abuses-persist-in-ice-detention/>.

6. INTER-AMER. COMM'N H.R. (hereinafter IACHR), *Schedule for June 28, 2021*, <https://www.oas.org/en/iachr/sessions/calendario.asp?S=180>.

7. Comisión Interamericana de Derechos Humanos, *US_ Situación de derechos humanos de personas migrantes y los centros de detención en Estados Unidos*, YOUTUBE (June 29, 2021), <https://www.youtube.com/watch?v=8UX6Ope31kY>.

8. *Id.*

9. *Id.*

internationally recognized human rights.¹⁰ They called attention to the numerous rights violations under international law implicated by her testimony and questioned a system that exacted punitive detention against individuals as a means of enforcing civil immigration laws.¹¹ The Commissioners also explicitly named as torture the abuses she endured, and specifically noted a government's obligation to provide reparations for torture carried out by persons operating under governmental authority.¹² The U.S. government, represented by the U.S. Department of Homeland Security's (DHS) Officer for Civil Rights and Civil Liberties, initially responded to Ms. Dowe's testimony and other evidence presented of the longstanding history of medical neglect and abuses at ICDC (as well as the Stewart Detention Center in Lumpkin, Georgia) with prepared remarks that spoke in general terms of the United States' commitment to human rights, the DHS-ICE detention standards governing immigration detention, and the role of DHS Office of Civil Rights and Civil Liberties (DHS-CRCL) in overseeing compliance with those standards.¹³ The prepared remarks did not speak to the specific documented complaints of abuse at either ICDC or Stewart, referencing only ongoing investigations.¹⁴ But Ms. Dowe's tearful and pained rebuke of the government's testimony ultimately compelled the DHS-CRCL Officer to break from her prepared script and publicly apologize to Ms. Dowe for the harms she endured.¹⁵ She also vowed to pursue the investigation and take measures to guard against similar future abuse.¹⁶

The hearing before the IACHR highlighted the value of engaging with regional and international human rights systems, particularly in cases where domestic systems of accountability and redress fall short. But as we argue in this Article, the full story behind the hearing—the years of advocacy leading up to the hearing, and the aftermath of the hearing—demonstrates the challenges and shortcomings of engaging with human rights mechanisms. The experiences of the women detained at ICDC are repeated in immigration detention centers across the United States.¹⁷ Accounts of gender-based violence, medical

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. NPR All Things Considered, *Government's Own Experts Found 'Barbaric' and 'Negligent' Conditions in ICE Detention*, Aug. 16, 2023, <https://www.npr.com>.

neglect, abusive medical care, and retaliation—often in the form of solitary confinement—exemplify the urgent need to move beyond moments of rights recognition and calls for redress to sustained engagement by the international human rights community. As we argue in this Article, sustained and collaborative engagement by the international human rights community aimed at developing effective mechanisms for providing accountability, redress, and reparations when violations have occurred, is necessary for ensuring those violations do not repeat in the future, and for ensuring the relevance of international human rights law and mechanisms in the promotion and protection of individuals' fundamental rights not only in the United States, but across the region, and globally.

Section II of this Article provides an overview of immigrant detention in the United States and sets forth the persistent rights violations endemic to the U.S. system of detention. It then provides a brief overview of the domestic mechanisms put in place to provide minimal protections to persons subjected to immigrant detention, and the ways in which international human rights law, and the regional and international human rights regimes, work to supplement those protections. Specifically, it examines the work of the IACHR in working to promote within the United States “the human rights of all immigrants, documented and undocumented alike; this includes the rights to personal liberty, to humane treatment, to the minimum guarantees of due process, to equality and nondiscrimination, and to protection of private and family life,”¹⁸ particularly in the context of immigrant detention and deportation.

Section III provides a detailed case study of efforts to achieve rights recognition, as well as accountability and redress for abuses committed against migrants held in ICE custody at the Irwin and Stewart Detention Centers in Georgia. These efforts include the use of administrative complaint mechanisms and federal court litigation, as well as Congressional advocacy, media, and other public advocacy campaigns, and ultimately at the center of this Article, international human rights advocacy.

[org/2023/08/16/1190767610/ice-detention-immigration-government-inspectors-barbaric-negligent-conditions](https://www.ice.dhs.gov/2023/08/16/1190767610/ice-detention-immigration-government-inspectors-barbaric-negligent-conditions).

18. IACHR, *Immigration in the United States: Detention and Due Process* [hereinafter *IACHR 2010 Report*], 11 ¶ 32, OEA/Ser.L/V/II, Doc. 78/10 (Dec. 30, 2010). For a more complete discussion of those obligations, as set forth by the Inter-American Commission, see *id.* at 11–5 ¶ 32–43.

Section IV sets forth a critical analysis of the ways in which the Inter-American Human Rights System and United Nations (UN) Human Rights mechanisms serve as valuable sites for rights recognition and rights validation, but then fall short in achieving the promise of rights promotion and protection due to the limited strategic engagement and institutional commitment to creating avenues for achieving accountability, redress, and reparations.¹⁹ In doing so, it examines some of the structural and practical limitations built into the international human rights mechanisms while also highlighting opportunities for greater impact.

II. IMMIGRATION DETENTION IN THE UNITED STATES: A SYSTEM OF ABUSE

A. Historical Overview of Detention in the United States

The use of detention as a means of immigrant exclusion within the United States is as old as Ellis Island. From 1892 through 1954, Ellis Island was not only the site through which new immigrants passed through as they sought out their life in the New World, but it was also the site of the first dedicated immigration detention facility.²⁰ Much like present-day processing at the U.S. southern border and ports of entry across the United States, immigrants arriving at Ellis Island were screened by immigration officers who made determinations of legal eligibility and medical fitness before allowing anyone to enter the United States.²¹ Immigrant detention at Ellis Island expanded with the Emergency Quota Act of 1921, which introduced the first numerical restrictions on immigration into the United States, with specific percentage quotas allocated based on nationality. This led to a greater number of immigrants being held as they awaited their turn for admission into

19. For a detailed analysis of international human rights standards as applied to U.S. system of immigration detention, see Denise L. Gilman, *Realizing Liberty: The Use Of International Human Rights Law To Realign Immigration Detention In The United States*, 36 *FORDHAM INT'L L.J.* 243 (2013).

20. Emma Goldman, *Immigration and Deportation at Ellis Island*, PBS, <https://www.pbs.org/wgbh/americanexperience/features/goldman-immigration-and-deportation-ellis-island>.

21. The United States detained approximately 20% of immigrants seeking entry to the United States following their initial screening: some were quarantined in medical isolation units, or held in the medical wards for further examination; unaccompanied women and children who were awaiting the arrival of a male sponsor were held in pens or dormitories while they awaited the arrival of a male sponsor; and others were detained as crime suspects or based on criminal convictions, or because the government otherwise feared that they would pose a threat to the country. *Id.* Immigrants deemed a threat included people believed to be anarchists or Bolsheviks, and those deemed otherwise "immoral." *Id.*

the United States, while less fortunate immigrants waited to return to their country of origin.²² Ellis Island also served as the site for detaining immigrants already living in the United States who faced deportation after having been arrested on immigration violations, for commission of a crime, or who had been deemed to pose a threat to national security—the historical precursor to the modern-day immigration detention system.²³ Across the United States, thousands of immigrants were detained at the Angel Island Immigration Station, built to detain immigrants subject to the Chinese Exclusion Act of 1882, and later nationals from other Asian countries subjected to racialized national-origin based exclusion laws, including immigrants arriving from Japan and India, among other countries.²⁴

From the outset, the judicial branch has taken an exceedingly constrained view of the courts' authority to review detention and of immigrants' rights to challenge their detention when employed by U.S. Congress and the executive branch as a means of enforcing immigration laws specific to exclusion and deportation.²⁵ Perhaps the most telling

22. NAT'L PARK SERV., *Immigration*, https://www.nps.gov/ellis/learn/historyculture/places_immigration.html (Feb. 25, 2015). The parallels to metering at the U.S.-Mexico border, whereby immigrants were forced to wait for their number to be called so they could present themselves for entry into the United States, are hard to ignore. See, e.g., Erika Lee, *A New Era of Anti-Immigrant Hate and Immigration Restriction*, 109 J. AM. HIST. 399, 400 (2022) (“One hundred years after the Emergency Quota Act of 1921 was passed, we find ourselves in a new era of unprecedented immigration restriction that seems devastatingly similar.”).

23. HISTORY, *Ellis Island*, <https://www.history.com/topics/immigration/ellis-island> (Feb. 13, 2023) (noting in one historical account of Ellis Island, “In 1919, as a wave of anti-immigration hysteria swept the country, Frederic C. Howe, Commissioner of the Immigration Service, wrote despondently, ‘I have become a jailer.’” Goldman, *supra* note 20).

24. For a brief history of Angel Island, see ANGEL ISLAND CONSERVANCY, *U.S. Immigration Station*, <https://angelisland.org/history/united-states-immigration-station-usis/>. For a more detailed analysis of empirical data pertaining to individuals detained at Angel Island, see Robert Barde and Gustavo J. Bobonis, *Detention at Angel Island: First Empirical Evidence*, SOCIAL SCIENCE HIST., Vol. 30, No. 1, 103 – 136, Cambridge University Press (Spring 2006), <https://www.jstor.org/stable/40267900>.

25. *Wong Wing v. United States*, 163 U.S. 228 (1896), *Yick Wo*, 118 U.S. 356 (1886). See, e.g., Faiza W. Sayed, *Challenging immigration Detention: Why Immigrant Detainees Receive Less Process than Enemy Combatants and Why They Deserve More*, 111 COLUM. L. REV. 1833 (2011); Philip L. Torrey, *Rethinking Immigration's Mandatory Detention Regime: Politics, Profit and the Meaning of “Custody,”* 48 U. MICH. J. L. REFORM 879 (2015). As explicitly evidenced in the history of Angel Island, throughout the more than two hundred years of immigration enforcement in the United States, policies of exclusion and detention practices have disproportionately targeted and impacted Asian communities, as well as Black and Brown communities. See, e.g., Karla McKanders, *Immigration and Blackness: What's Race Got to Do With It?*, 44 HUM. RTS. 20 (2019); Elizabeth Arenda and Elizabeth Vaquera, *Racism, the Immigration Enforcement Regime, and the Implications for Racial Inequality in the Lives of Undocumented Young Adults*, *Sociology of Race and Ethnicity*,

judicial statement on the topic came from the 1950 U.S. Supreme Court case of *Knauff v. Shaughnessy*.²⁶ A German national who was detained at Ellis Island upon seeking entry to the United States based on her marriage to a U.S. citizen appealed the denial of her habeas petition seeking release and admission into the United States, a denial which was based on purported evidence not shared with her.²⁷ In his majority opinion denying her appeal, Justice Sherman Minton wrote: “Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.”²⁸ The courts have continued to rationalize their permissive approach to immigration detention based on two interrelated rationale contraindicated by the experiences of those directly impacted: 1) deportation is a civil punishment, and not sufficiently punitive in nature to give rise to the same constitutional due process and other protections afforded to individuals subjected to criminal punishment;²⁹ and 2) detention is used for the short-term purpose of effectuating the screening, exclusion, and/or deportation of immigrants without lawful permission to enter or remain in the United States, which falls under the exclusive authority of the federal government under the plenary powers doctrine.³⁰ Yet, the overtone of criminality imposed through the use of a carceral system engaged in the deprivation of liberty cannot be denied, particularly when examining the conditions of confinement and the often prolonged duration of confinement many immigrants endure.³¹

Vol. I (I), 88–104, American Sociological Association (2015), https://projects.iq.harvard.edu/files/deib-explorer/files/aranda_and_vaquera.pdf; Karla M. McKanders, *Immigration Enforcement and the Fugitive Slave Acts: Exploring Their Similarities*, 61 CATHOLIC U. L. REV. 921 (2012).

26. U.S. *ex rel.* *Knauff v. Shaughnessy*, 338 U.S. 537 (1950).

27. *Id.* at 539–40.

28. *Id.* at 540. See, Charles D. Weisselberg, *The Exclusion and Detention of Aliens: Lessons from the Lives of Ellen Knauff and Ignatz Mezei*, 43 U. PENN. L. REV. 4 (1995).

29. *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) (“Consistent with the civil nature of the proceeding, various protections that apply in the context of a criminal trial do not apply in a deportation hearing”).

30. *Id.* See also, *Demore v. Kim*, 538 U.S. 510 at 527–531 (2003). *But see* *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (recognizing constitutional due process limitations on the government’s authority to detain immigrants, noting that such rights apply to “all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”); *Jennings v. Rodriguez*, 538 U.S. 281 at 343 (J. Breyer, *dissenting*) (noting that per the government’s own admission, the average length of detention is twice as long as that first reported by the government to the Court in *Demore*).

31. See Louis Henkin, *The Constitution and United States Sovereignty: A Century of Chinese Exclusion and Its Progeny*, 100 HARV. L. REV. 853, 862 (1987) (arguing that the modern-era due process case law has rendered this virtually uncritical deference to the federal government’s extraconstitutional plenary power “a remnant of a prerights jurisprudence that we have proudly rejected in other respects.”); Anil Kalhan, *Rethinking Immigration*

The human cost of detention is real. More than 3,500 immigrants died in U.S. custody at Ellis Island during its half-century of operations as a site for immigrant screening, detention, and exclusion.³² Those deaths are not a historical anomaly. From 2015 through June 2023, ICE issued public releases on the deaths of seventy-four individuals who perished in their custody.³³ Immigrants held in detention and their family members continue to feel the often-excruciating human toll endemic to a system of detention that treats the deprivation of liberty

Detention, 110 COLUM. L. REV. Sidebar 42, 43–44, 49–50 (2010) (exploring immigration detention as a manifestation of the convergence between criminal enforcement and civil immigration control, and arguing that immigration detention may be unconstitutional under the Due Process Clause if circumstances of detention are excessive compared to its noncriminal, “public safety” justifications, while also noting conditions of detention amount to a “quasi-punitive regime out of alignment with immigration custody’s permissive purposes.”); César Cuauhtémoc García Hernández, *Invisible Spaces and Invisible Lives in Immigration Detention*, 57 HOW. L.J. 869, 870–871 (2014) (discussing barriers to challenging conditions of immigration detention, and specifically arguing immigration officials’ broad authority to detain arises from the courts having stripped migrants held in immigration detention from procedural rights making them “ineligible for basic human dignities.”); Michael Kagan, *Immigration Law’s Looming Fourth Amendment Problem*, 104 GEO. L.J. 125, 166–67 (2015) (emphasizing that even if Congress does have the constitutional power to create a category of people subject to mandatory detention pursuant to deportation proceedings, the empirical realities of such detention have fundamentally unraveled the civil-criminal dichotomy upon which that system has been erected).

32. Goldman, *supra* note 20.

33. AILA, *Deaths at Adult Detention Centers*, <https://www.aila.org/library/deaths-at-adult-detention-centers> (last visited June 29, 2023). For number of deaths in ICE detention from January 1 – May 31, 2024, see Daniella Silva, *The number of deaths in ICE custody is already more than double all of last year*, NBC NEWS, June 1, 2024, <https://www.nbcnews.com/news/us-news/number-deaths-ice-custody-already-double-last-year-rcna154659>. See also, Carl Takei et al., *Fatal Neglect: How ICE Ignores Death in Detention*, AMER. CIVIL LIBERTIES UNION, DET. WATCH NETWORK, AND NATIONAL IMMIGRANT JUSTICE CENTER, 5 (2016), https://assets.aclu.org/live/uploads/publications/fatal_neglect_acludwnnjjc.pdf (cautioning that preventable deaths stemming from violations of ICE medical standards are not always reported as such, so that the number of individuals who have died in ICE custody or whose death is directly attributable to lack of adequate medical care while in ICE custody may actually be higher than official ICE reports reveal). In October 2021, the American Civil Liberties Union (ACLU) sued DHS-ICE for its failure to respond to a FOIA request specific to ICE’s practice of releasing individuals hospitalized while under their custody immediately preceding their death. Press Release, Amer. Civil Liberties Union, ACLU Files Lawsuit Against ICE for Wrongfully Withholding Public Records about Unreported Detainee Deaths (Oct. 7, 2021), <https://www.aclu.org/press-releases/aclu-files-lawsuit-against-ice-wrongfully-withholding-public-records-about-unreported>. A 2022 report by the LA Times recounts the death of an individual whom ICE released from custody shortly before her death, after she had been transported to an emergency room having been found unconscious in her cell at the Otero County Processing Center, having submitted repeated urgent requests for medical attention that went unmet while held at Otero. See Andrea Castillo and Jie Jenny Zou, *ICE rushed to release woman, avoiding responsibility for her death. She isn’t alone.*, L.A. TIMES, May 13, 2022, <https://www.latimes.com/world-nation/story/2022-05-13/ice-immigration-detention-deaths-sick-detainees>.

and due process as a legitimate means of enforcing our immigration laws. As we argue herein, the United States has consistently failed to implement systems of accountability responsive to the full range of rights abuses committed by government officials, or by contracted officials for which the government's lack of meaningful oversight makes it complicit. This governmental failure leads to a void in bridging the gap between rights and obligations on paper, and full rights recognition, accountability, and redress that we argue the international human rights system must work to fill.

The number of people subjected to immigration detention, and the duration of detention, have both seen a sharp increase over the past quarter century. U.S. lawmakers have created entire categories of individuals subject to mandatory detention.³⁴ They have simultaneously acted to strip courts of jurisdiction to review government determinations of a person's removability and detention status.³⁵ Although ICE ostensibly has the burden of establishing an individual is deportable based on allegations of fact and legal conclusions drawn therefrom, the immigrant—often unrepresented by counsel—must know to challenge any asserted allegations of fact and conclusions of law.³⁶ Individuals

34. In 1996, Congress passed, and President Clinton signed into law, the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132 110 Stat 1214 (1996), and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-204, Div. C, 110 Stat. 3009-546. Both laws worked to further criminalize human migration by dramatically expanding the use of mandatory detention for persons arriving to the United States without a visa or other means of lawful entry, and significantly expanding upon the list of criminal offenses for which one would then be subjected to deportation proceedings and mandatory detention throughout the full pendency of proceedings. Following the attacks of September 11, 2001, Congress created DHS and migrated almost all immigration services and enforcement out of the Department of Justice and consolidated them together with all government operations that touched on immigration, border control, and national security, within DHS. See Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135. Notably, AEDPA was passed following the bombing of the Alfred P. Murrah federal building in Oklahoma City on April 19, 1995, for which Timothy McVeigh and Terry Nichols, two U.S. citizens born in the United States, were convicted. See Michael J. Whidden, *Unequal Justice: Arabs in American and United States Antiterrorism Legislation*, 69 *FORDHAM L. REV.* 2825, 2825-26 (2001). Furthering the expansion of immigration enforcement and raising the barriers for those seeking entry or relief from deportation, Congress passed the Real ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302 (2005), and later in 2005, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, 109th Cong. (2005).

35. 8 U.S.C. § 1252(f).

36. See, e.g., AM. IMMIGR. COUNCIL, *Access to Council in Immigration Court* (Sept. 2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf (noting that fewer than one in seven people in immigration detention are represented by counsel in immigration court, and that they are eleven times more likely to seek relief and twice as likely to obtain it than unrepresented migrants in ICE detention).

detained by ICE then bear the burden of requesting parole from ICE or a custody status determination hearing from an immigration judge, during which they must prove they merit release from detention.³⁷ Immigration judges are granted significant discretion in deciding whether a person is to be released, and the amount of bond to be paid to effectuate that release.³⁸ If bond is ultimately denied or set at a rate too high for the immigrant to pay, or if the Immigration Court determines that it does not have jurisdiction to consider bond, the individual's only opportunity for release is through a request made directly to ICE, or ultimately through a petition for habeas corpus filed in federal court.³⁹

Courts have continued to rely on the cited historical precedent to grant the federal government enormous leeway in making determinations over who it can exclude, deport, and by extension, who it can detain. While the Supreme Court has ruled that the United States cannot hold an immigrant subject to a final order of deportation indefinitely, where it appears that deportation cannot or will not be effectuated,⁴⁰ the

37. Immigration and Nationality Act § 236(c)(2), 8 U.S.C. § 1226(c)(2) (“The Attorney General may release [a detained person if they] satisf[y] the Attorney General that [they] will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding.”).

38. Immigration and Nationality Act § 236(a)(2)(A), 8 U.S.C. § 1226(a)(2)(A) (“the Attorney General may release [detained migrants] on bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General”); *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (“[a]n Immigration Judge has broad discretion in deciding the factors that [they] may consider in custody redeterminations”). See also Fatma Marouf, *Regional Immigration Enforcement*, 99 WASH. U. L. REV. 1593, 1660 (2022). Over the past two decades, bond has been granted in 20% fewer hearings, with immigration judges granting bond in 51% of motions brought in 2001 and granting bond in only 31% of cases in the first nine months of 2023. See TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, *Detained Immigrants Seeking Release on Bond Have Widely Different Outcomes – Overall Bond Grant Rates Have Dropped*, (Jul. 19, 2023), <https://trac.syr.edu/reports/722/>.

39. See Memorandum from Secretary of Homeland Sec. Alejandro N. Mayorkas to U.S. Immigration and Customs Enforcement Acting Director Tae D. Johnson (Sept. 30, 2021), <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf> (detailing ICE's enforcement discretion as described by the Supreme Court in *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483–484 (1999)); *Demore v. Hyung Joon Kim*, 538 U.S. 510, 517 (2003) (explaining that the writ of habeas corpus is available to noncitizens in immigration detention because 8 U.S.C. § 1226(e) contains no explicit provision barring habeas review, and we think that its clear text does not bar respondent's constitutional challenge to the legislation authorizing his detention without bail”).

40. *Zadvydas v. Davis*, 533 U.S. 678, 690–91.

Court has negated lower court rulings mandating regularly scheduled custody review hearings for individuals subjected to prolonged detention, wherein the government would have the burden of demonstrating ongoing detention was justified.⁴¹ In addition to the jurisprudential barriers immigrants face when challenging their detention, immigrants who lack or are effectively denied access to legal and financial resources by virtue of their detention are exceedingly hampered in the process.⁴²

The absolute numbers of persons detained have fluctuated over recent years, but the historic trend shows detention on the rise. Over the past several years, the number of individuals held in immigration custody peaked at 55,654 in August 2019, before declining to 13,258 in February 2021, and steadily rose again to more than 36,000 in December 2023.⁴³ The numerical fluctuations map onto a series of policies restricting entry for persons arriving at the U.S. southern border with Mexico. Beginning in 2018, asylum seekers and others seeking entry through Mexico were subjected to metering whereby only a limited number of individuals were allowed to present themselves at the U.S. border to seek asylum each day.⁴⁴ This policy was followed by the Remain in Mexico program⁴⁵ first undertaken in January 2019 (inaptly titled the Migration Protection Protocols), which was superseded by a policy implemented in 2020 barring all land-crossings into the

41. *Jennings v. Rodriguez*, 538 U.S. at 306, 311–12.

42. The right to legal representation is limited to those who can locate pro bono legal services, or who can locate and afford to pay a private attorney, and the median bond amount set is \$7,000. See TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, *Detained Immigrants Seeking Release on Bond Have Widely Different Outcomes – Overall Bond Grant Rates Have Dropped* (Jul. 19, 2023), <https://trac.syr.edu/reports/722/>. According to the report, this is an increase of \$2,000 from the median bond amount set in FY 2022, and noting that in seventy-four cases, bond was set at \$25,000 or more.

43. See, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, *Detention Facilities Average Daily Population*, (last accessed July 19, 2023) https://trac.syr.edu/immigration/detentionstats/pop_agen_table.html.

44. Memorandum from Kirstjen M. Nielsen, Sec’y of U.S. DHS (Jun. 5, 2018), https://www.dhs.gov/sites/default/files/publications/18_0622_S1_Memorandum_DACA.pdf; OFFICE OF INSPECTOR GEN., U.S. DEP’T HOMELAND SEC., *CBP Has Taken Steps to Limit Processing of Undocumented Aliens at Ports of Entry* (Oct. 27, 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-10/OIG-21-02-Oct20.pdf>. See also *White House Daily Briefing*, C-SPAN (June 18, 2018), <https://www.c-span.org/video/?447252-1/white-house-daily-briefing>; Memorandum from Todd C. Owen, U.S. Customs and Border Protection Office of Field Operations Executive Assistant Commissioner (Apr. 27, 2018), https://immigrationpolicytracking.org/media/documents/2018.04.27_CBP_Metering_Guidance_.pdf.

45. U.S. DEP’T HOMELAND SEC., *Migrant Protection Protocols*, (Jan. 24, 2019), <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>; Richard Gonzales, *U.S. Is Rolling Out Its ‘Remain In Mexico’ Policy On Central American Asylum-Seekers*, NPR (Jan. 24, 2019, 10:37 PM), <https://www.npr.org/2019/01/24/688470513/u-s-plans-to-enforce-remain-in-mexico-policy-on-central-american-asylum-seekers>.

United States of migrants without a visa, ostensibly in response to the COVID-19 pandemic, under Title 42.⁴⁶ The reduction in the number of incoming migrants resulted in an overall reduction of immigrants taken into ICE custody. Litigation brought during the height of the COVID pandemic challenging the lack of adequate health and safety protocols for persons in detention resulted in federal district court mandates of custody status reviews for detained individuals identified as having a preexisting health condition that put them at severe risk of complications from COVID.⁴⁷ Those mandated custody status reviews led to the release of significant numbers of individuals in ICE custody, further reducing the number of detained immigrants. In May 2023, the federal government declared an end to the COVID pandemic resulting in the lifting of Title 42 restrictions, and the number of arriving migrants subjected to detention increased, alongside the number of individuals already in the United States detained by ICE at the initiation of deportation proceedings.⁴⁸

Operating in tandem with the rise in the overall population held in immigration detention has been the dramatic growth over the past two decades of the private prison industrial complex. By July 2023, more than 90% of those held in ICE detention were detained in private

46. Order Suspending Introduction of Persons From a Country Where a Communicable Disease Exists, 85 FED. REG. 16, 567 (Mar. 20, 2020) (to be codified at 42 U.S.C. § 265).

47. See *Fraihat v. ICE*, 445 F. Supp. 3d 709, 750 (C.D. Cal. Apr. 20, 2020) (order granting Plaintiffs' Emergency Motion to Certify Subclass and Motion for Preliminary Injunction, inter alia); *Fraihat v. ICE*, 220 WL 1932393 (C.D. Cal. Apr. 20, 2020) (Order on Plaintiffs' Emergency Motion for Provisional Class Certification). See also *Fraihat v. ICE*, 2020 WL 6541994 (C.D. Cal. Oct. 7, 2020) (Order granting in part and denying in part Plaintiffs' Motion to Enforce Apr. 20, 2020 Preliminary Injunction).

48. TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, *ICE Detainees, Part A.*, https://trac.syr.edu/immigration/detentionstats/pop_agen_table.html (last visited July 21, 2023).

facilities,⁴⁹ a number that stood at 73% in 2018.⁵⁰ While both the private prison corporations and U.S. government representatives tout the ability of corporations to maximize cost efficiency, that efficiency has come at a tremendous human cost.⁵¹ As highlighted in the following section, operating alongside the rise in immigration detention and increased reliance on private prison corporations for the detention of immigrants is a rise in reports of abusive conditions of confinement, egregious rights violations, and deaths while in ICE custody. One former ICE official conceded: “It wasn’t [the private prison companies’] priority to ensure that the highest standards were being met.”⁵² He went on to recognize the responsibility ICE bore for conditions of confinement: “We set up this partnership with the private industry in a way that was supposed to make things much more effective, much more economical But unfortunately, it was in the execution and the monitoring and the auditing we fell behind, we fell short.”⁵³

As elaborated upon in the case study specific to abuses at the Irwin County Detention Center and the Stewart Detention Center, the

49. Eunice H. Cho, *Unchecked Growth: Private Prison Corporations and Immigration Detention, Three Years Into the Biden Administration*, AMER. CIV. LIBERTIES UNION (Aug. 7, 2023), <https://www.aclu.org/news/immigrants-rights/unchecked-growth-private-prison-corporations-and-immigration-detention-three-years-into-the-biden-administration> (noting President Joe Biden promised when campaigning for the presidency to end the use of private prison facilities for the detention of immigrants, yet omitted DHS from an agency directive issued in January 2021 to phase out contracts with private prison corporations. Corporations such as the GEO Group and CoreCivic have brought in \$1.05 billion and \$552.2 million respectively in their contracts with ICE). See also Setareh Ghandehari, Bob Libal, and Priya Sreenivasan, *Broken Promises: Limits of Biden’s Executive Order on Private Prisons*, DET. WATCH NETWORK & PROJECT SOUTH (2021), https://www.detentionwatchnetwork.org/sites/default/files/reports/Broken%20Promises_DWN%20and%20Project%20South.pdf; Bob Libal & Azadeh Shahshahani, *End Profit-Driven Detention in the Immigration System as Well as Federal Prisons*, L.A. TIMES, Dec. 15, 2021, <https://www.latimes.com/opinion/story/2021-12-15/end-privately-run-detention-in-the-immigration-system-as-well-as-federal-prisons>.

50. Clyde Haberman, *For Private Prisons, Detaining Immigrants Is Big Business*, N.Y. TIMES, Oct. 1, 2018, <https://www.nytimes.com/2018/10/01/us/prisons-immigration-detention.html>. The report also notes that immigration detention accounts for the overwhelming majority of the population held in prisons owned and operated by private, for-profit corporations, which hold just 9% of the total prison population for individuals incarcerated on criminal charges.

51. See, e.g. Ghandehari et al., *supra* note 49; Sarah H. Paoletti & Meroua Zouia, *Submission Addressing the Role of Private Military and Security Companies in Immigrant Detention and the Impact on the Protection of the Rights of All Migrants*, PENN L. TRANSNATIONAL LEGAL CLINIC AND PROJECT S., (May 21, 2020); Cho, *supra* note 49; Dwayne FATHERTEE, *Settlement Marks Step Toward Ending Abuses at for-Profit Immigrant Prisons*, SOUTHERN POVERTY L. CENTER, Nov. 9, 2023, <https://www.splcenter.org/news/2023/11/09/corecivic-for-profit-immigrant-prisons-settlement>.

52. Haberman, *supra* note 50.

53. *Id.*

U.S. government's failure of oversight has contributed to persistent and egregious rights violations, rendering the stories of the women detained at ICDC made public in the fall of 2020—stories shared by Wendy Dowe during the June 2021 IACHR thematic hearing—shocking, but not surprising.

B. Applicable International Human Rights Law and the Recognition by International Human Rights Organizations of Rights Violations Endemic to the U.S. System of Immigration

As noted above, the U.S. system of immigration detention extracts a significant human toll, not just in lives lost, but in the human suffering that arises from the indefinite nature of immigration detention and the numerous rights violations carried out often with impunity against immigrants incarcerated in a system of purported civil detention. These abuses have been highlighted in hearings before the IACHR since the early 2000s and in submissions to relevant UN mandate holders, before members of Congress, in press releases, and in advocacy first with the Immigration and Naturalization Service, and later with DHS.⁵⁴

More than a decade ago, the IACHR detailed in its *Report on Immigration in the United States: Detention and Due Process*⁵⁵ the ways in which the U.S. system of immigration enforcement and detention failed to adequately safeguard, and in some cases directly contributed to violations of basic human rights. The IACHR report followed from a series of thematic hearings requested by Paoletti's Transnational Legal Clinic, alongside numerous immigrant and refugee rights organizations and law school clinics across the country.⁵⁶ The issues raised in the report still resonate today. Specifically, the report addressed the

54. See, e.g., *Comisión Interamericana De Derechos Humanos*, *supra* note 7; Hearings, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (last visited Mar. 8, 2024), <https://www.oas.org/en/iachr/sessions/hearings.asp?Year=2023&Country=USA&Topic=20>; Sarah H. Paoletti & Azadeh Shahshahani, *Re: Communication Addressing U.S. Violations of International Law at Immigration Detention Facilities in the U.S. State of Georgia and Calling for a Coordinated Site Visit and International Condemnation*, PROJECT S. AND TRANSNATIONAL LEGAL CLINIC UNIV. OF PA. CAREY L. SCH. (Nov. 19, 2020), https://projectsouth.org/wp-content/uploads/2020/11/2020.11.19_UN-Communication-ICDC-Medical-Neglect-and-Abuse.pdf [hereinafter *Paoletti & Shahshahani Communication*]; Letter to the Members of the Georgia Delegation to the 115th United States Congress (Nov. 21, 2017), <https://www.courthousenews.com/wp-content/uploads/2017/11/Letter-to-Congress-Georgia-Detention-Centers.pdf>; Press Release, Det. Watch Network, *After Years Of Advocacy, No Immigrant Women Are Currently Detained at the Irwin County Detention Center* (Apr. 29, 2021) [hereinafter *Det. Watch Press Release*], <https://www.detentionwatchnetwork.org/pressroom/releases/2021/after-years-advocacy-no-immigrant-women-are-currently-detained-irwin-county>.

55. See *IACHR 2010 Report*, *supra* note 18 at ¶ 417.

56. *Id.*, at ¶¶ 13 and 15.

fundamental right to liberty,⁵⁷ and articulated as follows a firmly established norm of international human rights law as it relates to immigration enforcement and detention:

[M]ember States must enact immigration laws and establish immigration policies that are premised on a presumption of liberty — the right of the immigrant to remain at liberty while his or her immigration proceedings are pending — and not on a presumption of detention.⁵⁸ (citations omitted).

The IACHR expressed concern “with the increasing use of detention of migrants based on a presumption of its necessity, when in fact detention should be the exception.”⁵⁹ Despite strong recommendations from the IACHR grounded in clearly articulated norms of international human rights law, the United States has persisted with a system of immigration enforcement whereby detention is the norm rather than a practice employed only in “exceptional circumstances.”⁶⁰

The IACHR further noted its observations and concerns as to violations of the right to due process and access to justice, as well as the right to seek asylum, arising from the U.S. system of immigration detention.⁶¹ And, the IACHR expressed grave concerns regarding the conditions of confinement as examined against the right to humane treatment during detention, specifically addressing the right to medical care, the right to have duly trained and qualified personnel and independent supervision at the place of detention, the right to an established disciplinary policy implemented with full due process protections, the

57. *Id.* at ¶¶ 33–55.

58. *Id.* at ¶ 39. The Commission further stated:

Detention is only permissible when a case-specific evaluation concludes that the measure is essential in order to serve a legitimate interest of the State and to ensure that the subject reports for the proceeding to determine his or her immigration status and possible removal. The argument that the person in question poses a threat to public safety is only acceptable in exceptional circumstances in which there are certain indicia of the risk that the person represents. The existence of a criminal record is not sufficient to justify the detention of an immigrant once he or she has served his or her criminal sentence. Whatever the case, the particular reasons why the immigrant is considered to pose a risk have to be explained. The arguments in support of the appropriateness of detention must be set out clearly in the corresponding decision.

59. *Id.* at ¶ 416.

60. *See discussion infra*, Section II.B.

61. *IACHR 2010 Report, supra* note 18, at ¶¶ 56–63; ¶ 418 (“It must be reiterated that detention is a disproportionate measure in many if not the majority of cases, and that the programs that provide for alternatives to detention constitutes a more balanced way for the State to ensure compliance with immigration laws. Another concern the IACHR sets forth in this report is the impact of detention on due process, mainly with respect to the right to legal counsel which directly affects the right to seek release.”).

obligation to investigate deaths in immigration custody, as well as additional rights and obligations specific to asylum seekers and unaccompanied children.⁶² The IACHR also addressed the principle of equality and nondiscrimination as applied to immigration detention,⁶³ and the significant and unavoidable impact that detention has on the rights to family life, to privacy, and the inviolability of the home.⁶⁴

As the number of immigrants held in detention continues to rise, so too do the allegations and experiences of abuse endured by immigrants held in ICE and Customs and Border Patrol (CBP) custody.⁶⁵ Individuals, family members, advocates, and reporters have long been recounting the full range of abuses that transpire behind the barbed wire and imposing cement brick walls of detention centers across the country.⁶⁶ The Trump Administration's practice of separating families under its "zero tolerance" policy initiated in 2017, garnered significant public attention and outcry.⁶⁷ Much has been written about the everity

62. *Id.* at ¶¶ 64 – 93, ¶ 419 (“[E]ven in those cases in which detention is strictly necessary, there is no genuinely civil system where the general conditions comply with standards of respect for human dignity and humane treatment; there is also a lack of the special conditions required for in cases of non-punitive detention . . . [T]he IACHR is further troubled by the frequent outsourcing of the management and personal care of immigration detainees to private contractors.”). The IACHR goes on to provide specific recommendations for reforming the immigration detention system in a manner that complies with international human rights norms, for those cases where it is determined that immigration detention is strictly necessary, as assessed against the liberty interests of the individual. *Id.* at ¶¶ 428–50.

63. *Id.* at ¶¶ 94–95.

64. *Id.* at ¶¶ 96–98.

65. The Center for Victims of Torture prepared a Backgrounder report, and an in-depth legal analysis addressing the ways in which U.S. immigration detention violates the Convention Against Torture, and other international human rights treaty provisions. See TAYLOR KOEHLER, CTR. FOR VICTIMS OF TORTURE, ARBITRARY AND CRUEL: HOW U.S. IMMIGRATION DETENTION VIOLATES THE CONVENTION AGAINST TORTURE AND OTHER INTERNATIONAL OBLIGATIONS. (2021), https://www.cvt.org/wp-content/uploads/2023/06/Arbitrary_and_Cruel_d5_FINAL.pdf. For updated reports on the nature of specific rights abuses carried out in detention centers across the United States, see, e.g., NPR All Things Considered, *supra* note 17 (detailing reports of abuse reported by inspectors with DHS Office of Civil Rights Civil Liberties released after two years of FOIA litigation); AM. CIV. LIBERTIES UNION, HUM. RTS. WATCH, AND NAT'L IMMIGRANT JUST. CTR., *Justice Free Zones: U.S. Immigration Detention under the Trump Administration* (2020), <https://www.aclu.org/publications/justice-free-zones-us-immigration-detention-under-trump-administration> [hereinafter *Justice Free Zones*].

66. See IACHR 2010 Report, *supra* note 18, at ¶¶ 415–419; *US: 20 Years of Immigrant Abuses Under 1996 Laws, Arbitrary Detention, Fast-Track Deportation, Family Separation*, HUM. RTS. WATCH (Apr. 25, 2016), <https://www.hrw.org/news/2016/04/25/us-20-years-immigrant-abuses>.

67. Caitlin Dickerson, *The Secret History of the U.S. Government's Family-Separation Policy*, THE ATLANTIC, Aug. 7, 2022, <https://www.theatlantic.com/magazine/archive/2022/09/trump-administration-family-separation-policy-immigration/670604/>; John Sides, *The*

of the psychological harm to the children and parents resulting from the grievous violations of rights to family life, and rights emanating from the “best interests of the child” standard under both domestic and international law.⁶⁸ Recent litigation has challenged the prevalence of forced labor in immigration detention.⁶⁹ Sexual violence, which often goes unreported, is prevalent.⁷⁰ Throughout the history of immigration detention, immigrants and their advocates have documented and publicized the pervasive and persistent rights abuses committed against individuals held in immigration detention.⁷¹ They have also

Extraordinary Unpopularity of Trump’s Family Separation Policy (In One Graph), WASH. POST, June 19, 2018, <https://www.washingtonpost.com/news/monkey-cage/wp/2018/06/19/the-extraordinary-unpopularity-of-trumps-family-separation-policy-in-one-graph/>.

68. See, e.g., Letter from Colleen A. Kraft, President of the American Academy of Pediatrics, to Kirstjen M. Nielsen, Sec’y of U.S. DHS, (Mar. 1, 2018), <https://downloads.aap.org/DOFA/AAP%20Letter%20to%20DHS%20Secretary%2003-01-18.pdf>; BRITNEY BRINGUEZ ET AL., PHYSICIANS FOR HUMAN RIGHTS, “PART OF MY HEART WAS TORN AWAY”: WHAT THE U.S. GOVERNMENT OWES THE TORTURED SURVIVORS OF FAMILY SEPARATION (2022), <https://phr.org/our-work/resources/part-of-my-heart-was-torn-away/>; WOMEN’S REFUGEE COMMISSION, POLICY BRIEF: UPDATE ON FAMILIES FORCIBLY SEPARATED UNDER THE TRUMP ADMINISTRATION: URGENT SERVICE NEEDS, APPROPRIATE RESTITUTION, AND POLICIES NEEDED TO PREVENT A FUTURE ADMINISTRATION FROM SEPARATING FAMILIES (2022), <https://www.womensrefugeecommission.org/wp-content/uploads/2022/09/Update-on-Families-Forcibly-Separated-under-the-Trump-Administration-Final.pdf>. For a complete timeline of internal government communications pertaining to child separation, see *A Timeline of the Trump Administration’s Family Separation Policy*, AMERICAN OVERSIGHT (last updated Jan. 4, 2023), <https://www.americanoversight.org/a-timeline-of-the-trump-administrations-family-separation-policy>.

69. See Amended Complaint & Demand for Jury Trial at 29–31, *Barrientos et al. v. CoreCivic Inc.*, 2020 U.S. Dist. LEXIS 229939 (M.D. Ga. Oct. 16, 2020), (No. 4:18-cv-00070-CDL); Alexandra F. Levy, *Fact Sheet: Human Trafficking and Forced Labor in For-Profit Detention Facilities*, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE (June 15, 2018), <https://www.business-humanrights.org/en/latest-news/fact-sheet-human-trafficking-forced-labor-in-for-profit-detention-facilities/>; Jonathan Booth, *Ending Forced Labor in ICE Detention Centers: A New Approach*, 34, *GEORGETOWN IMMIG. L.J.*, 574 (2020).

70. S. POVERTY L. CTR., PROJECT S., BLACK ALL. FOR JUST IMMIGR., EL REFUGIO, GA. LATINO ALL. FOR HUM. RTS., ET AL., *Re: Sexual Assault of Detained Immigrants by a Nurse at Stewart Detention Center, a U.S. Department of Homeland Security Immigration Detention Facility Operated by CoreCivic* (July 12, 2022), <https://www.splcenter.org/sites/default/files/stewart-detention-center-nurse-complaint-07-12-2022.pdf> [hereinafter *Stewart Letter*]; Nicole Lue et al., *Trends in Sexual Assault Against Detainees in US Immigration Detention Centers 2018–2022*, 329(4) *JAMA*, 338–339 (2023), <https://jamanetwork.com/journals/jama/fullarticle/2800675>.

71. See, e.g., NPR All Things Considered, *supra* note 17; Patrick Taurel, *Internal Watchdog Finds ICE Violations of Solitary Confinement Policy*, ACLU: NEWS AND COMMENTARY (Oct. 21, 2021), <https://www.aclu.org/news/immigrants-rights/internal-watchdog-finds-ice-violations-of-solitary-confinement-policy>; Complaint from American Immigration Council Detailing Abusive Overuse of Solitary Confinement and Mistreatment that Disproportionately Impacts Persons with Disabilities at the Aurora Contract Detention Facility (Jul. 13, 2023), https://www.americanimmigrationcouncil.org/sites/default/files/research/misuse_of_solitary_confinement_in_colorado_immigration_detention_center_complaint.pdf; Press Release, Organization of American States, IACHR

increasingly sought to demonstrate how women suffer a unique set of rights abuses pertaining to medical neglect and abuse,⁷² while racial discrimination contributes to disproportionate rates of prolonged detention, violence, and abuse committed against Black non-citizens held in detention.⁷³ These reported abuses not only violate ICE's own published detention standards,⁷⁴ they violate well-established principles of international human rights law which the United States is obligated to uphold.⁷⁵ Among those rights are: the right to dignity;⁷⁶ the right to life and well-being;⁷⁷ the right to liberty and security of

Expresses Deep Concern for Deaths and Detention Conditions at Migrant Detention Centers in the United States (Aug. 11, 2017), https://www.oas.org/en/iachr/media_center/PReleases/2017/119.asp; *Systemic Indifference: Dangerous and Substandard Medical Care in US Immigration Detention*, HUMAN RIGHTS WATCH (May 8, 2017), <https://www.hrw.org/news/2017/05/08/us-detention-hazardous-immigrants-health>.

72. NORA ELLMAN, CENTER FOR AMERICAN PROGRESS, IMMIGRATION DETENTION IS DANGEROUS FOR WOMEN'S HEALTH AND RIGHTS (2019), <https://www.americanprogress.org/article/immigration-detention-dangerous-womens-health-rights/>.

73. TIMANTHA GOFF ET AL., BAJI, UNCOVERING THE TRUTH: VIOLENCE AND ABUSE AGAINST BLACK MIGRANTS IN IMMIGRATION DETENTION (2022), <https://baji.org/wp-content/uploads/2022/10/Uncovering-the-Truth.pdf>.

74. See U.S. ICE, 2011 Operations Manual ICE Performance-Based National Detention Standards (last revised Dec. 2016); U.S. ICE, 2008 Operations Manual ICE Performance-Based National Detention Standards (2008). The 2011 PBNDS constitutes the set of standards covering Stewart Detention Center as of the end of fiscal year 2017. U.S. ICE, Progress in Implementing 2011 PBNDS Standards and DHS PREA Requirements at Detention Facilities: Fiscal Year 2017 Report to Congress, (Mar. 19, 2018). Meanwhile, the 2008 PBNDS reflected the standards applicable to Irwin County Detention Center as of the end of fiscal year 2016. U.S. ICE, Progress in Implementing 2011 PBNDS Standards and DHS PREA Requirements at Detention Facilities: Fiscal Year 2016 Report to Congress (Jan. 17, 2017). The 2011 and 2008 PBNDS apply to prisons "solely used for immigration detention." Katy Murdza, *ICE Revises Its Standards for Some Detention Facilities*, IMMIGRATION IMPACT (Dec. 2, 2019), <https://immigrationimpact.com/2019/12/02/ice-updates-detention-standards>. In contrast, the National Detention Standards (NDS) apply to IGSA and U.S. Marshals Service facilities used for immigration plus other types of detention. See also U.S. ICE, 2019 National Detention Standards for Non-Dedicated Facilities (last revised 2019); U.S. ICE, 2000 National Detention Standards for Non-Dedicated Facilities (2000). Notably, Congress had instructed ICE to set the 2011 PBNDS as the standard for all facilities by 2014 for being a more stringent standard than the NDS, though ICE ultimately failed to abide by such instruction. *Fact Sheet: Immigration Detention in the United States*, NATIONAL IMMIGRATION FORUM (2021), https://immigrationforum.org/wp-content/uploads/2021/01/Immigration-Detention-Factsheet_FINAL.pdf.

75. See Lisa Reinsberg and Sarah H. Paoletti, *The U.S. Bears International Responsibility for Forced Sterilization of Women in ICE Detention*, JUST SECURITY, Sep. 29, 2020, <https://www.justsecurity.org/72587/the-u-s-bears-international-responsibility-forced-sterilization-of-women-in-ice-detention/>.

76. International Covenant on Civil and Political Rights, pmbl. and 10(1), Dec. 16, 1966, U.N.T.S. 171.

77. G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination, at 5(e)(iv), Dec. 21, 1965, 660 U.N.T.S. 195; American Declaration of the Rights and Duties of Man, at XI, May 2, 1948 ("Every person has the right to the

person;⁷⁸ the right to be free from arbitrary detention,⁷⁹ and to due process;⁸⁰ the right to seek asylum and to non-refoulement;⁸¹ the right to be free from family interference, and rights associated with the best interests of the child;⁸² and the right to equality and non-discrimination.⁸³ These abuses also reveal a system of immigration enforcement that operates for the purpose of deterrence, where cruelty serves as a means of effectuating the deterrence goals, in clear contravention of international human rights law.⁸⁴

preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”).

78. ICCPR at 9(1), Dec. 16, 1966, U.N.T.S. 171.

79. *Id.*; see also G.A. Res. 217 (III) A, Universal Declaration of Human Rights, at 9 (Dec. 10, 1948).

80. ICCPR at 14, Dec. 16, 1966, U.N.T.S. 171.

81. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, UDHR, at 14 (Dec. 10, 1948); G.A. Res. 39/46, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, at 3.1. (Dec. 10, 1984).

82. ICCPR at 17, Dec. 16, 1966, U.N.T.S. 171; G.A. Res. 217 (III) A, Universal Declaration of Human Rights, UDHR, at 12 (Dec. 10, 1948).

83. ICCPR at 2 and 3, Dec. 16, 1966, U.N.T.S. 171; G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination, at 5, Dec. 21, 1965.

84. See *IACHR 2010 Report*, *supra* note 18. See also U.N. Human Rights Committee, Concluding Observations on the Fifth Periodic Report of the United States of America, at 54–55, Dec. 7, 2023, U.N. Doc. CCPR/C/USA/CO/5 (“The Committee is concerned at reports of the continued detention of migrants as a mandatory measure and for prolonged periods; the lack of adequate access to legal counsel; poor conditions of detention, including overcrowding and inadequate access to food, water and medical care, leading to numerous deaths, including of children; and instances of violence, ill-treatment and abuse, including sexual violence, in public and private migrant detention facilities and the use of prolonged solitary confinement.”) The UNHCR called on the United States to, among other measures, “ensure that immigration detention is used only as a measure of last resort and for the shortest possible period of time, and increase the use of alternatives to detention that are respectful of human rights, including the right to privacy, instead of surveillance-based technological alternatives). See also Press Release, Multiple Mechanisms, UN Human Rights Experts Urge States to Adopt Alternative Measures and Put an End to Detention of Migrants (Dec. 17, 2021), <https://www.ohchr.org/en/press-releases/2021/12/un-human-rights-experts-urge-states-adopt-alternative-measures-and-put-end-0> (“We urge States to immediately cease immigration detention of children, and phase out, and ultimately put an end to this practice for all other migrants”); Inter-American Commission on Human Rights, *Inter-American Principles On the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking*, Resol. 04/19, Principle 69(d) (Dec. 7, 2019), <https://www.oas.org/en/iachr/decisions/pdf/Resolution-4-19-en.pdf> (“Detention must be in places other than those used for detaining persons accused of or convicted of criminal offences, for the shortest period of time possible, in no case indefinite, and subject to periodic re evaluation and judicial review”); Press Release, IACHR Press Office, IACHR Conducted Visit to the United States’ Southern Border, (Sept. 16, 2019) (“stress[ing] that migrating is not a crime” and recommending that the U.S. federal government “[a]dapt national legislation to international standards under which migrating is not a crime” and “[r]atify[] the American Convention on Human Rights, the Convention Relating to the Status of Refugees, the International Convention on the Protection of the Rights of All

While advocates have had limited success in shuttering some immigration detention centers through targeted shut-down campaigns, those successes have been met with rising populations at other detention centers and the opening of new mega-facilities, such as the Moshannon Valley Processing Center in rural Pennsylvania, owned and operated by GEO Corporation.⁸⁵ The opening of the Moshannon Valley Processing Center is part of an overall trend whereby immigration detention is increasingly concentrated in rural and isolated communities, far removed from legal services, access to language-appropriate and culturally-sensitive staffing, as well as medical support and access to public oversight.⁸⁶ Immigrants are then left increasingly reliant on ICE and its own internal oversight mechanisms to ensure that its detention standards are met. But, as detailed in the following Section, and as acknowledged and documented by ICE's own watchdog at the DHS Office of Inspector General, ICE has repeatedly failed to engage in sustained follow-up post-inspections and to effectively utilize its contracting powers to demand improvements from the private prison

Migrant Workers and Members of Their Families, and the Convention on the Rights of the Child”), https://www.oas.org/en/iachr/media_center/PReleases/2019/228.asp. U.S. courts have themselves recognized that deterrence cannot serve as the motivating factor behind immigration detention. *See*, R.I.L-R v. Johnson, 80 F. Supp. 3d 164, 189–91 (D.D.C. 2015) (citing *Kansas v. Crane*, 534 U.S. 407, 412 (2002)). And legal scholars have outlined the reasons why deterrence is not a legitimate basis for immigration detention, even though the U.S. persists in the practice. *See, e.g.*, Maureen A. Sweeney et al., *Detention as Deterrent: Denying Justice to Immigrants and Asylum Seekers*, 39 *GEORGETOWN IMMIGR. L.J.* 291 (2021); Emily Ryo, *Detention as Deterrence*, 71 *STANFORD L. REV.*, 237 (Mar. 2019), <https://review.law.stanford.edu/wp-content/uploads/sites/3/2019/03/71-Stan.-L.-Rev.-Ryo.pdf>.

85. *See* Letter from Det. Watch Network et al. to Pres. Biden and Dep't of Homeland Sec. Sec'y Mayorkas (Oct. 8, 2021), https://www.detentionwatchnetwork.org/sites/default/files/Stop%20ICE%20Expansion%20Org%20Sign%20On_10.8.21.pdf; Vanessa Stine and Erika Guadalupe Núñez, *A Bad Deal: A Proposal in Clearfield County Would Allow Biden Administration to Expand Immigration Detention in PA*, *ACLU PENNSYLVANIA*, Nov. 3, 2021, <https://www.aclupa.org/en/news/bad-deal-proposal-clearfield-county-would-allow-biden-administration-expand-immigration>; Press Release, Hon. Congresswoman Mary Gay Scanlon, Representatives Scanlon and Evans Urge DHS to Halt Expansion of ICE Facilities in Pennsylvania (Dec. 20, 2022), <https://scanlon.house.gov/news/documentsingle.aspx?DocumentID=435>; Press Release, Det. Watch Network, *Two Deaths in ICE Detention One Week into Detention*, (Dec. 13, 2023), <https://www.detentionwatchnetwork.org/pressroom/releases/2023/two-deaths-ice-detention-one-week-december> (reporting on death of thirty-seven year old Cameroonian national, Franklin Okpu, while held in detention at the Moshannon Valley Processing Center, two months following an immigration court order granting him relief from deportation under the Convention Against Torture).

86. *Justice Free Zones*, *supra* note 65.

corporations to whom it outsources detention of immigrants.⁸⁷ These failures have had fatal consequences.⁸⁸

C. Severe Limitations on Domestic Avenues for Redress

DHS has established mechanisms intended to provide oversight of immigration detention. But their effectiveness is hampered by their lack of a meaningful enforcement mandate and effective enforcement tools, insufficient resources and capacity, and lack of political will. The result is a system that fails to ensure accountability and redress to immigrants subjected to rights abuses and family members of those who suffer as a result.

DHS-CRCL and DHS-OIG were both created simultaneously with the creation of the DHS itself, through the passage of the Homeland Security Act of 2002.⁸⁹ DHS OIG's mission is "[t]o provide independent oversight and promote excellence, integrity, and accountability within DHS."⁹⁰ The mission of DHS-CRCL is to "[support] the Department's mission to secure the nation while preserving individual liberty, fairness, and equality under the law."⁹¹ Their missions and roles are complementary, and included among them is the fielding, investigation, and resolution of complaints pertaining to terms and conditions of detention of immigrants held in ICE and CBP custody.⁹² While DHS OIG can and has worked alongside federal prosecutors to criminally prosecute individuals within the DHS system who have violated the law, a review of prosecutions in which DHS OIG has been involved reveals the majority of prosecutions pertain to crimes of fraud and theft from the U.S. government and those that are specific to crimes such as cyberstalking or assault. Prosecutions for crimes—such as assault or criminal negligence—are exceedingly rare. Furthermore, the few prosecutions that do move forward seek to portray the individual actors

87. Testimony of Assistant Inspector General for Special Reviews and Evaluations Diana R. Shaw, before the Committee on Homeland Security – Subcommittee on Oversight, Management, and Accountability, *Oversight of ICE Detention Facilities: Is DHS Doing Enough* (Sept. 26, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/TM/2019/oigtm-asst-ig-special-reviews-evaluations-diana-r-shaw-092619.pdf>.

88. NAT'L IMMIGRANT JUST. CTR., AND DET. WATCH NETWORK, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*, Oct. 2015; *Justice Free Zones*, *supra* note 65.

89. Homeland Security Act of 2002, PUB. L. NO. 107–296, 116 Stat. 2135.

90. *About Us*, U.S. DEP'T OF HOMELAND SEC. OFF. INSPECTOR GEN. (last visited Mar. 8, 2024), <https://www.oig.dhs.gov/about>.

91. *Civil Rights and Civil Liberties*, U.S. DEP'T OF HOMELAND SEC. (last visited Mar. 8, 2024), <https://www.dhs.gov/topics/civil-rights-and-civil-liberties>.

92. Homeland Security Act of 2002, 6 U.S.C. § 345(a); Inspector General Act of 1978, 5a U.S.C. § 81(f).

as “bad apples” within the system, shifting responsibility away from the systems that created the environment in which such “bad apples” are allowed to act, an environment in which crimes and rights abuses persist.⁹³ Calls for more meaningful systemic reform and redress for the crime victims, the immigrants, and their family members, are left unanswered.⁹⁴

The more recently instituted Office of Immigrant Detention Ombudsman (OIDO) has tailored responsibility for oversight specifically of immigration detention and follows the same model of enforcement as DHS-CRCL.⁹⁵ Like DHS-CRCL, OIDO has authority—within its oversight mandate—to conduct detention center inspections and issue findings and recommendations regarding areas of non-compliance and areas of concern.⁹⁶ ICE is then given the opportunity to respond and either concur, partially concur, or reject the recommendations.⁹⁷ At the conclusion of the inspection process, OIDO, like DHS-CRCL, will issue a brief summary report that is publicly available.⁹⁸ Notably, DHS-CRCL published reports to identify only those recommendations accepted by DHS and do not provide a detailed account of its findings.⁹⁹ OIDO also has a mandate to provide assistance and redress to individuals “affected by” rights abuses,¹⁰⁰ a function which is handled through OIDO’s Detention Case Management System.¹⁰¹ In FY2022, according to OIDO’s annual report submitted to Congress in June 2023, OIDO staff addressed over six thousand complaints from across ninety different facilities using mediation “to find the best path to a resolution at the lowest level possible.”¹⁰² The report, however, does not indicate

93. See, e.g., Sarah Hopkins, *The Immigration Detention Grievance System: An Illusion of Justice*, ACLU OF N. CAL., June 26, 2023, <https://www.aclunc.org/blog/immigration-detention-grievance-system-illusion-justice>.

94. See Rashawn Ray, *Bad Apples Come from Rotten Trees in Policing*, BROOKINGS INSTIT., May 30, 2020, <https://www.brookings.edu/articles/bad-apples-come-from-rotten-trees-in-policing/>.

95. Consolidated Appropriations Act of 2019, 6 U.S.C. § 205.

96. *Id.* at § 205(b).

97. *Id.* at § 205(d); “About the Office of the Immigration Detention Ombudsman (OIDO).” U.S. DEPARTMENT OF HOMELAND SECURITY (last updated May 17, 2023), <https://www.dhs.gov/aboutoido>.

98. “The Office of the Immigration Detention Ombudsman’s Inspection Reports.” U.S. DEPARTMENT OF HOMELAND SECURITY (last updated July 24, 2024), <https://www.dhs.gov/publication/oido-inspection-reports>.

99. 6 U.S.C. § 345, Pub. L. 107–296.

100. *Id.* at § 205(b)(5).

101. “DHS/OIDO/PIA-001 Immigration Detention Case Management System.” U.S. DEPARTMENT OF HOMELAND SECURITY (last updated Mar. 31, 2023), <https://www.dhs.gov/publication/dhsoidopia-001-immigration-detention-case-management-system>.

102. *2022 Annual Report*, OFF. IMMIGR. DET. OMBUDSMAN: U.S. DEP’T OF HOMELAND

how OIDO addressed those complaints for which resolution was not reached, nor does it address whether any redress was provided to individuals who endured harm resulting from the underlying complaint. Also absent from the report is any discussion of ongoing oversight aimed at ensuring that underlying violations are not repeated.¹⁰³

As inadequate as the administrative structures are for enforcing the federal government's own standards of detention, they often serve as the only avenue for redress available to immigrants subjected to abuse, given exceedingly narrow avenues for redress available through federal court litigation. While individuals may raise claims of constitutional rights violations through a *Bivens* action,¹⁰⁴ the *Bivens* doctrine works to shield federal officials from responsibility for the misconduct of others sought through a theory of *respondeat superior*.¹⁰⁵ Courts have limited *Bivens* actions to those situations where it is sufficiently demonstrated that the individual agent against whom the complaint has been filed acted with "deliberate indifference" to the "misconduct."¹⁰⁶ The courts' application of this standard in the context of actions taken in the name of immigration enforcement have rendered pursuit of such claims

SEC., ¶¶ 3, 21, <https://www.dhs.gov/sites/default/files/2023-06/2022%20OIDO%20Annual%20Report.pdf>.

103. For an in-depth discussion and analysis of offices such as DHS, Office of Civil Rights and Civil Liberties (CRCL), and Office of Immigrant Detention Ombudsman (OIDO) operating within federal agencies, see Margo Schlanger, *Offices of Goodness: Influence Without Authority in Federal Agencies*, 36 CARDOZO L. REV. 53 (2014).

104. *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

105. See *FDIC v. Meyer*, 510 U.S. 471 (1994) (holding *Bivens* doctrine was intended to deter constitutional violations by individuals officers, not federal agencies); *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) (affirming "vicarious liability is inapplicable to *Bivens*," limiting the legal enforceability of ICE's oversight responsibilities for abuses committed by private contractors).

106. See, e.g., *Barkes v. First Corr. Med., Inc.*, 766 F.3d 307,320 (3d Cir.2014) (explaining that liability in such cases is "imposed not vicariously but based on the [officer's] own misconduct, because to exhibit deliberate indifference to such a situation is a culpable mental state under the Eighth Amendment." (citing *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011)).

nearly futile.¹⁰⁷ Similarly, while the Federal Tort Claims Act (FTCA)¹⁰⁸ provides a limited category of tort claims for which the government may be held liable for violations committed by its employees, numerous exceptions to the claims that can be brought and the redress available apply, which—together with the procedural barriers presented—render efforts to advance FTCA claims as seemingly futile as those brought under *Bivens*.¹⁰⁹

Domestic redress mechanisms—whether administrative complaint processes or federal court litigation—are further limited by practical considerations: they are dependent on individuals having knowledge of and access to the complaint mechanisms that are available primarily in English, and frequently require access to the internet for information and filing. Existing domestic mechanisms further do not account for perhaps the most insurmountable impediment individuals must confront when their rights are being violated—the very real, and well-founded fear of retaliation.

The following Section provides a case study examining the ways in which the federal government and the U.S. legal system have consistently failed to ensure accountability and redress when officials operating under contract with ICE persistently violate the rights of immigrants held in its custody, looking specifically at the abusive conditions of confinement at the Stewart Detention Center and ICDC. It concludes with an exploration of the parallel international human rights advocacy undertaken in response to the U.S. administrative and legal system's failings to rectify the persistence of violations of the right to life, personal security, health, freedom from forced labor, non-discrimination, and equality, due process and equal access to the courts—failings that have contributed to ongoing violations within a system of seeming impunity.

107. In *Hernandez v. Mesa*, 140 U.S. 735 (2020), the Court dismissed a *Bivens* action brought against a Customs and Border Patrol (CBP) officer who shot and killed a fifteen-year-old boy across the border fence, in which the boy's family argued that the officer's actions violated the Fourth and Fifth Amendments of the U.S. Constitution. The Court held that the officer's actions must be understood in the context of foreign relations and border security. The *Hernandez* decision followed the Court's ruling two years earlier in *Ziglar v. Abbasi*, 137 S.Ct. 1843 (2017). See Benjamin C. Zipursky, *Ziglar v. Abbasi and the Decline of the Right to Redress*, 86 *FORDHAM L. REV.* 2167 (2018); William J. Aceves, *Hernandez, Bivens, and the Supreme Court's Expanding Theory of Judicial Abdication*, 119 *MICH. L. REV. ONLINE* 1 (2020).

108. 28 U.S.C. § 1346, § 2671, et seq.

109. See, e.g., *Millbrook v. United States*, 569 U.S. 50, 52 (explaining that federal courts lack jurisdiction if a waiver under the FTCA applies). See also, CONG. RSCH. SERV., *The Federal Tort Claims Act (FTCA): A Legal Overview*, R45732 (updated Apr. 17, 2023), <https://crsreports.congress.gov/product/pdf/R/R45732>.

III. SEEKING ACCOUNTABILITY AND REDRESS FOR ABUSIVE CONFINEMENT AT STEWART AND ICDC: A CASE STUDY OF ENGAGING WITH INTERNATIONAL HUMAN RIGHTS MECHANISMS

A. Immigration Detention in the U.S. State of Georgia

Immigration detention centers in the United States, particularly the U.S. South, are rife with human rights violations. A report in 2016 showed that one out of every six detained immigrants in the United States is held in the Southern states of Louisiana, Georgia, Florida, and Alabama.¹¹⁰ As of January 4, 2024, this number has risen to one out of every four.¹¹¹ Georgia alone is home to one in thirty undocumented migrants nationwide,¹¹² but this figure almost doubles for migrants in ICE custody as this singular state holds roughly one in sixteen detained immigrants relative to all fifty states plus territories.¹¹³ Detained immigrants in the U.S. South face countless violations of their dignity and human rights plus limited options for immigration relief. Georgia is no exception.¹¹⁴

The American Civil Liberties Union (ACLU) of Georgia first documented and presented to the IACHR abuses endemic to Georgia's immigration detention centers based on interviews with detained individuals, their family members, and their immigration attorneys in 2011.¹¹⁵ These human rights violations are similar across ICE prisons: medical neglect and abuse, physical violence and retaliation, physical

110. S. POVERTY L. CTR., *Shadow Prisons: Immigrant Detention in the South*, at 4–5 (2016), https://www.splcenter.org/sites/default/files/leg_ijp_shadow_prisons_immigrant_detention_report.pdf [hereinafter *Shadow Prisons*].

111. TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, *Detention Facilities Average Daily Population* (last visited Aug. 27, 2024), https://trac.syr.edu/immigration/detentionstats/pop_agen_table.html. The proportion represented by these four states was 28% of the nationwide total as of August 5, 2024.

112. BRYAN BAKER AND ROBERT WARREN, U.S. DEPARTMENT OF HOMELAND SECURITY OFFICE OF HOMELAND SECURITY STATISTICS, *ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITED STATES: JANUARY 2018–JANUARY 2022* (2024), https://www.dhs.gov/sites/default/files/2024-05/2024_0418_ohss_estimates-of-the-unauthorized-immigrant-population-residing-in-the-united-states-january-2018%E2%80%93january-2022.pdf.

113. TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, *Detention Facilities Average Daily Population* (last visited Aug. 27, 2024), https://trac.syr.edu/immigration/detentionstats/pop_agen_table.html. The odds are closer to one in fifteen as of August 05, 2024.

114. Lautaro Grinspan, *Immigration Detainments Jump More Than 50 Percent in Georgia*, ATLANTA JOURNAL-CONSTITUTION, June 18, 2024, <https://www.ajc.com/news/georgia-news/immigration-detention-surges-in-georgia-up-50-from-2023/7M36PVEOJ5ENRCZ52BNRKF6L24/>.

115. ACLU, *ACLU of Georgia Submission to the IACHR Regarding Racial Profiling in Gwinnett and Cobb Counties and Conditions of Detention at Stewart and Irwin County Detention Centers* (Mar. 24, 2011), <https://www.aclu.org/documents/aclu-georgia-submission-iachr-regarding-racial-profiling-gwinnett-and-cobb-counties-and>.

and sexual abuse, oppressive use of solitary confinement, inadequate medical care, unhygienic and unsafe conditions, forced labor, and the failure to protect against COVID-19.¹¹⁶ As explained below, these violations have existed since the inception of these prisons and remain unaddressed in any meaningful sense to this day, despite the termination of contracts with three prisons.

Six years later, Project South and the Penn State Law Center for Immigrants' Rights Clinic released a report titled *Imprisoned Justice: Inside Two Georgia Immigration Centers*.¹¹⁷ The report, which focused on Stewart and Irwin and was based on interviews with scores of detained immigrants as well as immigration attorneys, tours of both ICE prisons, and review of contracts and other relevant documents, paints an extensive picture of egregious human rights violations at both Stewart and Irwin, including lack of access to adequate medical and mental healthcare and non-adherence to basic hygiene standards.¹¹⁸

While ICE contracts were terminated with the North Georgia Detention Center (NGDC) in 2013,¹¹⁹ the Atlanta City Detention Center in 2018,¹²⁰ and ICDC in 2021,¹²¹ three ICE prisons across Georgia remain fully operational and have expanded in capacity: Stewart, the Folkston ICE Processing Center (Folkston), and the Robert A. Deyton Detention Facility (Deyton).¹²² After NGDC stopped detaining immigrants, the detained immigrants were transferred to Stewart and ICDC.¹²³ After the Atlanta City Detention Center stopped detaining migrants, detained

116. See, e.g., Maurizio Guerrero, "Torture with impunity runs rampant in ICE facilities"; PRISM, June 15, 2023, <https://prismreports.org/2023/06/15/torture-rampant-ice-facilities/>; EUNICE HYUNHYE CHO AND TESSA WILSON, ACLU, AMERICAN OVERSIGHT, AND PHYSICIANS FOR HUMAN RIGHTS, DEADLY FAILURES: PREVENTABLE DEATHS IN U.S. IMMIGRATION DETENTION (2024), <https://phr.org/wp-content/uploads/2024/06/REPORT-ICE-Deadly-Failures-ACLU-PHR-AO-2024.pdf>.

117. PROJECT S. AND THE PENN STATE L. CTR. IMMIGRANTS' RTS., *Imprisoned Justice: Inside Two Georgia Immigration Detention Centers* (2017), https://projectsouth.org/wp-content/uploads/2017/06/Imprisoned_Justice_Report-1.pdf [hereinafter *Imprisoned Justice*].

118. *Id.*

119. Martha Dalton, *Officials to Close North Georgia Detention Center in Gainesville*, WABE, Dec. 3, 2013, <https://www.wabe.org/officials-close-north-georgia-detention-center-gainesville/>.

120. Geoff Dempsey, *Atlanta Mayor Closes City Jail, Citing Rising Costs*, PATCH, May 28, 2019, <https://patch.com/georgia/atlanta/atlanta-mayor-closes-city-jail-citing-rising-costs>.

121. Ben Fox and Kate Brumback, *US Ends Use of Georgia Immigration Jail Accused of Mistreatment*, FOX5, May 21, 2021, <https://www.fox5atlanta.com/news/irwin-county-immigrants-detention-facility-end>.

122. U.S. ICE, *Detention Facilities* (last updated Mar. 30, 2023), <https://www.ice.gov/detention-facilities>; U.S. ICE, *Robert A. Deyton Detention Facility* (last updated May 23, 2024), <https://www.ice.gov/detain/detention-facilities/robert-deyton-detention-facility>.

123. Dalton, *supra* note 119.

immigrants were transferred to Dayton.¹²⁴ After ICDC stopped detaining immigrants, detained immigrants were transferred to Stewart.¹²⁵ In February 2022, plans were announced for a massive expansion of Folkston, with reports indicating that it could ultimately quadruple in size and surpass Stewart (currently the second-largest detention center in the country), despite persistent reports of abuse at the GEO Corporation owned and operated prison.¹²⁶

1. The Stewart Detention Center: Among the Deadliest of Immigration Detention Centers, Owned and Operated by One of the Three Largest Contractors with DHS for Immigration Detention

While the Stewart Detention Center is categorized as a medium-security immigration detention center located on the outskirts of Lumpkin, Stewart County, Georgia, its remote, rural location, two rows of large, barbed wire fencing surrounding it, and levels of security that exceed most federal prisons defy any notions of civil detention.¹²⁷

The Stewart Detention Center is not unique for its “rural, isolated location and lack of resources.”¹²⁸ Stewart County is located on Lower Creek people territory, and the Stewart Detention Center arose following a long history of racialized violence by white settlers beginning with the removal of Native peoples from their lands.¹²⁹ Starting in the 1820s, over twenty-three thousand Muscogee Creek people were forcibly displaced from southwest Georgia and Alabama.¹³⁰ There were also enslaved Black people in Georgia since the mid-1700s.¹³¹

124. Jeremy Redmon, *ICE Holding Detainees in Clayton Prison After Atlanta Turned Them Away*, ATLANTA JOURNAL-CONSTITUTION, Oct. 30, 2018, <https://www.ajc.com/news/state—regional-govt—politics/ice-holding-detainees-clayton-prison-after-atlanta-turned-them-away/QN3BqK4AofVTNAwMhgciPN>.

125. *Det. Watch Press Release*, *supra* note 54.

126. Jeremy Redmon and Lautaro Grinspan, *Exclusive: Ga. Immigration Facility to Become One of Nation's Largest*, THE ATLANTA JOURNAL-CONSTITUTION, Feb. 4, 2022, <https://www.ajc.com/news/exclusive-south-georgia-immigration-detention-complex-aims-to-expand/QN5G2BFOPREQHEBDOPPAX2PSVI>.

127. David Goldman and Kate Brumback, *In Tiny Georgia Town Where Immigration Detainees Outnumber Residents, Network Tries To Help*, WABE, Jan. 16, 2020, <https://www.wabe.org/in-tiny-georgia-town-where-immigration-detainees-outnumber-residents-network-tries-to-help>.

128. Quinn Ouellette-Kray, *Clearing and Cultivating Carceral Space: A Historical Geography of Stewart Detention Center of Stewart Detention Center 9* (May 14, 2021) (M.A. thesis, Georgia State University) (ScholarWorks), <https://doi.org/10.57709/21006218>.

129. *Id.* at 27–31.

130. *Id.* at 24.

131. Betty Wood, *Slavery in Colonial Georgia*, NEW GEORGIA ENCYCLOPEDIA, (last modified July 27, 2021), <https://www.georgiaencyclopedia.org/articles/history-archaeology/>

Lumpkin itself developed in the 1800s due to chattel slavery and the plantation economy.¹³² The area was one of Georgia's largest counties and largest cotton producers.¹³³ This history of enslavement and excessive degradation of the local soil provides important context for understanding the outsized role the Stewart Detention Center—a privatized, for-profit, large-scale immigrant detention center, with an official capacity of approximately two thousand detained immigrants—plays in the county's economy.¹³⁴ In 2011, the City of Lumpkin reported that Stewart was “ranked as the largest and busiest” immigration detention center in the country.¹³⁵ By 2020, the number of detained immigrants outnumbered the residents of Lumpkin.¹³⁶

The county initiated plans to turn the building into an immigrant detention center in 2004, but those plans were not realized until 2006 when the private prison corporation CoreCivic (known at the time as Corrections Corporation of America, or CCA) partnered with DHS-ICE.¹³⁷ In June 2006, Stewart County signed an Intergovernmental Service Agreement (IGSA) for the operation of Stewart for the detention of immigrants held in ICE custody.¹³⁸ The initial contract term was effective through December 31, 2011, with allowance for renewal. The county and CCA completed construction and began operating the space for immigrant detention starting in 2006.¹³⁹ The prison was operated by CCA beginning in 2012 until 2019 when CCA rebranded as CoreCivic.

slavery-in-colonial-georgia.

132. “History of Lumpkin.” CITY OF LUMPKIN, GA., <https://cityoflumpkin.org/history/>.

133. Matthew M. Moye, *Stewart County*, NEW GEORGIA ENCYCLOPEDIA, (last modified July 9, 2022), <https://www.georgiaencyclopedia.org/articles/counties-cities-neighborhoods/stewart-county>.

134. Maddy Long, *The Stewart Detention Center*, STATES OF INCARCERATION, <https://statesofincarceration.org/story/stewart-detention-center>.

135. CITY OF LUMPKIN, *supra* note 132.

136. Goldman and Brumback, *supra* note 127.

137. *Corrections Corporation of America Announces Agreement with Stewart County, Georgia to House Detainees from U.S. Immigration and Customs Enforcement*, CORECIVIC, July 5, 2006, <https://ir.corecivic.com/news-releases/news-release-details/corrections-corporation-america-announces-agreement-stewart>.

138. U.S. ICE AND STEWART CNTY., *Intergovernmental Service Agreement (IGSA)* (Jun. 30, 2006), <https://www.ice.gov/doclib/foia/isa/stewartcountyga.pdf>. See also U.S. ICE, *Amendment of Solicitation and Modification of Contract*, https://www.ice.gov/doclib/foia/isa/r_droigsa060005orderhscedm08fig010stewartcountygamodification4.pdf; U.S. ICE, *Amendment of Solicitation and Modification of Contract*, https://www.ice.gov/doclib/foia/isa/r_droigsa060003orderhsceop06fig00008stewartcountygaaosofmodification5.pdf.; *Corrections Corporation of America Announces Agreement with Stewart County, Georgia to House Detained immigrants from U.S. Immigration and Customs Enforcement*, CORECIVIC, Jul. 5, 2006, <http://ir.corecivic.com/news-releases/news-release-details/corrections-corporation-america-announces-agreement-stewart>.

139. Catherine E. Sholchet, *In One of America's Poorest Places, Detaining Immigrants*

Stewart has been referred to as the “black hole of the immigration detention network” given the indefinite detention of immigrants held there.¹⁴⁰ Many immigrants held at Stewart are there for months at a time, some for longer than a year, with no set date for release or deportation.¹⁴¹ The recourse available to them during this period of prolonged detention is limited. Denial of access to accurate and complete procedural information compounded by the prison’s geographic isolation and often inoperative and compromised telecommunications devices that leave immigrants far removed from and inhibited from accessing potential pro bono and legal aid providers further restrict recourse.¹⁴² The Stewart Immigration Court—housed within the detention center—has among the highest rates of ordered deportations in the country.¹⁴³ The Transactional Records Access Clearinghouse (TRAC) project at Syracuse University’s data on the outcomes of deportation proceedings at the Stewart Immigration Court¹⁴⁴ shows that between fiscal years 2017 and 2022, immigration judges in Lumpkin denied 88.5% of asylum applications compared to the national average of 63.3%.¹⁴⁵

The Stewart Detention Center has an extensively documented history of abuse, medical neglect, and human rights violations.¹⁴⁶

is a Big Business, CNN, Aug. 2018, <https://edition.cnn.com/interactive/2018/08/us/ice-detention-stewart-georgia/>.

140. Christie Thompson, *Welcome to Stewart Detention Center, the Black Hole of America’s Immigration System*, VICE, Dec. 12, 2016, <https://www.vice.com/en/article/welcome-to-stewart-detention-center-the-black-hole-of-the-immigration-system/>.

141. *Ibid.*

142. *Ibid.*; see *Testimony From Stewart Underscores Ongoing Abuse*, PROJECT SOUTH, (Oct. 28, 2019), <https://projectsouth.org/stewart-detention-center-underscores-ongoing-abuse-and-racist-judge/>. Immigration “[Judge Dan] Trimble has turned down 95 percent of those seeking asylum from fiscal year 2011 to 2016.” See also Jeremy Redmon, *Georgia’s Immigration Court Judges Among Toughest in Nation for Asylum*, ATLANTA JOURNAL-CONSTITUTION, July 25, 2019, <https://www.ajc.com/news/breaking-news/georgia-immigration-court-judges-among-toughest-nation-for-asylum/svQ2CmRGXS5Hgi2utVTmrO/>.

143. *Imprisoned Justice*, *supra* at 117; B. Shaw Drake, *Asylum Seekers and Immigrants Detained in Georgia Face Insurmountable Hurdles to Asylum, Release, and Counsel*, HUFFINGTON POST, Aug. 17, 2016, https://www.huffpost.com/entry/asylum-seekers-and-immigr_b_11529124.

144. TRAC IMMIGR. PROJECT, *Outcomes of Deportation Proceedings in Immigration Court*, https://trac.syr.edu/phptools/immigration/court_backlog/deport_outcome_charge.php.

145. TRAC IMMIGR. PROJECT, *Judge-by-Judge Asylum Decisions in Immigration Courts: FY 2017–2022*, <https://trac.syr.edu/immigration/reports/judge2022/>. In sum, immigration judges in Lumpkin authored 1,922 asylum decisions and denied 1,701, whereas the national total over the same time frame reflected 250,002 asylum decisions with 158,219 denials.

146. Azadeh Shahshahani & Priyanka Bhatt, *ICE Shut Down One Gruesome Detention Center—Then Transferred Immigrants to Another*, PROGRESSIVE MAG., June 18, 2021, <https://progressive.org/latest/ice-gruesome-detention-center-bhatt-shahshahani-210618/> (“For the

Documents show a myriad of abuses at Stewart,¹⁴⁷ including inadequate and limited access to mental and medical healthcare;¹⁴⁸ punitive use of solitary confinement and physical force against detained immigrants;¹⁴⁹ unsanitary and unsafe conditions and services; medical abuse and neglect; and forced labor.¹⁵⁰

These abuses persist despite a long history of targeted advocacy led by and engaged in partnership with and on behalf of individuals detained at Stewart.¹⁵¹ This advocacy reached new heights in March 2020, when nearly 350 detained immigrants at Stewart went on hunger strike over inadequate health and safety precautions against COVID-19, demanding to be released.¹⁵² In a glaring double standard evidencing the dehumanization of detained persons, the prison disallowed family visitation as part of public health restrictions but frequently took individuals to the Atlanta Airport for deportation flights, even though countries of origin were not accepting foreign travelers, leading to the routine return of detained immigrants back to Stewart.¹⁵³ In response, ICE denied that a hunger strike was taking place and threatened to revoke detained migrants' phone privileges.¹⁵⁴ The first COVID-19 case at Stewart was reported on March 31, 2020, soon followed by a second positive case.¹⁵⁵ Over three years later, Stewart continues to be

last decade, advocates have raised red flags about human rights abuses occurring inside Stewart. Among them: a lack of medical care and mental health care, forced labor, arbitrary use of solitary confinement, unsanitary conditions, and the use of force against the detained population.”)

147. See generally *Imprisoned Justice*, supra note 117 at 26–39; *Shadow Prisons*, supra note 110.

148. Spencer Woodman and José Olivares, *Immigrant Detainee Called ICE Help Line Before Killing Himself in Isolation Cell*, INTERCEPT, Oct. 8, 2018, <https://theintercept.com/2018/10/08/ice-detention-suicide-solitary-confinement/>.

149. Gaby Del Valle and José Olivares, *Immigrants at Privately Run ICE Detention Center Were Thrown Out of Wheelchairs When They Asked for Medical Help*, INTERCEPT, July 24, 2020, <https://theintercept.com/2020/07/23/ice-guards-excessive-force-sick-immigrants/>.

150. Complaint, *Barrientos v. CoreCivic Inc.*, 332 F.Supp.3d 1305, No. 4:18-CV-70, (M.D. Ga. 2018), <https://projectsouth.org/wp-content/uploads/2018/04/Complaint-Barrientos-v-Core-Civic.pdf> (Complaint filed by Project South and others against CoreCivic regarding forced labor of detained immigrants).

151. See DET. WATCH NETWORK, STEWART DETENTION CENTER: EXPOSE & CLOSE, (2012), <http://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20Expose%20and%20Close%20Stewart.pdf> [hereinafter *Expose & Close*].

152. Carly Berlin, “*We Don’t Want to Die Here.*” *Detained Immigrants Protest Amid Pandemic*, SCALAWAG MAG., Apr. 6, 2020, <https://scalawagmagazine.org/2020/04/ice-centers-coronavirus/>.

153. *Id.*

154. *Id.*

155. *Id.* See also Andy Miller, *Stewart County Becomes COVID-19 Hotspot as Cases Rise at Detention Center*, GPB NEWS, June 22, 2021, <https://www.gpb.org/news/2021/06/22/stewart-county-becomes-covid-19-hot-spot-cases-rise-at-detention-center>.

a deadly place for immigrants. The latest death in ICE custody was that of 44-year-old Liberian national Cambric Dennis on May 21, 2024, at Stewart—the tenth reported death at Stewart since 2017.¹⁵⁶ There have been a total of twelve migrant deaths at Stewart.¹⁵⁷

In January 2021, ICE began transferring female detained migrants to Stewart in response to the termination of ICE’s contract with ICDC,¹⁵⁸ ending the policy of men-only detention that had been in place since 2008.¹⁵⁹ Following this change in policy, nearly twenty sexual assault allegations were made between May 2021 and May 2022.¹⁶⁰ In July 2022, four women detained at Stewart filed a complaint with DHS-CRCL alleging sexual assault and harassment by a male nurse.¹⁶¹ To date, the DHS-CRCL has yet to issue a public response regarding these complaints.

2. Irwin County Detention Center: A History of Abuse Culminating in Reports of Non-consensual, Invasive Gynecological Procedures, with No Meaningful Accountability or Redress

ICDC is located in rural Ocilla, Georgia, approximately three hours from Atlanta.¹⁶² Like the City of Lumpkin, Ocilla had focused

156. *Detainee Death Report: ROSALES-Vargas, Salvador*, U.S. ICE (Apr. 4, 2023), <https://www.ice.gov/doclib/foia/reports/ddrROSALES-VargasSalvador.pdf>;

SPLC Statement on Latest Death at Stewart Detention Center, S. POVERTY L. CTR. (Apr. 7, 2023), <https://www.splcenter.org/presscenter/splc-statement-latest-death-stewart-detention-center>; Another migrant dies in Georgia ICE detention, second in 2024, ATLANTA JOURNAL CONSTITUTION, May 29, 2024,

<https://www.ajc.com/news/georgia-news/another-migrant-dies-in-georgia-ice-detention-second-in-2024/FYPUXRNYGBH5NMO4V2QX6X2M2A/>.

157. *Death of Salvador Vargas (61) Enrages Community, Elicits Immediate Government Action to Close Fatal Prisons in ICE Detention System*, DET. WATCH NETWORK, Apr. 7, 2023, <https://www.detentionwatchnetwork.org/pressroom/releases/2023/death-salvador-vargas-61-enrages-community-elicits-immediate-government>; Another migrant dies in Georgia ICE detention, second in 2024, ATLANTA JOURNAL CONSTITUTION, May 29, 2024,

<https://www.ajc.com/news/georgia-news/another-migrant-dies-in-georgia-ice-detention-second-in-2024/FYPUXRNYGBH5NMO4V2QX6X2M2A/>.

158. Tina Vasquez, *ICE Ordered to End Contract with Facility Where Detained Women Were Sterilized*, PRISM, May 20, 2021, <https://prismreports.org/2021/05/20/ice-ordered-to-end-contract-with-facility-where-detained-women-were-sterilized/>.

159. Tina Vasquez, *ICE is Now Detaining Women at One of the Nation’s Most Deadly Facilities*, PRISM, Feb. 2, 2021, <https://prismreports.org/2021/02/02/ice-now-detaining-women-at-one-of-nations-most-deadly-facilities/>.

160. José Olivares and John Washington, *ICE Jail Nurse Sexually Assaulted Migrant Women, Complaint Letter Says*, INTERCEPT, Jul. 14, 2022, <https://theintercept.com/2022/07/13/ice-stewart-detention-sexual-misconduct/>.

161. *Id.*; see also *Stewart Letter*, *supra* note 70.

162. JAMEEL MANJI, *Irwin County Detention Center*, (published Nov. 8, 2018, last updated June 14, 2019), <https://manjilaw.com/irwin-county-detention-center/>.

its economy on immigrant detention. The prison opened in January 1991, originally as a U.S. Marshals Service detention center and then as a youth boot camp, before the county started imprisoning detained migrants in an attempt to solve their financial debt under the advice of the president of the Ocilla-Irwin Chamber of Commerce.¹⁶³

In 2007, Irwin County contracted with ICE to hold immigrants at the facility.¹⁶⁴ ICDC's current owner and operator, LaSalle Corrections, took over in 2013 after the prior owners, Municipal Corrections LLC, and Detention Management LLC, went into bankruptcy proceedings, ostensibly because they failed to detain enough migrants to produce sufficient revenue to pay back the tax-exempt bonds they received from the County.¹⁶⁵ CCA was the largest bidder at auction but had not committed to keeping ICDC open.¹⁶⁶ Irwin County rejected their bid due to Irwin County officials' fears that CCA would find it in its economic interest to shut down the facility and transfer the persons detained therein to its prisons in other counties, taking away the third largest employer in the county at the time.¹⁶⁷ ICDC operated with a capacity of approximately one thousand detained immigrants in ICE custody,¹⁶⁸ with the initial influx of immigrants being women relocated from the Etowah County Detention Center in Gadsden, Alabama, following targeted public outrage and advocacy pertaining to abuses at that prison.¹⁶⁹

In 2017, the ICE Office of Detention Oversight (ICE-ODO) conducted a compliance inspection of ICDC, during which it interviewed thirty-nine detained immigrants and found that the facility maintained a "high standard of facility sanitation and general cleanliness."¹⁷⁰

163. *Shadow Prisons*, *supra* note 110 at 36. See also *Private Detention Facility Forced into Bankruptcy, Sold at Auction*, PRISON LEGAL NEWS, Oct. 15, 2013, <https://www.prisonlegalnews.org/news/2013/oct/15/private-detention-facility-forced-into-bankruptcy-sold-at-auction>; Jeremy Redmon, *ICE Detention Center Struggling Financially*, ATLANTA JOURNAL-CONSTITUTION, Apr. 23, 2012, <https://www.ajc.com/news/local/ice-detention-center-struggling-financially/tYQJiGzYHNPJEEeM4wY97N/>.

164. U.S. MARSHALS SERV. AND IRWIN CNTY. DET. CTR., *Intergovernmental Agreement for ICDC to House ICE Federal Detained Immigrants* (July 25, 2007), <https://www.documentcloud.org/documents/1672364-irwin-county-igsa-contract.html>; *Shadow Prisons*, *supra* note 110 at 23.

165. LASALLE CORRECTIONS, *Irwin County Detention Center*, <https://web.archive.org/web/20240304135554/ShadowPrisons>, *supra* note 110 at 22–23.

166. *Prison Legal News*, *supra* note 163.

167. *Id.*

168. LASALLE CORRECTIONS, *supra* note 165 (capacity of 1,201 individuals); *Imprisoned Justice*, *supra* note 117 at 40.

169. Hannah Rappeleye and Lisa Riordan Seville, *How One Georgia Town Gambled Its Future on Immigration Detention*, NATION, Apr. 10, 2012, <https://www.thenation.com/article/archive/how-one-georgia-town-gambled-its-future-immigration-detention/>.

170. U.S. ICE, *Compliance Inspection of the Irwin County Detention Center* (Mar.

ICE-ODO also reported that “none of the detained immigrants made allegations of mistreatment, abuse, or discrimination.”¹⁷¹ However, detained immigrants repeatedly shared stories of lack of access to legal materials and mail; unhygienic and overcrowded facilities; limited access to medical and mental health care; overuse of segregation, discrimination, and threats of physical force; and inadequate and unsafe food.¹⁷² The discrepancy between ICE’s narrative and the detained immigrants’ experiences is one seen as well when comparing ODO reports from its investigations at Stewart to published memoranda submitted to ICE leadership by CRCL about pending complaints, calling into question the credibility of ICE’s own internal investigations.

In May 2021, after years of sustained advocacy by groups on the ground, including a petition with thousands of signatures and repeated calls on Congress to investigate,¹⁷³ DHS Secretary Alejandro N. Mayorkas ordered that the contract with ICE for detention of migrants at ICDC be terminated.¹⁷⁴ To date, Mayorkas has overseen the termination of five such contracts, the other three involving the Carlos Carreiro Immigration Detention Center in Massachusetts,¹⁷⁵ the Yuba County Jail in California,¹⁷⁶ the Berks County Residential Center in

2017), <https://www.ice.gov/doclib/foia/odo-compliance-inspections/2017IrwinCountyGA.pdf>.

171. *Id.*

172. *Shadow Prisons*, *supra* note 110 at 21–26; *Imprisoned Justice*, *supra* 117 at 40–53.

173. ACTION NETWORK, *Sign the Petition: Shut Down the Irwin County Detention Center!*,

<https://actionnetwork.org/petitions/sign-the-petition-demand-the-shut-down-irwin-county-detention-center>. See, e.g., Letter from Project South to the Members of the Georgia Delegation to the 116th United States Congress (Mar. 31, 2020), <https://projectsouth.org/wp-content/uploads/2020/04/Congressional-Letter-Requesting-the-Immediate-Release-of-Immigrants-in-ICE-custody-in-Georgia.pdf> [hereinafter *March Georgia Delegation Letter*]; Letter from Project South to the Members of the Georgia Delegation to the 116th United States Congress (Oct. 17, 2019), <https://projectsouth.org/wp-content/uploads/2019/10/10.172019-Letter-to-Georgia-Congressional-Delegates-.pdf> [hereinafter *October Georgia Delegation Letter*]; Letter from Project South to U.S. Congressman Sanford D. Bishop Jr. (June 25, 2019), <https://projectsouth.org/wp-content/uploads/2019/06/Letter-to-Representative-Bishop-Regarding-Detention-of-Children-at-Fort-Benning-.pdf>; Letter from Project South to the Members of the Georgia Delegation to the 115th United States Congress (Nov. 21, 2017), <https://projectsouth.org/wp-content/uploads/2017/11/Letter-to-Congress-Georgia-Detention-Centers.pdf> [hereinafter *November Georgia Delegation Letter*].

174. *ICE to Close Two Detention Centers*, U.S. DEP’T OF HOMELAND SEC., May 20, 2021, <https://www.dhs.gov/news/2021/05/20/ice-close-two-detention-centers>.

175. *Id.*

176. Tyche Hendricks, ‘Waste of Federal Funds’: ICE Ends Contract With Northern California Jail After Years of Outrage Over Conditions, KQED, Dec. 9, 2022, <https://www.kqed.org/news/11934879/waste-of-federal-funds-ice-ends-contract-with-norcal-jail-after-years-of-outrage-over-conditions>.

Pennsylvania,¹⁷⁷ and most recently, the South Texas Family Residential Center in Dilley, Texas.¹⁷⁸ This low number stands in stark contrast to the calls by the Detention Watch Network and partners for the closure of a number of ICE prisons¹⁷⁹ as well as the ACLU in 2021 for the closure of thirty-nine facilities it identified as having been opened improperly, as being too remote to guarantee legal and medical support, or as having suffered “egregious patterns of inhumane treatment or conditions.”¹⁸⁰ Reportedly, at least five anonymous senior immigration officials conducted a review in 2021 of over twenty ICE detention facilities and advised Mayorkas to close several of them, but Mayorkas declined in order to “preserve detention beds and [avoid] backlash in counties that benefited economically from the detention centers.”¹⁸¹

ICE’s decision to terminate its contract with ICDC followed in response to a whistleblower complaint filed by Project South and grassroots groups in September 2020.¹⁸² The complaint triggered massive national and international outcry and led to a Congressional visit to Irwin in the fall of 2020 as well as a Congressional investigation that culminated in an extensive U.S. Senate report and U.S. Senate hearing.¹⁸³ A class action lawsuit was also filed on behalf of the survivors by Project South and partners which remains pending.¹⁸⁴

177. *Federal government to End Contract with Berks County Residential Center Jan 31*, BERKS WKLY. (Nov. 30, 2022), <https://berksweekly.com/news/federal-government-to-end-contract-with-berks-county-residential-center-jan-31/>.

178. *ICE Announces Ongoing Work to Optimize Enforcement Resources*, U.S. DEP’T OF HOMELAND SEC. (June 10, 2024), <https://www.ice.gov/news/releases/ice-announces-ongoing-work-optimize-enforcement-resources>.

179. See, e.g. Ghandehari et al., *supra* note 49; *Expose & Close*, *supra* note 151.

180. *Letter from Ronald Newman, ACLU Nat’l Pol. Dir., to the Honorable Alejandro Mayorkas*, U.S. DEP’T. HOMELAND SEC. (Apr. 28, 2021) (announcing the planned closure of ICE Det. Facilities in May 2021).

181. Ted Hesson et al., *Biden Vowed to Reform Immigration Detention. Instead, Private Prisons Benefited*, REUTERS, Aug. 7, 2023, <https://www.reuters.com/world/us/biden-vowed-reform-immigration-detention-instead-private-prisons-benefited-2023-08-07>.

182. *Cuffari Letter*, *supra* note 2; *Det. Watch Press Release*, *supra* note 54; Molly O’Toole, *ICE to Close Georgia Detention Center Where Immigrant Women Alleged Medical Abuse*, L.A. TIMES, May 20, 2021, <https://www.latimes.com/politics/story/2021-05-20/ice-irwin-detention-center-georgia-immigrant-women-alleged-abuse>.

183. *Cuffari Letter*, *supra* note 2; CONG. HISP. CAUCUS, *Congressional Hispanic Caucus Statement on Investigation of Irwin County Detention Center* (Sept. 26, 2020), <https://chc.house.gov/media-center/press-releases/congressional-hispanic-caucus-statement-on-investigation-of-irwin-county>; STAFF OF S. COMM. ON HOMELAND SEC. AND GOVERNMENTAL AFFS. PERMANENT SUBCOMM. ON INVESTIGATIONS, 117TH CONG., S. HRG. 117-537, REP. ON MED. MISTREATMENT OF WOMEN IN ICE DET., Comm. Print (Nov. 15, 2022), <https://www.hsgac.senate.gov/wp-content/uploads/CHRG-117shrg50238.pdf>; *Medical Mistreatment*, *supra* note 4.

184. C.R. LITIG. CLEARINGHOUSE, *Oldaker v. Giles* 7:20-cv-00224 | U.S. M.D. Ga. (Feb. 29, 2024), <https://clearinghouse.net/case/18118/>.

ICE began by relocating all women out of Irwin by the end of April 2021, and with the termination of the ICE contract, all detained immigrants in ICE custody were ultimately relocated out of the facility.¹⁸⁵ While LaSalle Corrections lost one contract with ICE, it continues to profit from ICE detention contracts at its detention centers across the country.¹⁸⁶

- B. Persistent Advocacy Aimed at Achieving Recognition of and Accountability for Rights Violations Carried Out with Seeming Impunity at Stewart and ICDC
1. Documentation of Rights Abuses and Efforts to Compel Congressional Action

Advocates have been monitoring conditions at Stewart and Irwin detention centers for years.¹⁸⁷ Project South is part of a coalition including Georgia Detention Watch, Georgia Latino Alliance for Human Rights, Alterna, and El Refugio to expose human rights abuses at the prisons.¹⁸⁸ They, alongside regional and national human rights organizations, have published several reports based on interviews with hundreds of detained immigrants, shedding light on the immigrants' experiences and demanding that these prisons be shut down.¹⁸⁹

More than a decade ago, in May 2012, the ACLU of Georgia released *Prisoners of Profit: Immigrants and Detention in Georgia*, reporting on the conditions at Stewart and Irwin, such as indefinite detention without justification with limited access to legal representation and immigration relief, an inhumane living environment, involuntary labor at subminimum wages, an inability to carry out religious practices, and retaliation for making complaints or grievances about these oppressive conditions.¹⁹⁰ Four years later, in response to repeated reports of

185. Ana Popovich, *DHS OIG Releases Report on Conduct at Irwin County Detention Center, Target of Whistleblower Complaints in 2020*, WHISTLEBLOWER NETWORK NEWS, Jan. 13, 2022, <https://whistleblowersblog.org/government-whistleblowers/dhs-oig-releases-report-on-conduct-at-irwin-county-detention-center-target-of-whistleblower-complaints-in-2020/>.

186. *Our Locations*, LASALLE CORR., <https://lasallemcorrections.com/locations/> (owning and operating 18 facilities in Louisiana, Texas, and Arizona).

187. See *infra*, footnote 147.

188. *Legal & Advocacy Work*, PROJECT SOUTH, <https://projectsouth.org/legal-advocacy-work-2/>.

189. See, e.g., PRIYANKA BHATT ET AL., PROJECT SOUTH & GA. DET. WATCH, *INSIDE ATLANTA'S IMMIGRANT CAGES: A REPORT ON THE CONDITIONS OF THE ATLANTA CITY DETENTION CENTER* (2018), https://projectsouth.org/wp-content/uploads/2018/08/InsideATL_Imm_Cages_92_DIG.pdf; *Imprisoned Justice*, *supra* note 117.

190. Azadeh Shahshahani, *Prisoners of Profit: Immigrants and Detention*

abusive conditions of detention, the Southern Poverty Law Center, the National Immigration Project of the National Lawyers Guild, and the Adelante Alabama Worker Center came together to issue a report, *Shadow Prisons: Immigrant Detention in the South*. It dedicated two sections to Stewart and ICDC, covering the deprivation of detained persons from legal materials and personal mail, grave breaches of due process standards, deplorable mental and medical health conditions, wanton use of administrative segregation for disciplinary and transfer purposes, provision of food and water unfit for human consumption, unresponsive complaint processes, and other failures to honor detained individuals' basic human rights at both prisons.¹⁹¹ And, as noted above, Project South, along with the Pennsylvania State University Law School's Center for Immigrants' Rights Clinic, published a report in May 2017 titled *Imprisoned Justice: Inside Two Georgia Immigrant Detention Centers* on conditions at Stewart and Irwin, detailing recommendations for ICE to comply with federal law and constitutional principles and for termination of contracts at both Stewart and Irwin.¹⁹²

In addition to documenting and reporting rights abuses occurring behind the barbed wire fences at Stewart and ICDC, advocates repeatedly sought to engage members of Congress and the U.S. Civil Rights Commission in the fight for recognition of the fundamental rights of immigrants held at those prisons. On March 21, 2014, the ACLU of Georgia and various stakeholders urged the Georgia congressional delegation to investigate the conditions at Stewart and Irwin and take appropriate measures.¹⁹³ Project South has since engaged in consistent and sustained advocacy with Congressional delegations.¹⁹⁴ On November 21, 2017, Project South sent a letter to members of the 115th Georgia Delegation of the U.S. Congress to investigate Stewart and Irwin, highlighting the inhumane conditions at Stewart leading to the death of 27-year-old Jean Carlos Jiménez-Joseph and other devastating outcomes for detained migrants.¹⁹⁵ On May 13, 2019, Project South

in Georgia, ACLU (May 30, 2012), <https://www.aclu.org/news/smart-justice/prisoners-profit-immigrants-and-detention-georgia>.

191. *Shadow Prisons*, *supra* note 110 at 37.

192. *See infra*, footnote 173.

193. *November Georgia Delegation Letter*, *supra* note 173 (citing the report the ACLU and twenty-three other civil society groups submitted to the Georgia Congressional delegation on March 21, 2014, calling for "an investigation into the conditions at Stewart and Irwin Detention Center").

194. *See* Eva Fedderly, *Groups Ask Congress to Intervene in Immigration Detention Facility Conditions*, COURTHOUSE NEWS SERVICE, Nov. 22, 2017, <https://www.courthousenews.com/groups-ask-congress-to-intervene-in-immigration-detention-facility-conditions/>.

195. *November Georgia Delegation Letter*, *supra* note 173.

sent a letter to the U.S. Commission on Civil Rights regarding conditions at Stewart and Irwin and advocated for an investigation.¹⁹⁶ This was followed later that same year by a letter sent by Project South on October 17, 2019, to the 116th Georgia Delegation urging an investigation into the Stewart Detention Center given the deaths after May 2017 of Pedro Arriago-Santoya and three other persons detained at Stewart and the still unaddressed structural failures that resulted in these losses.¹⁹⁷ And, on March 31, 2020, shortly after the federal government declared a state of emergency due to the COVID-19 pandemic, Project South sent a letter to the 116th Georgia Delegation requesting the immediate release of immigrants in ICE custody within the state in light of the dangers posed to the health of those in detention.¹⁹⁸ The request called attention to the serious risk of an outbreak and the lack of care taken by the prisons to prevent infection, noting the pervasive unsanitary living conditions, lack of access to medical care, the withholding of COVID-related information, reckless transfers to other facilities, and ICE's failed attempts at deportations.¹⁹⁹

Just over two years later, on July 27, 2022, soon after the complaint about sexual assault of immigrant women by a nurse at Stewart Detention Center was filed,²⁰⁰ Project South sent a letter to the 117th Georgia Delegation advocating for Congress to defund ICE as a way to stop the persistent injustices at Stewart and other detention centers.²⁰¹ In its letter, Project South argues the history of abuse at Stewart is far from unique, but instead is the norm within the federal immigration detention scheme.²⁰² The letter highlights the repeated pattern of neglect by the very same internal mechanisms whose assigned task is to prevent such abuses from happening in the first place, to stop ongoing abuses, and to hold to account the perpetrators of past abuses.²⁰³ Specifically, it references complaints filed with DHS-OIG and DHS-CRCL, while then noting the ongoing and persistent documented human rights abuses at Stewart. It also notes CoreCivic's record of lying to reporters about

196. Letter from Project South to United States Commission on Civil Rights (May 13, 2019), <https://projectsouth.org/wp-content/uploads/2019/05/Comment-to-U.S.-Commission-on-Civil-Rights-Georgia-Detention-Centers.pdf>.

197. *October Georgia Delegation Letter*, *supra* note 173.

198. *March Georgia Delegation Letter*, *supra* note 173.

199. *Id.*

200. *Stewart Letter*, *supra* note 70.

201. Letter from Project South to Members of the Georgia Delegation to the 117th U.S. Congress (Jul. 27, 2022) <https://projectsouth.org/wp-content/uploads/2016/04/7.27.22-Congressional-Letter-Stewart-Detention-Center.pdf>.

202. *Id.*

203. *Id.*

detained migrants' complaints, while some facility officers have taken to social media to celebrate their violence against detained migrants.²⁰⁴ The letter concludes by arguing that if official avenues continue to prove ill-suited to halt these abuses and rights violations, the only remaining recourse to ensure the safety of detained persons is the wholesale defunding of ICE.²⁰⁵

CRCL's own public reporting of complaints dating back to 2012 reveals numerous complaints filed with its office specific to Stewart and ICDC, beginning with a 2014 CRCL investigation closeout memorandum following an investigation into complaints filed by the ACLU of Georgia "related to correctional operations, medical care, and mental health care."²⁰⁶ In May 2017, CRCL issued a memorandum to ICE regarding its investigation into complaints specific to medical and mental health care, legal access, food service, segregation, recreation, and the detained migrant grievance system.²⁰⁷ While the complaints identified in that May 2017 memorandum date back to 2015, CRCL did not conduct its investigation until February 2017.²⁰⁸ CRCL's subsequent report includes recommendations to address the facility's shortcomings in all of the cited areas of concern.²⁰⁹ One year later, in May 2018, CRCL issued its close-out memorandum, indicating all issues raised in the 2017 investigation had been "resolved," a conclusion based exclusively on ICE's own unchecked reporting.²¹⁰ The record of investigation and purported complaint resolution serve as a stark reminder of CRCL's lack of an enforcement mandate, and—as with other CRCL investigations and resulting reports—call into question the efficacy of the internal agency fulfilling its stated mandate of ensuring respect for civil rights and civil liberties across DHS operations.

204. *Id.*

205. *Id.*

206. Memorandum from Office for Civ. Rts. and Civ. Liberties to ICE Leadership, CRCL Complaint Nos. 12-08-ICE-0136, 12-08-ICE-0173, 12-08-ICE-0187, and 12-12-ICE-0250, (Oct. 16, 2014), https://www.dhs.gov/sites/default/files/publications/stewart-detention-center_10-16-14_0.pdf.

207. Memorandum from Office for Civ. Rts. and Civ. Liberties to ICE Leadership Re: Stewart Detention Center, Recommendations on Complaint Nos. [redacted], https://www.dhs.gov/sites/default/files/publications/stewart-detention-center_05-18-17.pdf (May 18, 2017).

208. *Id.*

209. *Id.*

210. Memorandum from Office for Civ. Rts. and Civ. Liberties to ICE Leadership to ICE leadership Re: Stewart Detention Center, Closure of Complaint Nos. [redacted], <https://www.dhs.gov/sites/default/files/publications/stewart-detention-center-05-23-18.pdf> (May 23, 2018).

C. Whistleblower Complaint Through Which Evidence of Non-consensual Invasive Gynecological Abuses Are Brought to Light and the Actions That Followed

On September 14, 2020, Project South and its partners filed a whistleblower complaint with DHS OIG and CRCL offices regarding inadequate COVID-19 protocol and practices for detained immigrants and ICDC, as well as complaints of medical abuse and retaliation, calling for an urgent investigation into the conditions. The complaint, filed on behalf of Ms. Wooten, a protected whistleblower, as well as immigrants detained at Irwin, also detailed non-consensual invasive gynecological procedures carried out by a doctor contracted by ICDC.²¹¹

While the allegations specific to non-consensual, invasive gynecological procedures followed extensive documentation addressing medical neglect in the face of the COVID pandemic and the failure to implement proper protocols to guard against the spread of COVID, and punitive retaliatory actions taken against the women who sought protection in the face of a deadly pandemic, the reports of medical abuse at the hands of the contracted doctor received the greatest public attention.²¹² Alongside the complaint, Project South and partners summarized the women's first-hand accounts in a report highlighting medical abuse against migrants detained at ICDC.²¹³ A federal class action lawsuit, *Oldaker v. Giles*, was also filed on behalf of over sixty immigrant women detained at ICDC, grounded on the medical abuses as well as retaliation by federal and local officials.²¹⁴

211. Wendy Dowe, "The Traumas of Irwin Continue to Haunt Me": Non-Consensual Surgery Survivor Seeks Restitution, Calls to Shut Down Detention Centers, Ms. MAG., Dec. 9, 2021, <https://msmagazine.com/2021/12/09/immigrants-ice-detention-center-georgia-irwin-women-reparations-sexual-violence/>. For a discussion of a history of racially-based eugenics including the sterilization of over 60,000 persons categorized by the state as "unfit" to give birth chiefly for being "immigrants, Blacks, Indigenous people, poor whites and people with disabilities," a trend that gained particular prominence in some Southern states during the civil rights movement, see Alexandra Stern, *Forced Sterilization Policies in the US Targeted Minorities and Those with Disabilities – and Lasted into the 21st Century*, CONVERSATION, Sept. 23, 2020, <https://theconversation.com/forced-sterilization-policies-in-the-us-targeted-minorities-and-those-with-disabilities-and-lived-into-the-21st-century-143144>; see also Sally J. Torpy, *Native American Women and Coerced Sterilization*, 24 AM. INDIAN CULTURE AND RSCH. J., 1–22 (2000) (recounting the weaponization of the Indian Health Service by the federal government in the 1970s to carry out the forcible sterilization of thousands of Indigenous persons living in poverty, following the eugenicist national policy of conflating social and economic marginalization with a racialized theory of inferior genetics).

212. Dickerson, *supra* note 1.

213. PROJECT SOUTH ET AL., *Violence & Violation: Medical Abuse of Immigrants Detained at the Irwin County Detention Center* (Sept. 14 2021), https://projectsouth.org/wp-content/uploads/2021/09/IrwinReport_14SEPT21.pdf.

214. See C.R. LITIG. CLEARINGHOUSE, *Oldaker v. Giles*, No. 7:20-CV-00224 (WLS),

The House Judiciary Subcommittee on Immigration and Citizenship subsequently started its own investigation into the whistleblower complaint.²¹⁵ On September 17, 2020, the Government Accountability Project and Project South sent a letter regarding the whistleblower disclosures made by Ms. Dawn Wooten at ICDC, centered on the failure to take adequate COVID-19 precautions and other instances of medical neglect.²¹⁶ Chairperson Zoe Lofgren (D-CA) and Vice Chair Pramila Jayapal (D-WA) of the Subcommittee on Immigration and Citizenship, alongside Chairman Jerrold Nadler (D-NY) of the Committee on the Judiciary, wrote to then-DHS Acting Secretary Chad Wolf regarding the complaints.²¹⁷ The letter made four urgent demands: pause the removal of any individual who experienced any medical procedure at ICDC; ensure access to adequate, safe, and consensual medical treatment or an independent second opinion for individuals who may have had an unnecessary or non-consensual procedure; protect from retaliation those speaking out; and preserve relevant records.²¹⁸

Additionally, members of the Congressional Hispanic Caucus and the House Judiciary Committee called for an investigation into the abuses perpetrated by Dr. Mahendra Amin, the gynecologist contracted by Irwin.²¹⁹ Multiple immigrant women shared their experiences with members of Congress.²²⁰ In October 2020, an independent medical team reviewed documents pertaining to Dr. Amin's former patients at ICDC and concluded that he had performed unnecessary and non-consensual

2021 WL 3412551 (M.D. Ga. Aug. 4, 2021), <https://clearinghouse.net/case/18118/>.

215. Charles R. Davis, *The House Immigration Subcommittee is Investigating a Whistleblower Complaint Accusing Doctors at an ICE Detention Center of Surgically Removing Detained Immigrants' Wombs*, BUS. INSIDER, Sept. 15, 2020, <https://www.businessinsider.com/house-investigating-ice-hysterectomies-complaint-2020-9>.

216. Letter from Project South to House Committee on Homeland Security (Sept. 17, 2020), <https://projectsouth.org/wp-content/uploads/2020/09/ICE-ICDC-Whistleblower-Disclosure-to-Congress-091720.pdf>.

217. Letter from Reps. Pramila Jayapal, Jerrold Nadler, and Zoe Lofgren to Acting Secretary Chad Wolf (Sept. 23, 2020), <https://jayapal.house.gov/wp-content/uploads/2020/09/Irwin-County-Documents-Request.pdf>.

218. *Id.*

219. Congressional Hispanic Caucus, *Statement on Investigation of Irwin County Detention Center* (Sept. 26, 2020), <https://chc.house.gov/media-center/press-releases/congressional-hispanic-caucus-statement-on-investigation-of-irwin-county>.

220. Alan Judd, *GA ICE Detained Immigrants tell Congressional Delegation of Unwanted Gynecological Procedures*, ATLANTA JOURNAL-CONSTITUTION, Sept. 26, 2020, <https://www.ajc.com/news/georgia-news/ga-ice-detainees-tell-congressional-delegation-of-unwanted-gynecological-procedures/M5INTOHETFFB7OVE7OJXYE74MY>; *Number of Women Alleging Misconduct by ICE Gynecologist Nearly Triples*, *supra* note 2.

procedures on several women.²²¹ The House of Representatives passed a resolution “condemning the unwanted, unnecessary medical procedures . . . performed on immigrant women without their full, informed consent” at ICDC and demanded that DHS comply with the ongoing investigations.²²² Additionally, in January 2022, the Office of Inspector General, based partly on the whistleblower complaints, issued a report on the need for improvement of medical processes and communication protocols at Irwin with recommendations for ICE.²²³

Despite clear guidance aimed at protecting individuals who file complaints with OIG and CRCL, the survivors of gynecological abuse at ICDC were met with retaliation.²²⁴ Their federal lawsuit seeking compensation and redress for the abuses and subsequent retaliation remains pending, with no meaningful accountability or compensation provided to date.²²⁵ Ms. Wooten, the whistleblower nurse, has been struggling to get by since her termination by LaSalle Corrections

221. TED ANDERSON ET AL., *Executive Summary of Findings by the Independent Medical Review Team Regarding Medical Abuse Allegations at the Irwin County Detention Center* (2020), <https://www.scribd.com/document/481646674/Executive-Summary-of-Medical-AbuseFindings-About-IrwinDetention-Center>; Amelia Wilson, *Accessing Justice: A Call for Reparations for the Survivors of Medical Abuse at the Irwin County Detention Center*, 37 MD. J. INT'L L. 54, 56–57 (2022), <https://ssrn.com/abstract=4346155>.

222. H.R. 1153, 117th Cong. (2022), <https://www.congress.gov/bill/116th-congress/house-resolution/1153/text?r=2&s=1> (sponsored by Rep. Jayapal and co-sponsored by 225 members of Congress and endorsed by 54 community organizations); Press Release, Pramila Jayapal, House Passes Jayapal Resolution Condemning Forced Medical Procedures Conducted on Immigrant Women (Oct. 2, 2020), <https://jayapal.house.gov/2020/10/02/house-condemns-forced-medical-procedures>.

223. Popovich, *supra* note 185; Memorandum from Off. of Inspector Gen.: dep’t of Homeland Sec to Acting Director Tae D. Johnson (Jan. 3, 2022) <https://www.oig.dhs.gov/sites/default/files/assets/2022-01/OIG-22-14-Jan22.pdf>.

224. Jasmine Aguilera, *More Than 40 Women File Class Action Lawsuit Alleging Medical Misconduct by ICE Doctor at Georgia Detention Center*, TIME, Dec. 22, 2020, <https://time.com/5924021/women-lawsuit-irwin-detention-ice/>; Gianna Toboni et. al., *Woman Says Georgia ICE Facility Gave Her Unwanted Gynecological Surgery. Now She’s Being Deported.*, VICE, Nov. 23, 2020, <https://www.vice.com/en/article/pkdgpk/woman-in-ice-gynecology-scandal-facesdeportation-almost-a-death-sentence>; Gianna Toboni et al., *ICE Tried to Deport Yet Another Potential Witness in the Gynecology Scandal*, VICE, Nov. 10, 2020, <https://www.vice.com/en/article/wx85k5/ice-tried-to-deport-yet-another-potential-witness-in-the-gynecology-scandal>.

225. See *Oldaker v. Giles*, No. 7:20-CV-00224-WLS, 2024 WL 1241361 (M.D. Ga. Mar. 22, 2024) (involving the district court’s ruling on a series of pretrial motions); *Oldaker v. Giles*, No. 7:20-CV-00224-WLS, 2024 WL 1241359 (M.D. Ga. Mar. 22, 2024) (same); *Oldaker v. Giles*, No. 7:20-CV-00224-WLS, 2021 WL 3779837 (M.D. Ga. Aug. 25, 2021) (same); *Oldaker v. Giles*, No. 7:20-CV-00224-WLS, 2021 WL 3412551 (M.D. Ga. Aug. 4, 2021) (same). See also Wilson, *supra* note 221 (“[t]he *Oldaker v. Giles* lawsuit that alleges multiple constitutional and civil rights violations, including that ICE sought to silence the women after they spoke out about the medical abuse, is still pending in the Middle District of Georgia”).

after speaking out.²²⁶ The OIG has not yet issued a decision on her initial whistleblower retaliation complaint.²²⁷ In January 2023, the Government Accountability Project filed a new complaint on behalf of Ms. Wooten regarding her unconstitutional constructive termination from employment by LaSalle Corrections.²²⁸

For its part, CRCL, which was preparing for a third on-site investigation at ICDC, opened nine complaints in response to the whistleblower complaint.²²⁹ When ICE moved to discontinue use of the facility to detain individuals, CRCL canceled its scheduled on-site investigation and closed its investigation.²³⁰ Nonetheless, CRCL moved

226. Ms. Wooten has received threats to her person, up to and including death threats, leading her to move among hotels to keep herself and her family safe. Miranda Bryant, *'I'm back on food stamps': Nurse Who Exposed "Uterus Collector" Still Faces Consequences*, GUARDIAN, Oct. 17, 2022, <https://www.theguardian.com/us-news/2022/oct/17/whistleblower-uterus-collector-repercussions-ice-detained-immigrant-women>. Additionally, and despite tireless attempts on her part, she has been unable to find new employment given her label as a whistleblower. This, in turn, has driven Wooten and her family to depend on government benefits including food stamps, welfare, and Medicaid just to survive, and her mental health has deteriorated to the point that she needs antidepressants to ward off her newly developed suicidal ideation.

227. *Press Release: OIG Report Confirms Whistleblower Claims of Wrongdoing at Irwin County Detention Center*, GOV'T ACCOUNTABILITY PROJECT, Jan. 7, 2022, <https://whistleblower.org/press-release/press-release-oig-report-confirms-whistleblower-claims-of-wrongdoing-at-irwin-county-detention-center/>.

228. Ana Popovich, *Irwin County Detention Center Whistleblower Dawn Wooten Files New Complaint Alleging Retaliation*, WHISTLEBLOWER NETWORK NEWS, Jan. 18, 2023, <https://whistleblowersblog.org/government-whistleblowers/irwin-county-detention-center-whistleblower-dawn-wooten-files-new-complaint-alleging-retaliation/>; Gov. ACCOUNTABILITY PROJECT, *Wooten v. Lasalle Corrections*, No. 7:22-cv-00148-WLS, 2023 WL 7287208 (M.D. Ga. Nov. 3, 2023), <https://whistleblower.org/wp-content/uploads/2023/01/Wooten-v-Lassale-Complaint-12-29-2022-ECF.pdf> (complete complaint in equity for First Amendment retaliation).

229. See Caitlin Dickerson, *Inquiry Ordered into Claims Immigrants Had Unwanted Gynecology Procedures*, N.Y. TIMES, Sept. 14, 2020, <https://www.nytimes.com/2020/09/16/us/ICE-hysterectomies-whistleblower-georgia.html> (“The complaint details medical procedures ordered or undertaken by a physician who has treated patients detained at the Irwin County Detention Center, which is run by a private company, LaSalle Corrections, in Ocilla, Ga.”); Jonathan Blitzer, *The Private Georgia Immigration-Detention Facility at the Center of a Whistle-Blower's Complaint*, NEW YORKER, Sept. 19, 2020, <https://www.newyorker.com/news/daily-comment/the-private-georgia-immigration-detention-facility-at-the-center-of-a-whistle-blowers-complaint> (“instances of systematic medical neglect and malpractice, harsh punishments of detained immigrants for speaking out, and the warden and the prison staff's refusal to take measures to deal with the coronavirus.”); Tina Vásquez, *EXCLUSIVE: FBI Investigates Georgia Doctor Accused of Sterilizing Detained Women*, PRISM, May 6, 2021, <https://prismreports.org/2021/05/06/exclusive-fbi-investigates-georgia-doctor-accused-of-sterilizing-detained-women>.

230. U.S. DEP'T OF HOMELAND SEC., *Recommendations Memo to ICE Concerning Irwin County Detention Center in Ocilla, Georgia* (Sept. 12, 2022), <https://www.dhs.gov/publication/recommendations-memo-ice-concerning-irwin-county-detention-center-ocilla-georgia>.

forward with the issuance of a report on the complaints received from ICDC “which remain relevant to other facilities administered by the same contractor, LaSalle Corrections.”²³¹ The report confirmed that while the complaints were shocking, they should not have been surprising. CRCL had received prior complaints about abusive conditions of confinement that resulted in two on-site investigations of ICDC, one in September 2012 and another one in July 2016.²³² The September 2012 investigation was prompted by complaints filed by the ACLU of Georgia about the deficient provision of medical care and conditions of the facility.²³³ In November 2012, CRCL issued eighteen recommendations, and in March 2015, CRCL formally closed these complaints after ICE communicated its concurrence with the CRCL recommendations, without any published plans for redress or remediation.²³⁴ Just one year later, CRCL launched a subsequent investigation which resulted in twenty-six recommendations on various issues such as practices around disinfection, sanitation, and infectious diseases; use of force and segregation against detained immigrants; food service, recreation, and living conditions; language access; and grievance procedures available to detained immigrants.²³⁵ Following the 2016 investigation, CRCL received additional complaints about medical and mental healthcare, inhumane conditions of detention, use of force and other forms of retaliation, lack of access to legal resources and language services, and mistreatment by ICE deportation officers.²³⁶ The 2022 CRCL report itself reveals significant shortcomings in the CRCL process, and the ways in which the lack of meaningful oversight, enforcement, and accountability created the conditions giving rise to the reported 2020 abuses.

D. Pursuit of Redress and Accountability before the Inter-American Commission on Human Rights and UN Special Procedures

In addition to the administrative, federal court, and other advocacy addressed above, the authors herein have sought to engage international and regional human rights mechanisms as a means for gaining rights recognition for immigrants and their family members subjected to the egregious violations at Stewart and ICDC.

231. *Id.* The two recommendations from CRCL to ICE in the memorandum have been exempted from public disclosure.

232. *Id.*, p. 2.

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*, p. 3.

Prior to the reports of non-consensual gynecological procedures that garnered national attention, and the attention of the international human rights community, the authors submitted numerous Hearing Requests with the IACHR to address the full range of rights violations endured by immigrants at both ICDC and Stewart. In 2017, the authors requested a thematic hearing for the IACHR's 166th Extraordinary Period of Sessions following the death of two immigrants held in ICE custody in Georgia, one at Stewart and one at the Atlanta City Detention Center (the ICE contract with ACDC was later terminated).²³⁷ The IACHR did not grant the hearing request, so the authors renewed their request for a hearing in 2018 for the 169th Extraordinary Period of Sessions at the IACHR, after two more deaths at Stewart.²³⁸ Again, the Commission did not grant the request for a hearing. In January 2020, the authors made a renewed hearing request for the 175th Period after another immigrant died at Stewart,²³⁹ and again the request for a hearing went unanswered.

During this time, the authors had greater success in garnering the attention of the UN Special Procedures with particularized human rights mandates. Their 2018 Communication to the UN Working Group on Arbitrary Detention, the Special Rapporteur on the Rights of Migrants, and other mandate holders²⁴⁰ resulted in a communication to the U.S. government, as well as Communications sent directly to ICDC and Stewart, raising serious human rights concerns implicated by the allegations we had set forth and documented.²⁴¹ The authors subsequently filed, together with Detention Watch Network, a Submission to the UN Working Group on the use of mercenaries, the Role of Private Military

237. Letter from Sarah H. Paoletti et al. to Dr. Paulo Abrão, Executive Secretary of IACHR (Oct. 4, 2017), <https://projectsouth.org/wp-content/uploads/2017/10/IACHR-Request-For-Hearing-Immigrant-Detention-in-Georgia.pdf>; Catherine E. Shoichet, *Immigrant Detainee Dies in ICE Custody*, CNN, May 16, 2017, <https://edition.cnn.com/2017/05/16/us/ice-stewart-detention-center-death/index.html>; Catherine E. Shoichet, *Atlanta Immigration Detainee Dies*, CNN, May 17, 2017, <https://edition.cnn.com/2017/05/17/us/ice-atlanta-detainee-dies/index.html>.

238. Letter from Sarah H. Paoletti & Azadeh Shahshahani to Dr. Paulo Abrão, Executive Secretary of IACHR (July 17, 2018), https://projectsouth.org/wp-content/uploads/2018/07/IACHR-Request-For-Hearing-Immigrant-Detention-in-Georgia_169-Period-of-Sessions.pdf.

239. Letter from Sarah H. Paoletti & Azadeh Shahshahani to Dr. Paulo Abrão, Executive Secretary of IACHR (Jan. 5, 2019), https://projectsouth.org/wp-content/uploads/2020/02/2020-01.05_IACHR-Request-For-Hearing-Immigrant-Detention-in-Georgia_175-Period-of-Sessions.pdf.

240. *Paoletti & Shahshahani Communication*, *supra* note 54.

241. Resulting communication from UN Working Group on Arbitrary Detention, et al., to U.S. (Oct. 12, 2018), AL USA 18/2018 (on file with the Transnational Legal Clinic, Univ. of Pa. Carey L. Sch.).

and Security Companies in Immigrant Detention, and the Impact on the Protection of the Rights of All Migrants.²⁴²

It was not until the New York Times published on its front page a story about the women at the heart of the OIG Complaint addressing invasive non-consensual gynecological procedures inflicted on women detained at ICDC²⁴³ that the IACHR took note. The authors collaborated with various stakeholders within the international human rights, women's rights, and reproductive justice communities to renew their request for a thematic hearing before the IACHR, and on this occasion, the request was granted.²⁴⁴ The authors also joined with colleagues in drafting and submitting a communication to the UN Special Rapporteur on the Rights of Migrants and other mandate holders outlining the range of international human rights violations documented in the OIG Complaint and in accounts of retaliation that followed.²⁴⁵

In their 2021 request for a thematic hearing before the IACHR, as well as in their UN human rights communication, the authors noted the alarming rates of COVID that detained immigrants were forced to withstand while in detention and spotlighted four COVID deaths at Stewart from May 2020 through April 2021.²⁴⁶ In addition, the authors reported on the medical abuse endured by women at the hands of a private gynecologist contracted for the provision of care.²⁴⁷ Nearly seventy organizations and individuals joined in a letter of support for the hearing.²⁴⁸ After multiple requests had been left unanswered, the IACHR granted the 2021 request, and a hearing was held virtually in June 2021.²⁴⁹ During the hearing, members of the IACHR reiterated

242. Paoletti & Zouia, *supra* note 51, PENN L. TRANSNATIONAL LEGAL CLINIC AND PROJECT S. (May 21, 2020), <https://www.ohchr.org/sites/default/files/Documents/Issues/Mercenaries/WG/ImmigrationAndBorder/dwn-projectsouth-pennlaw-submission.pdf>.

243. Caitlin Dickerson, Seth Freed Wessler, and Miriam Jordan, *Immigrants Say They Were Pressured Into Unneeded Surgeries*, N.Y. TIMES, Sept. 29, 2020, at A1; *Cuffari Letter*, *supra* note 2.

244. IACHR, *Letter to Petitioners, Re: Human Rights Situation of Migrants and Detention Centers in the United States* (May 26, 2021) (on file with authors).

245. Paoletti & Shahshahani Communication, *supra* note 54.

246. Letter from Sarah H. Paoletti & Azadeh Shahshahani to Commissioners of IACHR (Apr. 21, 2021), https://projectsouth.org/wp-content/uploads/2021/04/IACHR-Hearing-Req-Immigrant-Detention_180th-Period-of-Sessions_2021.04.21.pdf.

247. *Id.*

248. Letter from Sarah H. Paoletti & Azadeh Shahshahani to Commissioners of IACHR (May 15, 2021), https://projectsouth.org/wp-content/uploads/2021/04/IACHR-Hearing-Req-Immigrant-Detention_180th-Period-of-Sessions_2021.04.21.pdf.

249. Press Release, Project South, Project South, Penn Law Transnational Legal Clinic & the Detention Watch Network to Testify Before Inter-American Commission on Human Rights on Immigrant Human Rights Abuses, Project South (July 8, 2021), <https://projectsouth.org/project-south-penn-law-transnational-legal-clinic-the-detention-watch>.

international human rights norms specific to immigration detention, noting that detention should be a matter of last resort, not the norm.²⁵⁰ IACHR members acknowledged that the abuses endured by the women at ICDC gave space for the harm that resulted from those abuses, and specifically recognized that what Wendy Dowe—who testified to her treatment at ICDC—had described amounted to torture, and when torture occurs under the government’s watch, as it did here, the government is obligated to make reparations.²⁵¹ While the government, represented by the DHS Officer of Civil Rights Civil Liberties, initially relied on carefully prepared remarks detailing the ICE Detention Standards and CRCL’s role in overseeing their implementation, it ultimately issued an apology to Wendy Dowe, acknowledging that the government has an obligation to not allow such abuses to occur.

The hearing marked an important moment of rights recognition and included a call for accountability and redress. But, like CRCL, the IACHR lacks meaningful enforcement mechanisms for ensuring implementation of its recommendations.²⁵² It can, however, conduct formal investigations through on-site visits (to which the United States must consent through the issuance of an official invitation).²⁵³ It can issue press releases noting concerns, and can also issue more in-depth reports and recommendations following an investigation.²⁵⁴ And, importantly, it can engage with stakeholders, including the immigrants subjected to detention and their family members, the advocacy community, and the State.²⁵⁵ In the years that have passed since that June 2021 hearing, however, the IACHR has failed to conduct the follow-up necessary to

network-to-testify-before-inter-american-commission-on-human-rights-on-immigrant-human-rights-abuses.

250. *Id.*

251. *Human Rights Situation of Migrants and Detention Centers in the United States*, 180TH PERIOD OF SESSIONS, IACHR (2021), https://www.youtube.com/watch?v=Xq4t_GwkQok.

252. O.A.S. Res. 447, 9th Sess., Vol. 1 at 88 O.A.S. Off. Rec. OEA/Ser.P/IX.0.2/80 (Oct. 1979), IACHR Statute, Arts. 18, 20 (setting forth responsibilities and authority of the IACHR, specifically as it relates to countries such as the United States, that have not ratified the American Convention on Human Rights). *See*, Gilman, *supra* note 19, at 282–283 (discussing U.S. government position before the IACHR on the non-binding nature of its obligations under the American Declaration and the American Convention on Human Rights, which the United States has not ratified). *See generally*, Oona A. Hathaway, Sarah Aronchick Solow, and Sabria McElroy, *International Law at Home: Enforcing Treaties in U.S. Courts*, 37 YALE J. INT’L LAW 51 (2012) (discussing the historic precedent underlying challenges to enforcement of international law in U.S. courts).

253. IACHR Statute, Arts. 28, 20; IACHR Rules of Procedure, Arts. 53–57, <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/basics/rulesiachr.asp>.

254. *Id.*

255. *Id.*

achieve meaningful accountability and redress for Ms. Dowe and the other women who endured medical neglect and abuse while detained in ICE custody at ICDC, and the gap between rights recognition and reparations persists. To date, any form of meaningful accountability to the family members of the individuals who died while in ICE custody at Stewart whose cases have been presented to the IACHR remains elusive.

As discussed in Section IV below, sustained engagement is critical to both the solidification of international human rights norms and their implementation within the United States and throughout the region. Unfortunately, subsequent requests for follow-up hearings or working group meetings have gone unanswered by the IACHR,²⁵⁶ leaving unanswered calls for ongoing and renewed engagement with stakeholders across the country to address rights violations endemic to the U.S. system of immigration detention and potential avenues for redress and reform.²⁵⁷

IV. LESSONS LEARNED: TAKE-AWAYS FROM ENGAGING WITH INTERNATIONAL HUMAN RIGHTS SYSTEMS, PARTICULARLY IACHR, AND OPPORTUNITIES FOR BRIDGING THE ACCOUNTABILITY GAP

Despite nearly two decades of advocacy before international and regional human rights mechanisms aimed at gaining full rights recognition for individuals subjected to immigration detention in the United States, the situation that confronts immigrants held in ICE detention continues to be one of abusive, carceral confinement that stands in stark contrast to established norms of international human rights law. Reports continue to emerge from behind the rows of barbed wire, fencing, and imposing cement block structures of abuse against immigrants held in ICE custody. And in the face of those reports, the United States persists in its failure to provide accountability and redress for those rights violations—violations endemic to a system of enforcement that

256. Letter from Sarah H. Paoletti & Azadeh Shahshahani to Tania Reneaum Panszi, Executive Secretary of IACHR (Dec. 3, 2023), <https://projectsouth.org/wp-content/uploads/2023/04/2023.12.03-IACHR-189th-POS-Hearing-Request-Immigrant-Detention-in-the-US.pdf>; Letter from Sarah H. Paoletti & Azadeh Shahshahani to Tania Reneaum Panszi, Executive Secretary of IACHR (Aug. 15, 2022) https://projectsouth.org/wp-content/uploads/2016/04/2022.08.15_185-PoS-Hrg-Req_Detention-Conditions-US.pdf.

257. See, e.g., PRIYA SREENIVASAN, JASON A. CADE, AND AZADEH SHAHSHAHANI, PROJECT SOUTH, ESCALATING JAILHOUSE IMMIGRATION ENFORCEMENT: A REPORT ON DETAINEES ISSUED BY ICE AGAINST PERSONS HELD BY LOCAL LAW ENFORCEMENT AGENCIES IN GEORGIA, NORTH CAROLINA, AND SOUTH CAROLINA FROM 2016–2018, (2021), https://projectsouth.org/wp-content/uploads/2021/12/120621_Escalating-Jailhouse-Immigration-Enforcement-Report.pdf; Ghandehari et al., *supra* note 49.

prioritizes deterrence through detention over rights recognition. So why persist? What is the purpose and value of engaging in international human rights advocacy? And how might we move past those fleeting moments of rights recognition achieved in those rare hearings when the United States is called to account, to effectuate meaningful change? What role can the international human rights community play in promoting and positively contributing to that change?

Much has been written to both promote and critique the use of international human rights norms and the engagement of human rights mechanisms.²⁵⁸ We acknowledge the limitations built into the international human rights regime, often by design. Nonetheless, we have clearly staked our claims on the side of human rights engagement. We provide herein our rationale for engaging with international human rights laws and mechanisms as a tool and vehicle for seeking to advance the rights of immigrants and their family members in an enforcement system that routinely flouts the most fundamental of rights. We then discuss some of the lessons learned and set forth our preliminary recommendations for enhancing the impact of future engagement.

A. Why Engage with International Human Rights Law and Mechanisms?

The 2021 hearing before the IACHR provided a forum for Ms. Dowe to share her story, and the experiences of those who had been detained alongside her. It provided an opportunity for independent human rights experts to validate that Ms. Dowe and those detained alongside her were entitled to fundamental human rights, regardless of her migration or detention status, and to explicitly name the abusive treatment she was subjected to while in ICE custody “torture.” And it provided a public international forum for a panel of independent human rights experts—members of the IACHR—to remind the U.S. government of its obligation under international law to provide reparations when torture has been carried out by persons acting under its authority.

258. For arguments as to the value of international human rights engagement as a means for advancing fundamental rights in the United States, see, e.g., R. Denisse Córdova Montes, *Using International Human Rights Law to Address Hunger in the U.S.*, 6 BUS. ENTREPRENEURSHIP & TAX L. REV. 1 (2022); Eric Tars et al., *Challenging Domestic Injustice through International Human Rights Advocacy: Addressing Homelessness in the United States*, 42 CARDOZO L. REV. 913 (2021). See also HUM. RTS. AT HOME BLOG, https://lawprofessors.typepad.com/human_rights/, for regular postings on U.S. advocates' engagement with international human rights norms and mechanisms. For arguments challenging the legitimacy and efficacy of engaging with international human rights norms and mechanisms, see Eric A. Posner, *The Twilight of Human Rights Law* (2014), <https://global.oup.com/academic/product/the-twilight-of-human-rights-law-9780199313440>.

This call for reparations serves as a critical reminder that the United States cannot contract away its human rights obligations by transferring day-to-day responsibility for the custody of those held under its authority to third-party agents.

Ms. Dowe bravely seized upon the opportunity to confront the State representative following her predictable prepared remarks about written standards and administrative complaint mechanisms as evidence of all DHS is doing to safeguard the fundamental rights of immigrants subject to its custody. She challenged the government's asserted commitment to human rights, reminding the official of the abject failure of written standards and mechanisms to protect her and her family from the grievous harms they endured. Ms. Dowe's bravery, pain, and frustration were palpable and compelled the U.S. government official to break from her carefully constructed prepared testimony and extend an apology to Ms. Dowe for the abuses endured under the government's watch. That moment of confrontation and the ultimate recognition by the CRCL Officer of the woman sitting before her and the apology that ensued were—and are—those powerful moments where the right to human dignity that is at the core of human rights advocacy is brought to the fore.²⁵⁹

The fundamental humanity and dignity of persons subjected to immigration enforcement are often lost in the aggressive and divisive rhetoric so often employed in debates around immigration policies and practices in the United States. The lived experiences, hopes, and fears of those subjected to detention are obfuscated by numbers and statistics, which are often manipulated to reflect a certain ideological position. The IACHR's hearing provided an opportunity to bring those experiences forward in real and human terms.

Engagement with the IACHR and with the UN human rights bodies also provides an opportunity to focus on the government's affirmative obligations to ensure respect for the rights of all persons held within its custody, even when the government seeks to contract away that responsibility to third parties. And it provides an avenue for seeking accountability and redress on the part of the government for all rights violations, even those committed by individual third parties. The

259. Apologies are a fundamental component in the process of restorative justice, as "admitting guilt may further, or at least reflect, offenders' self-reactive attitudes," and as "[t]hey illustrate that the offender recognizes his violation, show that he may accept punishment, and validate the 'moral indignation' for his wrongful conduct." Kristen M. Marino, *Restoration, Retribution, and Sexual Assault: The Value of Apologies*, 171 U. PA. L. REV. 869, 887 (2023).

concurrent discussion of affirmative obligations recognized by international human rights law alongside shared narratives that reflect the humanity of the persons who suffer harm as a direct result of the government's abject failure to meet those rights obligations creates critical opportunities for meaningful dialogue around combatting systemic human rights violations with the people who actually have authority to effectuate change.

But positive change requires not just sustained engagement on the part of advocates and the international human rights mechanisms, it also requires the political will and commitment within the U.S. government to uphold its fundamental obligations under customary international law and the human rights treaty obligations it has assumed through its ratification of numerous treaties, and through its membership in both the Organization of American States and the United Nations. The federal government has modeled a limited—but notable—level of engagement throughout different U.S. administrations resulting directly from active and persistent advocacy on the part of civil society, working to hold the United States to account on the global stage. Advocacy led by members of the Bringing Human Rights Home Network (BHRH) and the Inter-American Working Group of the BHRH, has resulted in the participation before both regional and international human rights bodies of high-level officials representing the various federal agencies that exercise policy-making authority and oversight over the very practices at issue. This level of federal government engagement introduces additional avenues for promoting systemic policy reforms grounded in a more expansive and rights-oriented framing, both within the system of immigration detention and across a range of rights violations that plague the United States.

Even when U.S. engagement before the international and regional human rights mechanisms has been limited or waned (or been nonexistent), the authors have found it important to continue to work alongside their colleagues and directly-impacted migrants to pursue international human rights strategies, the reasons for which are two-fold. First and foremost, at the core of our engagement with international human rights norms is our firm and unwavering belief and commitment that all persons are entitled to the respect and enjoyment of fundamental rights, regardless of their migration status, race, national origin, language, disability, gender, gender identity, sexual orientation, or socio-economic status. While our work is centered on the rights of non-citizens, non-citizens often experience a range of compounding

forms of discrimination that contribute to compounding rights violations. Our clients' stories exemplify the ways in which the denial of language access; racial, national origin, and migration-status discrimination; the discriminatory use of medical segregation units as a means for responding to mental illness, or a mental health crisis; the denial of gender-affirming care, and the denial of gender-appropriate services and supplies all compound the harms associated with prolonged and arbitrary detention, medical neglect and abuse, due process violations, denial of the right to seek asylum and to non-refoulement, interference with the right to family life, and—at its most extreme—results in the active deprivation of the right to life. To not raise these issues as clear violations of U.S. obligations under international human rights law feels like a concession, and a concession we are not willing to make. The question then becomes not whether to engage, but how to more effectively engage in our shared pursuit towards an immigration system that respects and protects fundamental human rights.

The second reason for our ongoing engagement directly correlates to the above—we are committed to challenging breaches of rights obligations as a means of guarding against the erosion of international human rights norms. Challenges to rights violations remind us of the importance of working in solidarity with others to solidify the importance of those norms; they provide an opportunity for regional and global engagement around how those norms are recognized and operationalized in practice. For example, Paoletti's Transnational Legal Clinic has authored amicus briefs in federal court cases addressing the relevant international human rights law as applied to immigration enforcement and detention, relying on both U.S. treaty obligations and obligations under customary international law.²⁶⁰ Central to the arguments made are the fundamental right to liberty, and the recognized principle under international human rights law that for immigration detention to not violate the prohibition against arbitrary detention, it must be proportionate, reasonable, and necessary, and it must be carried out in a manner that is neither punitive nor discriminatory.²⁶¹

260. Amicus briefs on file with author Sarah H. Paoletti. Cases in which the Transnational Legal Clinic has submitted amicus briefs include: Brief of Amici Curiae, Immigration and International Human Rights Law Professors in Support of Petitioner, Mbabynong v. Garland, No. 21–60932, (5th Cir.) (filed Apr. 20, 2022) (addressing the right to non-refoulement under international law); Brief of Amici Curiae, International Human Rights Experts and Refugee Rights Experts, B.C. v. Att'y Gen. U.S., No. 19–1408 (3rd Cir.) (filed Aug. 31, 2020) (addressing due process safeguards necessary to effectuate right to non-refoulement under international law).

261. United Nations Working Group on Arbitrary Detention, *Deliberation No. 9*

Amicus briefs have also outlined the scope of the right to due process, and fair and equal access to the courts, as implicated in particular cases of immigration enforcement and detention, and the ways in which the failure to fully respect and guarantee those rights then implicates the right to non-refoulement under the Refugee Convention, and right to be free from torture and other cruel and unusual punishment under the Convention Against Torture.²⁶² Strengthening jurisprudence under international law becomes a critical tool in seeking to advance human rights norms through the domestic legal system.

Our operating hope, belief, and intent is that this simultaneous injection of the voices and lived experiences of immigrants subjected to detention within the international human rights discussions that happen in Washington, D.C., at the IACHR's headquarters, and in Geneva, where the UN human rights regime is based will help strengthen existing international human rights norms specific to immigration detention. We further hope that the injection of articulated human rights norms into domestic court proceedings, rule-making processes, and domestic law-making fora, will support and advance the immigrant-led movement towards the ultimate abolition of immigration detention, and in the interim, towards a system of civil detention that respects the full panoply of rights to which immigrants—by their sole virtue of being human—are entitled. We recognize, however, the significant limitations to the use of international human rights law and mechanisms as a means of achieving meaningful change, and the need, therefore, to engage creatively, strategically, and collaboratively. In the following section, we highlight some of the lessons we have learned over nearly two decades of this work.

B. Confronting the Limitations and Challenges of International Human Rights Engagement

While the IACHR June 2021 hearing and the Communications issued by the UN Special Procedures have been heralded as successes within the international human rights community, and while the moments of engagement marked critical opportunities for those whose voices are actively suppressed behind the walls and barbed wire of immigration detention centers, the lack of enforceable recommendations and sustained follow-up, and the ongoing abuses experienced by

Concerning the Definition and Scope of Arbitrary Deprivation of Liberty under Customary International Law, U.N. DOC. A/HRC/22/44 (Dec. 2012); *see also*, *Velez-Loor v. Panama*, Judgment, IACHR 218, 97 (Nov. 23, 2010).

262. *See* *Mbabyng v. Garland*, *supra* note 260.

immigrants held at the Stewart Detention Center and in detention centers across the country, reveal the limitations of human rights advocacy and feed into critiques of the international human rights regime. But, as articulated above, we still believe in the value of international human rights engagement. The lack of concrete and measurable impacts in terms of accountability and reparations for those whose rights abuses have been detailed before the IACHR and the UN human rights mechanisms is not reason to walk away from the international human rights regime. Instead, it signals the need for ongoing, persistent, and coordinated advocacy operating on two parallel tracks: the first track is that which promotes the recognition of the specific rights before the international human rights regime, and the second track is that which promotes the engagement and efficacy of the rights regime itself.

Every shortcoming and limitation presents an opportunity for creative and collaborative engagement across typical advocacy silos, as exemplified in the ongoing pursuit for redress and accountability by and for Wendy Dowe and other women subjected to abuse at ICDC. The abuses committed against the women at ICDC resonated with advocates long engaged in the anti-eugenics movement, and it resonated with those engaged in reproductive rights advocacy.²⁶³ The stories of abusive conditions of confinement resonated with those engaged in advocacy around prison conditions and those engaged in the growing abolitionist movement.²⁶⁴ These shared experiences and shared narratives create opportunities for identifying shared goals and working together across substantive areas of advocacy silos to move beyond discussions of rights abuses to discussions and movements towards realization of U.S. obligations to respect, protect, and fulfill the human rights of all individuals subject to its jurisdiction. Realizing those rights begins with ensuring accountability and redress when those rights are violated, and recognition of the need to reform the systems that created the environment in which those violations transpired. But that cannot be done in isolation and cannot be done episodically.

263. See, e.g., list of signatories joining in *Paoletti & Shahshahani Communication*, *supra* note 54.

264. See, e.g., SILKY SHAH, *UNBUILD WALLS: WHY IMMIGRANT JUSTICE NEEDS ABOLITION*, Haymarket Books (2024) (excerpt published in *TEEN VOGUE*, May 16, 2024, <https://www.teenvogue.com/story/unbuild-walls-silky-shah-excerpt>). Organizations such as Detention Watch Network have long engaged in targeted shutdown campaigns, and increasingly are linking those to the broader abolition movement. See e.g., *ENDING IMMIGRATION DETENTION: ABOLITIONIST STEPS VS. REFORMIST REFORMS*, DET. WATCH NETWORK, https://www.detentionwatchnetwork.org/sites/default/files/Abolitionist%20Steps%20vs%20Reformist%20Reforms_DWN_2022.pdf (modeled after Guide prepared by Critical Resistance).

That realization leads to the call for sustained engagement. Within the IACHR, it is what drives our repeated requests for hearings or working meetings that provide for ongoing dialogue, rather than episodic, sometimes disconnected, advocacy moments. The history of advocacy before the IACHR and by the IACHR can serve as critical building blocks through which both the United States and the IACHR are held to account for prior commitments, and wherein one success, or even string of successes, at the local level, such as ICE's termination of its contract with ICDC, or the shuttering of the Berks Family Detention Center, does not transition to complacency around abuses in other facilities. The pursuit of sustained attention focused on systemic reforms necessary to address rights abuses endemic to the overall system of immigration enforcement and detention helps guard against the narrative that rights violations are committed at the hands of "bad apples" operating outside of government authority and ultimate responsibility. Consistent and coordinated international human rights engagement can provide a vehicle for accountability, and for seeking redress and reparations for rights abuses that occur within the carceral system of immigration detention, wherein the right to liberty and fundamental human rights serve as the lens through which detention must be assessed.

The effectiveness of the international human rights regime in the advancement of human rights, however, is only as effective as the human rights regimes themselves and the respect and attention they garner from government officials and advocates, alike. As noted above, U.S. government participation in regional and UN human rights mechanisms is the result of sustained advocacy with government officials across many administrations.²⁶⁵ That push for full government engagement in human rights recognition and implementation continues with a push towards the creation of a National Human Rights Institution.²⁶⁶ In addition, ongoing advocacy is required to promote and ensure respect for and effective engagement of the international human rights mechanisms. This entails not just sustained and meaningful engagement on the part of the human rights mechanisms themselves, but also oversight and advocacy that works to ensure their independence, autonomy, and credibility. Sustained advocacy that seeks to build on prior work can only further both goals, demonstrating respect for previously articulated norms, while also ensuring that even those governments—like the United States—whose voluntary contributions to the OAS contribute

265. For an example of successful sustained advocacy specific to advancing housing as a human right, see Eric Tars et al., *supra* note 258.

266. See CAMPAIGN FOR AN NHRI IN THE USA, <https://nhriforusa.org>.

significantly to the funding of the IACHR, are held to account equal to that of the smallest countries in the region, and the smallest contributors to the Organization of American States. Advocacy can only be strengthened, therefore, by engaging in cross-border collaborations with those who share similar rights-specific and rights regime goals.

V. CONCLUSION

As set forth in this Article, human rights advocacy alone will not ultimately move us further along the arc of justice and towards the abolition of immigration detention and the rights violations endemic thereto. While complementary and overlapping advocacy efforts ultimately resulted in ICE's termination of its contract with ICDC, that victory was tainted—if not overshadowed—by the simultaneous move to expand ICE's contract with the Stewart Detention Center to include the detention of women, and the increased use of the Folkston Detention Center. But that does not mean advocates should concede this fight, or that international human rights advocacy is ultimately fruitless, or that the mechanisms are powerless. Instead, as we propose in this Article, the case study set forth herein highlights the need for fuller, more robust, and more consistent collaborative engagement with the international and regional human rights mechanisms alongside and in support of the immigrants who bravely step forward in pursuit of their fundamental human rights, and as a means of honoring those for whom stepping forward is no longer an option. Now more than ever, the international human rights community must provide clear and unequivocal guidance in the realm of immigration detention, insisting upon rights recognition and redress for those who endured abuse at ICDC and immigrants held in DHS custody across the United States,²⁶⁷

267. This Article focuses on rights violations for those held in ICE custody, specifically, because those are the rights violations that have been the subject of the advocacy undertaken by the authors, and because it is the violations that occur behind barbed wire and locked doors in detention centers in remote parts of the country that most often go unnoticed, unreported, and unaccounted for. Nonetheless, the authors are equally troubled by the number of deaths and egregious violations of fundamental human rights carried out by government officials in CBP facilities, primarily along the US southern border, including the tragic and preventable deaths of children held in CBP custody, *see* Eileen Sullivan, *Child Migrant Who Died in C.B.P. Custody Was Seen by Medical Staff 11 Times*, N.Y. TIMES, June 1, 2023, <https://www.nytimes.com/2023/06/01/us/politics/child-migrant-death.html>; *see* Stefan Becket, Camilo Montoya-Galvez & Margaret Brennan, *Unaccompanied Migrant Child Dies in U.S. Custody, the Second Death in 2 Months*, CBS NEWS (last updated on May 12, 2023), <https://www.cbsnews.com/news/unaccompanied-migrant-child-died-angel-eduardo-maradiaga-espinoza-us-custody-florida/>; Nick Miroff, *Three Minors Have Died This Year After Crossing Border, Entering U.S. Custody*, WASH. POST, May 22, 2023, <https://www.washingtonpost.com/immigration/2023/05/22/child-death-border-migrants>.

and those held in immigration detention across the globe. As articulated by Karina Cisneros Preciado, a woman transported in shackles to and from ICDC for aggressive and medically contraindicated procedures, “This shouldn’t happen to anyone anymore. We’re not animals. We’re human.”²⁶⁸

268. *Medical Mistreatment*, *supra* note 4; see also @SenOssoff, *WATCH: Karina Cisneros Preciado, who was formerly detained at Irwin County Detention Center in Georgia, delivers powerful opening remarks in PSI’s hearing on the mistreatment of women in U.S. detention.*, X (Nov. 15, 2022), <https://x.com/SenOssoff/status/1592611319102197760>.