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The Permanent Mission of the United States of America presents its compliments to the Office of the High Commissioner for Human Rights and to Mr. François Crepeau, Special Rapporteur on the Human Rights of Migrants, to Mr. Anand Grover, Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, to Ms. Rashida Manjoo, Special Rapporteur on Violence Against Women, Its Causes and Consequences, and to Mr. Juan Méndez, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The United States thanks the Special Rapporteurs for their August 19, 2011 letter regarding sixteen individual lesbian, gay, bisexual, and transgender persons (LGBT) who have allegedly been subjected to ill treatment while in detention in U.S. immigration facilities. The United States is aware of these allegations and is taking action to investigate the complaints.

The United States welcomes the opportunity to provide the Special Rapporteurs with information about proactive steps the U.S. Government has already taken to improve immigration detention conditions for LGBT detainees, and to provide answers to the six questions asked in the appeal. The United States cannot, however, comment on the details of the individual cases indicated by initials in the appeal, as the investigation is currently ongoing.

**Steps Taken or Currently Underway to Further Improve Detention Conditions for LGBT Immigration Detainees**

For an extended period of time, the U.S. Government has been actively engaged in working to improve detention conditions and safeguard the equality of LGBT individuals, through a number of coordinated initiatives across the Department of Homeland Security, which include:

\* In March 2011, U.S. Immigration and Customs Enforcement (ICE) within the Department of Homeland Security issued guidance to all field offices to emphasize the need for consistent admission, classification, and housing of vulnerable populations and detainees with a variety of special needs. Specifically, this guidance states that LGBT detainees should not be placed in segregated housing based solely on their sexual orientation or gender identification. This guidance also directs facility staff to identify these detainees' particularized medical care and other special needs, to ensure that proper protocols are implemented.

\* The ICE Performance-based National Detention Standards (PBNDS) are currently undergoing revisions that - once implemented - will include important enhanced protections for detainees who may be more vulnerable due to their actual or perceived sexual orientation or gender identity. The revised standards will be better tailored to the unique needs of ICE's

detained population, as they will maximize access to counsel, visitation, religious practices, and recreation, while also improving the agency's prevention of, and response to, sexual abuse or assault that may occur in detention facilities. The revised standards will also strengthen standards for quality medical, mental health, and dental care.

\* ICE is also engaged in automating a new Intake Risk Assessment process, scheduled for deployment in 2012, which directs ICE officers to consider special vulnerabilities; those vulnerabilities could include sexual orientation and gender identity. The risk assessment process contains objective criteria to guide decision-making regarding whether or not an alien should be detained or released; the alien's custody classification level, if detained; and the alien's level of community supervision (to include an ICE Alternative to Detention [ATD] program), if released.

\* ICE enforces its detention standards through an annual inspections process and through Detention Site Monitors (DSMs), who are currently located at facilities housing 85 percent of all ICE detainees. DSMs inspect immigration detention facilities on a consistent basis to ensure that detention contractors are meeting requirements and respond to and report on problems.

\* Information regarding sexual assault and abuse protections and safeguards is included on posters and in pamphlets at detention facilities. In addition, detainees should receive a copy of the ICE National Detainee Handbook, which contains information relating to sexual abuse prevention and the reporting of a sexual assault.

#### **Additional Information Regarding Six Specific Questions Asked of the U.S. Government**

The United States thanks the Special Rapporteurs for seeking the U.S. Government's observations on six specific matters and hope the following information addresses the questions.

***1) How can allegations of sexual violence be promptly investigated if the U.S. Department of Justice's proposed regulations to exclude immigration detention facilities detainees from the Prison Rape Elimination Act (PREA) are passed?***

U.S. Immigration and Customs Enforcement (ICE) within the U.S. Department of Homeland Security (DHS) is strongly committed to combating sexual abuse and sexual harassment of immigration detainees and has existing policies and procedures that call for prompt investigation of all such allegations. Whether or not the final regulations promulgated by the U.S. Department of Justice (DOJ) under PREA encompass ICE facilities, ICE will remain dedicated to protecting its detainees from harm.

ICE has a zero tolerance policy for sexual harassment and assault in all facilities housing immigration detainees and mandatory practices that call for informing detainees and staff of detainees' right to be safe and free from sexual harassment and assault and the procedures to report sexual assault and abuse. Through the National Detainee Handbook and the Sexual Assault Information materials, detainees are informed how to report abuse, including

how to report to DHS's Office of Inspector General (OIG). These sexual assault information materials provide an overview of the investigative process detainees can expect.

Investigations of alleged sexual assault or abuse are generally conducted by the local law enforcement agencies in the locality in which a facility is found. These investigations may also be coordinated with or conducted by the DHS OIG and ICE. The DHS Office for Civil Rights and Civil Liberties (CRCL) also has authority to investigate such complaints and is empowered to make recommendations to ICE to strengthen policies and procedures at a specific facility or across the immigration detention system. Investigations of sexual abuse and assault have resulted in employee termination and criminal prosecution as well as changes to practices and procedures to better protect detainees.

ICE has moved forward with its efforts to implement zero tolerance policies throughout the immigration detention system by continuing to examine the safety of its facilities; review existing standards on sexual abuse prevention, intervention and response; provide training for staff; and take other proactive steps to improve safeguards for detainees. This includes collaborating with the National Institute of Corrections in DOJ on the development of specialized training for ICE criminal investigators and other DHS personnel who are responsible for investigating allegations of sexual abuse or inspecting facilities for compliance with ICE detention standards.

**2) *What steps have been taken to investigate these victims' claims of torture and cruel, inhuman and degrading treatment while in the custody of the Department of Homeland Security?***

DHS CRCL has received complaints related to the treatment of LGBT individuals in immigration detention and has initiated an investigation into the allegations. CRCL's investigation includes onsite facility reviews, assessment of the complainants' medical and detention records by appropriate subject matter experts, in-person interviews with facility staff and complainants, and assessment of relevant DHS policies, protocols, and procedures. As this is currently an open investigation, CRCL cannot provide any further information at this time.

**3) *Will the Government extend the protections of PREA to immigrant detention facilities by ensuring the definition of "prison" includes any confinement facility of a federal, state or local government, whether administered by the Government or a private company on behalf of the Government?***

DOJ is currently revising the proposed PREA regulations and preparing the final regulations. Until the final rule is published, it would be premature to answer this question. However, regardless of whether the final regulations encompass ICE facilities, DHS is deeply committed to combating sexual abuse and sexual harassment of detainees and has taken affirmative steps to implement a zero tolerance policy at all its immigration detention facilities.

4) *What steps will the Government take to provide oversight to ensure implementation of these policies?*

As pledged, ICE has established and trained a corps of more than 40 new Federal Detention Site Monitors (DSMs) posted at each of its major detention facilities who, on a consistent basis, inspect to ensure that its contractors are meeting requirements, respond to and report on problems, and collaborate with contracting officers regarding cost adjustments as appropriate. ICE and DHS CRCL provide in-depth training to all DSMs. Training topics include red flags that signal victims of human trafficking; effective management of a culturally diverse detention setting; detainee access to counsel; limited English proficiency and disability considerations; religious practices; women's issues in detention; protections of the Violence Against Women Act (VAWA); asylum seekers in detention; prevention and response to sexual abuse of detainees; and mental health.

The DSMs provide ICE headquarters with a weekly report that documents problems identified within the facilities and the corrective actions taken to remedy them. These reports, along with other useful compliance tools, are then analyzed by ICE senior leaders. ICE senior leadership then ensures remedial plans are implemented and determine whether ICE should continue to use a particular facility.

The Office of Detention Oversight (ODO), within ICE's Office of Professional Responsibility (OPR), agrees that transparency and oversight must guide its detention reform efforts. Since its establishment in August 2009, ODO has served as an independent office within the agency, conducting inspections and investigating allegations. ICE has also conducted a comprehensive review of grievance procedures and designed a pilot project to ensure direct involvement of ICE officers in both formal and informal grievances. ICE is also exploring the feasibility of posting all facility inspection reports and corrective plans of action on the Internet. Other inspection mechanisms within ICE include a robust inspection program that ensures safe, appropriate, and humane conditions are rigorously applied and enforced in facilities that house ICE detainees. The facility inspection process utilized by ICE provides both structure and a schedule for compliance with ICE national detention standards and ICE policy. ICE maintains a list of facilities that are authorized to house ICE detainees, and removes detainees from facilities that are not in compliance with its Detention Management Compliance Program.

ICE conducts three types of facility reviews: pre-occupancy, special studies, and annual inspections. ICE conducts approximately 300 inspections annually to measure compliance with ICE detention standards in facilities that house ICE detainees. ICE awarded a contract to MGT of America, Inc. (MGT), which is recognized for its expertise in detention management. Detention professionals from MGT are now performing the annual detention facilities inspections for ICE. Each MGT team, at a minimum, will be comprised of a qualified senior project manager and qualified subject matter experts. This team consists of staff with specialized backgrounds in medical care, food service, life safety, security, programs, and occupational safety and health.

ODO inspects detention facilities in order to evaluate the welfare, safety, and living conditions of detainees. During each inspection, ODO evaluates the medical care provided to detainees based on the applicable ICE national detention standards. By reviewing facility adherence to the medical standards, ODO strives to ensure detainees receive prompt attention and appropriate treatment for all medical concerns. During each inspection, ODO also conducts interviews of a

cross section of detainees to provide the detainees the opportunity to raise any concerns or complaints about the services and treatment received at the facility. Concerns and complaints are taken very seriously and are incorporated into inspection reports and plans for corrective action, including complaints about inappropriate strip searches and denial of services such as recreation or medical care.

Prior to the conclusion of the inspection, the ICE Field Office Director and the facility officer in charge are made fully aware of any current practices that are of concern to the life, health, and safety of detainees. Subsequently, ODO also notifies ICE headquarters personnel of all serious and egregious findings. ODO final inspection reports are typically published within 45 days of the completion of the on-site visit and are immediately delivered to multiple parties within ICE for the most appropriate corrective actions. Facilities, in conjunction with the local ICE Field Office Director, are required to remedy all situations in which ODO has identified practices inconsistent with ICE detention standards and/or policies.

**5) *Will the Government terminate immigration detention contracts with local counties and private prisons that engage in abusive conduct?***

Yes, ICE can and has terminated contracts with facilities that do not comply with the applicable detention standards or which have demonstrated an inability to provide a safe and secure environment for ICE detainees. The Government has the ability to terminate these contracts for performance problems, which may include engaging in abusive conduct.

**6) *What steps will the Government take to ensure these individuals receive the medical treatment and medication they require?***

ICE has made clear that providing individuals in ICE custody, including LGBT detainees, with sound health care and access to appropriate medical services is a guiding principle of its reform. In its 2009 reform announcement, ICE pledged to hire a medical expert to provide an independent review of medical complaints and denials of requests for medical services. In January 2010, ICE Division of Immigration Health Service Corps (IHSC) assigned regional clinical directors to provide ongoing case management of complex medical cases and to expeditiously review denials of requests for medical services. ICE has also made substantial progress on its coordination efforts with DHS CRCL to systemize and expedite the medical complaints review process. ICE has recently revised and streamlined the treatment authorization process to ensure detainees receive the medical care that they need on a timely basis. ICE is also engaged in a nationwide review of medical and mental health services in order to deploy medical resources in the most efficient manner.

Any allegation that medical care is not being provided to a detainee is taken seriously. The claim that detainees with Gender Identity Disorder (GID) at the Santa Ana City Jail in California are being denied medication and/or treatment for their condition has been investigated by IHSC and CRCL (site visit in August 2011). CRCL has not issued a formal report; however, due to concerns raised during the facility review, IHSC has worked to educate the jail medical staff on

the need to provide this necessary care, and they have received instruction on how to obtain off-site specialty consultation services for GID and hormone therapy through the Medical Payment Authorization Request process. This mechanism is now being utilized to ensure appropriate care is provided for these detainees. The Field Medical Coordinator continues to monitor this concern.

The United States again thanks the Special Rapporteurs for taking the time to raise these important issues to attention.

The Permanent Mission of the United States of America thanks the Special Rapporteurs for their dedicated work and avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

The Permanent Mission of the  
United States of America, Geneva,

April 2, 2012.

