



**Unfinished Business:
Turning the Obama Administration's Human Rights Promises into Policy**

March 21, 2012

In April 2009, a few months after taking office, the Obama administration sought membership in the United Nations Human Rights Council (UNHRC) and issued a list of “U.S. Human Rights Commitments and Pledges”, including the following:

As the United States seeks to advance human rights and fundamental freedoms around the world, we do so cognizant of our own commitment to live up to our ideals at home and to meet our international human rights obligations.¹

In 2010, the U.S. government then committed to using its Universal Periodic Review (UPR) at the UNHRC to “deliver the progress [its] people demand and deserve” on human rights.² Through the UPR, the administration formally committed to take a number of concrete steps to improve U.S. human rights performance at home. The extent to which the administration lives up to those public commitments will substantially impact its human rights legacy.

In March 2012, the administration announced a plan to carry out the recommendations it agreed to during the UPR. The plan spans across agencies and establishes working groups in ten thematic areas with specified points of contact for each area.³ This white paper proposes eight implementation steps for four of the new working groups, those focused on: criminal justice, national security, immigration, and domestic human rights implementation. The administration has a limited window of opportunity to turn its pledges into policy. By implementing the recommendations in this paper, the administration will put muscle behind its rhetoric and deliver the progress it recognized the American people deserve.⁴

CRIMINAL JUSTICE

1. Take Concrete Steps to Stop Solitary Confinement Abuse⁵

During the UPR process the United States committed to:

Ensure the full enjoyment of human rights by persons deprived of their liberty, including by way of ensuring treatment in maximum security prisons in conformity with international law.⁶

U.S. supermax prisons hold over 25,000 people nationwide and researchers estimate that over 80,000 prisoners in the United States are held in administrative segregation, disciplinary segregation, and protective custody.⁷ Many such prisoners are severely mentally ill or cognitively disabled and they are typically placed in solitary confinement for indefinite periods, and may remain there for months, years, and even decades.⁸ Children held in adult U.S. prisons are also often held in solitary confinement “for safety reasons.”⁹

In August 2011, Juan E. Mendez, the U.N. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concluded in a report to the U.N. General Assembly that solitary confinement causes severe mental and physical pain and suffering and can amount to cruel, inhuman or degrading treatment or punishment and even torture.¹⁰ The United States should implement its commitment to humane treatment in maximum security prisons by taking concrete steps to address the abuse of solitary confinement. At a minimum, the United States government should immediately launch a study into the use of solitary confinement in prison facilities run by the Federal Bureau of Prisons. The United States should also extend an official invitation to the Special Rapporteur on Torture to visit the country as soon as practically possible, and should facilitate unimpeded access to prisons and prisoners held in solitary confinement.

2. End Disparate Impact of the Death Penalty and Mandatory Minimum Sentences¹¹

During the UPR process the United States committed to:

*Undertake studies to determine the factors of racial disparity in the application of the death penalty, to prepare effective strategies aimed at ending possible discriminatory practices.*¹²

*Review the minimum mandatory sentences in order to assess their disproportionate impact on the racial and ethnic minorities.*¹³

Racial disparity in criminal penalties—particularly in the application of the death penalty and imposition of mandatory minimum sentences—continue to persist in the American criminal justice system. In its recent periodic report to the U.N. Human Rights Committee, the U.S. government acknowledged “the overrepresentation of minority persons, particularly Blacks/African Americans, in the death row population” referencing a 2000 Justice Department study finding wide racial and geographic disparities in the federal government’s requests for death sentences.¹⁴ In 2011, racial minorities constituted 56% of the 3,220 people on death row.¹⁵ In 96% of states where race studies have been conducted, involving either race of victim or race of defendant, both disparities have been observed.¹⁶ A recent study by the U.S. Sentencing Commission (USSC) further found that people of color are sentenced to mandatory minimums for drug offenses far more often than their white counterparts and that the minimums are excessively severe, applied too broadly and inconsistently, and are in need of reform.¹⁷

In the long term, the United States should heed domestic and international calls to bring an end to the use of capital punishment.¹⁸ Immediately, the Obama Administration should fulfill its explicit commitment to undertake a new federal study examining the racial disparities in the application of the death penalty. In light of the most recent USSC study, the Justice Department should also reexamine its support of existing mandatory minimum sentences and, at the very least, refuse to support any new mandatory sentences that are proposed.

NATIONAL SECURITY

3. Provide U.N. Special Rapporteurs unimpeded access to Guantanamo Bay¹⁹

During the UPR process the United States committed to:

*Consider the possibility of inviting relevant mandate holders as follow-up to the 2006 joint-study by the 5 special procedures, in view of the decision of the current Administration to close the Guantanamo Bay detention facility.*²⁰

Outside independent monitoring is essential to ensuring prisoners' human rights in any detention facility. The well-documented history of secrecy and abuse at Guantanamo heightens the need for transparency concerning the detention facility's operations and the U.S. government's treatment of prisoners held there.²¹ Granting U.N. Special Rapporteurs full and unfettered access to Guantanamo will send a powerful message to the world that the U.S. government is truly committed to transparency, openness, and humane treatment.

Inviting U.N. special procedures (experts) to Guantanamo is also consistent with recommendations made in the U.S. Defense Department's own 2009 review of detention conditions at Guantanamo. In his report, Admiral Patrick Walsh recommended that the U.S. Defense Department "consider inviting non-governmental organizations and appropriate international organizations to send representatives to visit Guantánamo" because "[t]he involvement of other international and non-governmental organizations [in addition to the International Committee of the Red Cross]...may be beneficial in making the operations at Guantánamo more transparent, and in offering their services for the humane care and treatment of detainees."²²

To date, no non-governmental or international organization, other than the International Committee of the Red Cross, has been granted access to Guantanamo prisoners. The Obama administration should make good on its commitment to transparency and humane treatment by providing the five U.N. special procedures (experts) unimpeded access to the Guantanamo detention facility.

4. Provide Accountability and Remedies for Torture & Prevent Transfers to Torture²³

During the UPR process the United States committed to:

*[E]radicate all forms of torture and ill-treatment of detainees by military or civilian personnel, in any territory of jurisdiction, and that any such acts be thoroughly investigated.*²⁴

*Halt all transfer [of] detainees to third countries unless there are adequate safeguards to ensure that they will be treated in accordance with international law requirements.*²⁵

The U.S. government's failure to date to ensure accountability or remedies for past abuses of prisoners in U.S. custody – including transfer to abuse – has rightly generated considerable concern amongst the international community.²⁶ In light of these concerns, the United States should reconsider its decision not to: open a full investigation into past cases of torture, end the unjustified and improper assertion of the “state secrets” privilege to shield government officials and corporations from civil accountability, consider non-judicial remedies for victims of torture and other cruelty, and increase transparency in reforms it has implemented to prevent transfer to torture and other abuse.

There is now overwhelming evidence that under the Bush administration high level U.S. officials operated an interrogation program that subjected hundreds of prisoners to cruelty that violated both domestic and international law.²⁷ In June, Attorney General Eric Holder announced that the Department of Justice was only pursuing full criminal investigations into the deaths of two prisoners in U.S. custody.²⁸ The U.S. government should reverse its decision to so significantly narrow its investigation into abuses of detainees in U.S. custody and should commit to fully pursuing accountability for all those responsible for acts of torture consistent with its international legal obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

The U.S. government has also successfully invoked an array of privileges and immunities to block victims of torture from having their day in court, thereby denying victims access to remedies for their physical and psychological injuries.²⁹ The United States government should commit to providing alternative non-judicial remedies for victims of torture and other cruel, inhuman or degrading treatment, particularly for those who have exhausted judicial recourse.

Finally, in its recent periodic report to the U.N. Human Rights Committee, the U.S. government highlighted several steps that the administration is taking to ensure that U.S. transfers conform to international legal obligations.³⁰ However, many of the reports and recommendations that the government cited as being central to recent reforms remain secret—their substance unknown to the public.³¹ In implementing the recommendation that it ensure transfers are compliant with international law, the U.S. government should make the documents outlining the steps public, specifically, the Special Task Force on

Interrogations and Transfer Policies recommendations and the resulting reports on transfers of the Inspectors General of the State and Defense Departments.³²

IMMIGRATION

5. Take Concrete Steps to Reduce Significantly the Number of Individuals in Immigration Detention³³

During the UPR process the United States committed to:

*Reconsider alternatives to the detention of migrants.*³⁴

The U.S. immigration detention system locks up tens of thousands of immigrants unnecessarily every year, exposing detainees – including vulnerable populations such as persons with mental disabilities, asylum-seekers, women, children, and lesbians, gays, bisexuals and transgender individuals – to brutal and inhumane conditions of confinement at massive costs to American taxpayers.³⁵ This system of mass detention persists despite the fact that the U.S. Department of Homeland Security (DHS) acknowledges that most immigration detainees “have a low propensity for violence.”³⁶ Moreover, such mass detention is unnecessary to enforce immigration laws given the availability of alternatives like telephonic and in-person reporting, curfews, and home visits to prevent flight. Moreover, such mass detention is unnecessary to enforce immigration laws given the availability of alternatives to detention that have been shown to be successful at ensuring appearance at far less cost. These include supervised release with a combination of case management and assistance, reporting requirements (telephonic and/or in-person), and where necessary, curfews, home visits, and electronic monitoring. Indeed, DHS's Alternatives to Detention programs had a 93.8% compliance rate in 2010 and cost from \$.30-\$14 per person per day, whereas detention costs \$166 per person per day.³⁷

While the Obama administration has slightly reduced its congressional request for funding of immigration detention beds, there are many additional steps the administration should take to implement the UPR recommendation that it reconsider alternatives to the detention of migrants. Specifically, U.S. Immigration and Customs Enforcement (ICE) should use detention only as a last resort, in those circumstances where no alternative conditions of release would be sufficient to address the government's concerns about danger or flight risk.³⁸ ICE should also increase collaboration with local NGOs to allow statutorily eligible individuals who lack the requisite community ties to participate in alternatives to detention programs.³⁹ In this regard, the U.S. government should institute procedures to ensure that no person is subjected to immigration detention without a hearing before an impartial adjudicator to review ICE's determination that such detention is necessary. ICE should also ensure that its newly developed risk assessment tool prioritizes vulnerable populations for release, abandon its overly broad application of mandatory detention provisions, which offend international human rights norms, and increase collaboration with local NGOs on alternatives to detention programs.

6. Stop fostering racial profiling through immigration enforcement⁴⁰

During the UPR process the United States committed to:

*Prohibit and punish the use of racial profiling in all programs that enable local authorities with the enforcement of immigration legislation and provide effective and accessible recourse to remedy human rights violations occurred under these programs.*⁴¹

During the November 2010 U.S. UPR process, a number of states expressed serious concerns about racial profiling in relation to immigration enforcement issues. Racial profiling remains a widespread and pervasive problem in the United States, it is a violation of human rights, and it specifically runs afoul of U.S. obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).⁴² Two DHS programs, in large part, specifically fuel concerns around racial profiling: 287(g), which allows certain state and local law enforcement officers to engage in immigration enforcement; and Secure Communities (S-Comm), under which everyone arrested and booked into a local jail has their fingerprints checked against ICE's immigration database.

The 287(g) and S-Comm programs foster racial profiling and damage ties between local law enforcement and the community. The DHS Office of Inspector General (OIG) issued three reports in 2010-2011 on 287(g), affirming concerns that the program has contributed to racial profiling and has been incompetently administered.⁴³ While ICE has asked Congress to reduce funding in FY 2013 for 287(g) task forces, it has also approved the program's expansion in jails. Many states and localities throughout the country have refused to participate in S-Comm because officials have concluded that the program destroys public trust in policing and makes it harder for local and state law enforcement to do their jobs.⁴⁴ In both 287(g) and S-Comm, DHS has continuously partnered with jurisdictions where there are confirmed patterns of racial profiling.⁴⁵ The Inter-American Commission on Human Rights has emphasized that for S-Comm and 287(g), "ICE has failed to develop an oversight and accountability system to ensure that these local partners do not enforce immigration law in a discriminatory manner by resorting to racial profiling and that their practices do not use the supposed investigation of crimes as a pretext to prosecute and detain undocumented migrants."⁴⁶

At the 2011 UPR process, the United States "reaffirmed its commitment and recent actions to combat profiling" in the context of immigration enforcement, and claimed to be "conducting a thorough review of policies and procedures to ensure that none of its law enforcement practices improperly target individuals based on race or ethnicity".⁴⁷ To truly fulfill this commitment, the Obama administration should immediately require DHS to terminate all 287(g) agreements and the Secure Communities program. Moreover, the administration should: require DHS to regularly collect and make public data surrounding any such programs involving state and local police in immigration enforcement⁴⁸; limit all such programs to individuals convicted of serious and violent deportable felonies;

institute a robust racial profiling complaint and investigation procedure; and decline to initiate removal proceedings against individuals shown to have been subjected to racial profiling.

7. End Excessive Use of Force by Customs and Border Protection Agents⁴⁹

During the UPR process the United States committed to:

*Prohibit, prevent and punish the use of lethal force in carrying out immigration control activities.*⁵⁰

While it is unclear whether the United States has taken any steps to address the escalating number of incidents where U.S. Border Patrol agents and other Customs and Border Protection (CBP) personnel cause serious injury or death through the use of force, there are numerous allegations of abuses. In 2010, the Mexican Foreign Ministry reported that the number of Mexican nationals injured or killed as a result of use of force by U.S. Border Patrol agents has increased dramatically from 5 in 2008 to 12 in 2009 to 17 in just the first five months of 2010,⁵¹ but these numbers significantly understate the scale of the problem as countless incidents go unreported or occur against non-Mexican nationals. Over the past two years, there have been several fatal shootings where circumstances suggest the Border Patrol agents' use of force was disproportionate. In response to a June 2011 incident where a U.S. Border Patrol agent shot and killed a suspected border crosser on the Mexican side of the border who was allegedly throwing rocks at agents, Mexico's Foreign Relations Secretariat stated: "The Mexican government energetically condemns the death. ... [We] reiterate that the use of firearms to repel attacks with rocks, which is what preliminary information indicates may have occurred in this case, represents a disproportionate use of force."⁵²

While there are rare instances in which an agent needs to use lethal force if there is a tangible threat of serious bodily harm to agents or others, the frequency and regularity of its use has become alarming. To fulfill its commitment to prohibit, prevent and punish the use of lethal force in carrying out immigration control activities, the U.S. government should increase transparency of investigations into violent incidents; establish greater and independent oversight of Border Patrol agents; train agents to use alternative methods of force and de-escalation techniques when faced with individuals throwing rocks; and cease arguing in court that victims' survivors have no judicial remedy to recover damages from deadly-force incidents.

DOMESTIC IMPLEMENTATION OF HUMAN RIGHTS

8. Improve Transparency and Accessibility of Interagency Human Rights Implementation⁵³

During the UPR process the United States committed to:

*Continue consultations with non-governmental organizations and civil society in the follow up.*⁵⁴

In preparing its UPR report, the U.S. government engaged dozens of federal agencies and departments and participated in a number of civil society consultations throughout the country.⁵⁵ While the administration's recently announced plan for implementing the UPR recommendations is a welcome development, the administration needs to institutionalize a broader interagency process for implementing U.S. human rights obligations.

The U.S. government should heed the call of the Human Rights at Home Campaign and the U.S. Human Rights Network and codify a formal interagency human rights structure, led by the National Security Council, which is transparent and accessible to civil society.⁵⁶ The mechanism should: make clear to the public its mandate, authorities, structure and activities; establish explicit civil society points of contact with each agency involved in the structure; and hold regular, periodic meetings with civil society members. Such steps will allow civil society members to share their knowledge about rights violations they encounter on the ground and allow the administration to increase public awareness of its activities to improve compliance. The mechanism should also ensure effective collaboration and improved coordination between federal, state, local, and tribal governments on implementation and enforcement of human rights obligations.

In addition, in accordance with the U.S. government's recently stated commitment to improving ICERD implementation,⁵⁷ the administration should place particular focus on enhancing its ICERD-specific interagency coordination. The government should formally establish an interagency working group on ICERD. This body should clarify the mandate of the ongoing interagency ICERD work and, going forward, the mandate of the existing U.S. interagency group addressing ICERD should be made clear to the public. That mandate should focus on establishing a clear plan of action to implement fully the ICERD domestically and improve the United States' compliance with the treaty.

Conclusion

In March 2010, Secretary of State Hillary Clinton famously stated that "Human rights are universal, but their experience is local. This is why we are committed to hold everyone to the same standard, including ourselves."⁵⁸ This white paper has described concrete ways that the Obama administration can make tangible progress in protecting and promoting human rights and addressing their very serious violations.

Consistent with the Obama administration's stated commitment to "meeting its UN treaty obligations and participating in a meaningful dialogue with treaty body members"⁵⁹, in the 9 months between now and the end of this presidential term, there remains a real opportunity for the Obama administration to match its rhetoric with concrete action.

¹ United States Department of State, *United States Human Rights Commitments and Pledges* (April 2009), <http://www.state.gov/documents/organization/121976.pdf>.

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- ² United States Department of State, *Report of the United States of America Submitted to the U.N. High Commissioner for Human Rights in Conjunction with the Universal Periodic Review*, <http://www.state.gov/documents/organization/146379.pdf>.
- ³ Humanrights.gov, *U.S. Implementation Plan for the 2010 Universal Periodic Review* (March 16, 2012), <http://www.humanrights.gov/2012/03/16/u-s-implementation-plan-for-the-2010-universal-periodic-review>.
- ⁴ This report is not intended to be a comprehensive description of all steps the administration would have to take to be fully compliant with its human rights obligations. Instead, the report focuses on discrete commitments the administration has already made.
- ⁵ American Civil Liberties Union, *Stop Solitary - Advocacy Campaign Tools*, <http://www.aclu.org/prisoners-rights/stop-solitary-advocacy-campaign-tools> (last visited March 20, 2012).
- ⁶ Humanrights.gov, *Accepted UPR Recommendations* (March 2012) ¶ 177, <http://www.humanrights.gov/wp-content/uploads/2012/03/USAcceptedRecommendations-2010UPR.pdf>.
- ⁷ Daniel P. Mears, *Evaluating the Effectiveness of Supermax Prisons*, Urban Institute, 4 (2006); Angela Browne, A. Cambier, S. Agha, *Prisons Within Prisons: The Use of Segregation in the United States*, 24 *Federal Sentencing Reporter* 46 (2011).
- ⁸ *Wilkerson v. Stalder*, 639 F. Supp. 2d 654 (M.D. La. 2007) (three prisoners held in solitary confinement for periods ranging from 28 to 35 years); *Silverstein v. Federal Bureau of Prisons*, 704 F. Supp. 2d 1077 (D. Colo. 2010) (prisoner held in solitary confinement for 27 years).
- ⁹ United Nations Human Rights Council, 19th Session, Agenda Item 3, U.N. Doc. A/HRC/19/NGO/31 (February 17, 2012), available at http://www.aclu.org/files/assets/aclu.statement.solitary.confinement.unhrc_.19th.session.feb_.2012.pdf; Washington Coalition for the Just Treatment of Youth, *A Reexamination of Youth Involvement in the Adult Criminal Justice System in Washington: Implications of New Findings about Juvenile Recidivism and Adolescent Brain Development*, 8 (2009), available at http://www.columbialegal.org/files/JLWOP_cls.pdf.
- ¹⁰ United Nations Human Rights Council, 19th Session, Agenda Item 3, U.N. Doc. A/HRC/19/61 (January 18, 2012), <http://www.ohchr.org/Documents/Issues/SRTorture/A-HRC-19-61.pdf>.
- ¹¹ American Civil Liberties Union, *Death Penalty 101* (October 3, 2011), <http://www.aclu.org/capital-punishment/death-penalty-101>; American Civil Liberties Union, *Safe Communities, Fair Sentences*, <http://www.aclu.org/safe-communities-fair-sentences-0> (last visited March 20, 2011).
- ¹² Humanrights.gov, *supra* note 6, at ¶ 95.
- ¹³ *Id.* at ¶ 97.
- ¹⁴ United States Department of State, *Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights* (December 30, 2011), <http://www.state.gov/j/drl/rls/179781.htm>.
- ¹⁵ Death Penalty Information Center, *Facts about the Death Penalty* (March 12, 2012), <http://www.deathpenaltyinfo.org/documents/FactSheet.pdf>.
- ¹⁶ *Id.*
- ¹⁷ United States Sentencing Commission, *Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System*, xxviii-xxxviii (2011).
- ¹⁸ American Civil Liberties Union, *Statement Submitted to the OSCE Human Dimension Implementation Meeting by the American Civil Liberties Union on: Death Penalty in the United States of America* (September 28, 2011), <http://www.aclu.org/files/assets/osce-hdim-11-193-en.pdf>.
- ¹⁹ American Civil Liberties Union, *Detention*, <http://www.aclu.org/national-security/detention> (last visited March 20, 2012).
- ²⁰ Humanrights.gov, *supra* note 6, at ¶ 89.
- ²¹ Laurel E. Fletcher & Eric Stover, *Guantanamo and its Aftermath: U.S. Detention and Interrogation Practices and Their Impact on Former Detainees* (2008), available at http://www.law.berkeley.edu/HRCweb/pdfs/Gtmo-Aftermath_2.pdf.
- ²² Admiral Patrick Walsh, Department of Defense, *Review of Department Compliance with President's Executive Order on Detainee Conditions of Confinement* (February 2009), http://www.defense.gov/pubs/pdfs/Review_of_Department_Compliance_with_Presidents_Executive_Order_on_Detainee_Conditions_of_Confinementa.pdf.
- ²³ American Civil Liberties Union, *Torture*, <http://www.aclu.org/national-security/torture> (last visited March 20, 2012).

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- ²⁴ Humanrights.gov, *supra* note 6, at ¶ 139.
- ²⁵ *Id.* at ¶ 161.
- ²⁶ *Id.* at ¶ 139.
- ²⁷ American Civil Liberties Union, *Documents Released Under FOIA*, <http://www.aclu.org/accountability/released.html> (last visited March 20, 2012).
- ²⁸ Ateqah Khaki, *DOJ to Investigate Deaths of Two Detainees in CIA Custody*, ACLU Blog of Rights (June 30, 2011), <http://www.aclu.org/blog/national-security/doj-investigate-deaths-two-detainees-cia-custody>.
- ²⁹ See e.g. *Mohamed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070 (9th Cir. 2010), *cert denied*, No. 10-778, 2011 WL 1832889, at *1 (S. Ct. May 16, 2011); *Arar v. Ashcroft*, 585 F.3d 559 (2nd Cir. 2009), *cert denied*, 130 S. Ct. 3409 (2010).
- ³⁰ United States Department of State, *supra* note 14, at 256-95.
- ³¹ *Id.* at 285-86.
- ³² Note that the Department of Homeland Security Inspector General did make its report on transfer policy public. See, e.g., United States Department of Homeland Security, Office of Inspector General, *DHS Detainee Removals and Reliance on Assurances*, http://www.oig.dhs.gov/assets/Mgmt/OIG_11-100_Nov11.pdf.
- ³³ American Civil Liberties Union, *Immigration Detention*, <http://www.aclu.org/immigrants-rights/immigration-detention> (last visited March 20, 2012).
- ³⁴ Humanrights.gov, *supra* note 6, at ¶ 212.
- ³⁵ National Immigration Forum, *The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies* (August 2011), <http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf>.
- ³⁶ Dora Schriro, *Immigration and Customs Enforcement: Immigration Detention Overview and Recommendations* (October 6, 2009), <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>.
- ³⁷ National Immigration Forum, *supra* note 35.
- ³⁸ See U.N. High Commissioner for Refugees, *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants* iii, available at <http://www.unhcr.org/refworld/docid/4dc935fd2.html> (“[P]rinciples of proportionality, necessity and reasonableness . . . must be read as requiring detention to be an exceptional measure of last resort; and in this regard, states must show that there were not less intrusive means of achieving the same objective.”).
- ³⁹ Schriro, *supra* note 36.
- ⁴⁰ American Civil Liberties Union, *Secure Communities Blog Series*, <http://www.aclu.org/blog/tag/secure-communities> (last visited March 20, 2012); American Civil Liberties Union, *287(g) Blog Series*, <http://www.aclu.org/blog/tag/287g> (last visited March 20, 2012).
- ⁴¹ Humanrights.gov, *supra* note 6, at ¶ 108.
- ⁴² American Civil Liberties Union, *The Persistence of Racial and Ethnic Profiling in the United States* (2009), available at http://www.aclu.org/files/pdfs/humanrights/cerd_finalreport.pdf.
- ⁴³ Department of Homeland Security Office of Inspector General, *The Performance of 287(g) Agreements* (March 2010), http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_10-63_Mar10.pdf; Department of Homeland Security Office of Inspector General, *The Performance of 287(g) Agreements Report Update* (September 2010), http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_10-124_Sep10.pdf; Department of Homeland Security Office of Inspector General, *The Performance of 287(g) Agreements FY 2011 Update*, (September 2011), http://www.oig.dhs.gov/assets/Mgmt/OIG_11-119_Sep11.pdf.
- ⁴⁴ See e.g. Letter from Pat Quinn, Governor of Illinois, to Marc Rapp, Acting Assistant Director, Secure Communities (May 4, 2011), available at <http://uncoverthetruth.org/wp-content/uploads/2011-05/ilterminate.pdf>; Letter from Mylan L. Denerstein, Counsel to Governor of New York, to John Sandweg, Counsel to the Secretary for U.S. Department of Homeland Security (June 1, 2011), available at <http://www.governor.ny.gov/assets/Secure%20Communities.pdf>.
- ⁴⁵ DHS belatedly terminated its 287(g) agreement with Maricopa County Sheriff’s office after a DOJ investigation found evidence of misconduct by that office. Press Release, Department of Homeland Security, Statement by Secretary Napolitano on DOJ’s Findings of Discriminatory Policing in Maricopa County (December 15, 2011), available at <http://www.dhs.gov/ynews/releases/20111215-napolitano->

statement-doj-maricopa-county.shtm. DHS continues to operate S-Comm in several other jurisdictions with records of discriminatory policing including New Orleans, Suffolk County, New York, Alamance County, North Carolina, Puerto Rico, and Alabama. *Is Secure Communities Keeping Our Communities Secure?*, Hearing by the House Judiciary Subcommittee on Immigration Policy and Enforcement, 112th Cong. (2011) (statement of the American Civil Liberties Union), available at

http://www.aclu.org/files/assets/aclu_statement_re_scomm_hearing_11_30_11_final.pdf.

⁴⁴ Inter-American Commission on Human Rights, *Report on Immigration in the United States: Detention and Due Process* (December 30, 2010), available at

http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/03.17.2011_ReportOnImmigrationInTheUnited%20States-DetentionAndDueProcess.pdf.

⁴⁷ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, at 72, 74, U.N. Doc A/HRC/16/11 (January 4, 2011).

⁴⁸ Such information should include: circumstances and basis for contacts with individuals issued immigration detainers and/or placed in deportation proceedings; (b) the race and ethnicity of those contacted; and (c) the prosecutorial and judicial disposition of arrests that lead to detainers and/or deportation proceedings.

⁴⁹ Press Release, American Civil Liberties Union, *Border Patrol Shoots, Kills Rock Thrower* (June 22, 2011), available at <http://www.aclu.org/criminal-law-reform/border-patrol-shoots-kills-rock-thrower>.

⁵⁰ Humanrights.gov, *supra* note 6, at ¶¶ 208-209. In accepting these recommendations the United States noted that “law enforcement and immigration officers are lawfully permitted to use deadly force under certain exceptional circumstances, e.g., self-defense or defense of another person.” U.S. Department of State, U.S. Response to U.N. Human Rights Council Working Group Report (March 10, 2011), <http://www.state.gov/j/drl/upr/157986.htm>.

⁵¹ Letter from NGOs to John Conyers, U.S. House Judiciary Chairman (June 21, 2010), http://www.aclu.org/files/assets/Border_Oversight_Letter_FINAL_HOUSE_JUDICIARY.pdf.

⁵² *Agent’s Shot Kills Rock Thrower at Border Fence*, San Diego Union Tribune, June 22, 2011, available at <http://www.4sd.signonsandiego.com/news/2011/jun/22/border-patrol-agent-fatally-shoots-man-border/?ap>.

⁵³ Jamil Dakwar, *Keeping Our Promise to Human Rights*, ACLU Blog of Rights (December 9, 2009), <http://www.aclu.org/blog/human-rights/keeping-our-promise-human-rights>.

⁵⁴ Humanrights.gov, *supra* note 6, at ¶ 225.

⁵⁵ United States Department of State, *Report of the United States of America Submitted to the U.N. High Commissioner for Human Rights in Conjunction with the Universal Periodic Review 3*, <http://www.state.gov/documents/organization/146379.pdf>.

⁵⁶ Human Rights at Home Campaign Factsheet, <http://www.hurahcampaign.org/files/Interagency%20Working%20Group%20Fact%20Sheet.pdf> (last visited March 20, 2012).

⁵⁷ United States Department of State, *U.S. Statement on the Durban Declaration and Programme of Action*, (September 27, 2011), <http://geneva.usmission.gov/2011/09/27/durban-declaration-and-programme-of-action>.

⁵⁸ Hillary R. Clinton, *Preface to 2009 Country Reports on Human Rights Practices* (March 11, 2010), <http://www.america.gov/st/texttransenglish/2010/March/20100311143411eafas0.5985311.html>.

⁵⁹ United States Department of State, *supra* note 1.