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December 10, 2013

Commissioner Rodrigo Escobar Gil
Rapporteur on the Rights of Persons Deprived of Liberty
Inter-American Commission on Human Rights
1889 F St. NW
Washington D.C. 20006

Re: Request for Meeting on violations of the rights of immigrants detained in Georgia

Dear Commissioner Gil,

I am writing on behalf of the American Civil Liberties Union Foundation of Georgia (ACLU of Georgia) to request a meeting with both you and Commissioner Felipe González, to discuss the findings of our report, *Prisoners of Profit: Immigrants and Detention in Georgia*, a copy of which is enclosed.¹ In light of the recent IACHR Reports “Report on the Human Rights of Persons Deprived of Liberty in the Americas” and “Report on Immigration in the United States: Detention and Due Process,” we recognize that the IACHR shares many of the same concerns as expressed by the ACLU of Georgia about treatment of immigrants. Therefore, we hope that this request will lead to your support, along with that of Commissioner González, and that appropriate action may be taken.

Prisoners of Profit documents the plight of thousands of individuals who are detained in immigration detention facilities in the State of Georgia and details extensive violations of their rights guaranteed by the American Declaration on the Rights and Duties of Man (“American Declaration”), including guarantees under Articles XXV and XXVI to humane treatment and due process of law.

Prisoners of Profit is authored by the ACLU of Georgia’s National Security/Immigrants’ Rights Project, a project aimed at bringing Georgia and its localities into compliance with constitutional and human rights standards on the treatment of refugee and immigrant communities, including immigrants detained in facilities in the state. The Project’s current priorities include: immigration detention; racial profiling and local enforcement of immigration laws; undocumented student access to public higher education; immigrant communities’ access to justice; discrimination against Muslim, Middle Eastern, and South Asian communities; and protection of other fundamental rights of immigrants.

Prisoners of Profit is the culmination of three years of visits by ACLU of Georgia staff to

¹ See Alexandra Cole, *Prisoners of Profit: Immigrants and Detention in Georgia*, 28 (Azadeh Shahshahani ed., American Civil Liberties Union Foundation of Georgia, 2012), available at http://www.acluga.org/files/2713/3788/2900/Prisoners_of_Profit.pdf. (“Prisoners of Profit”).

immigration detention centers throughout the state, interviews with detained immigrants and their family members as well as interviews with immigration lawyers.² The report establishes that immigrants in Georgia are systemically deprived of their right to due process in immigration removal proceedings, and that while detained pending those proceedings or pending their removal from the United States, they are subjected to conditions of confinement that rise to the level of cruel, inhuman or degrading treatment. In addition, through the operation of state and federal laws, immigrants are denied access to an effective remedy for violations of their rights. The report documents these abuses, and makes concrete recommendations for reform of laws, policies, and practices to bring them into line with the U.S. constitution and international law, including the American Declaration.

I. Due Process Violations

Articles XVIII and XXVI of the American Declaration guarantee everyone fundamental substantive and procedural due process protections in criminal, civil, and administrative proceedings.³ Thus, all immigration proceedings must adhere to the due process guarantees of the American Declaration. The United States Supreme Court has also recognized that the due process guarantees of the Fifth Amendment of the U.S. Constitution apply to the civil confinement of non-citizens.⁴

The United States has charged the U.S. Immigration and Customs Enforcement (ICE) with the detention of immigrants whom it is seeking to remove from the country. ICE has outsourced much of its mandate to private corporations such as Corrections Corporations of America (CCA), which operates the largest detention center in Georgia.

ICE officials and CCA officers acting as their agents have violated due process rights of immigrants in Georgia in three ways: (1) through the establishment of coercive and constitutionally inadequate removal proceedings; (2) denying immigrants effective access to legal counsel; and (3) failing to provide them with effective grievance procedures regarding conditions of confinement.

1. Violations of Due Process by Immigration and Customs Enforcement (ICE) policies and ICE officers

Several ICE policies and practices implemented in Georgia deny immigrants their due process rights.

ICE officers undermine immigrants' rights by routinely coercing immigrants into signing

² See Prisoners of Profit, *supra* note 1 at 28.

³ Sawhoyamaya Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 82 (Mar. 29, 2006) (noting that “the due process of law guarantee must be observed in the administrative process and in any other procedure whose decisions may affect the rights of persons.”).

⁴ See David Cole, In Aid of Removal: Due Process Limits on Immigration Detention, 51 Emory L.J. 1003, 1010 (2002) (“non-punitive or preventive detention is permissible only where an individual (1) is either in criminal or immigration proceedings and has been shown to be a danger to the community or [a] flight risk; (2) is dangerous because of a ‘harm-threatening mental illness’ that impairs his ability to control his dangerousness; or (3) is an enemy alien during a declared war.” (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001))); *United States v. Salerno*, 481 U.S. 739, 752-53 (1987); *Carlson v. Landon*, 342 U.S. 524, 541-42 (1952).

stipulated orders for their removal.⁵ These orders strip detainees of their right to a hearing as they purport to signal their consent to removal from the United States. However, detained immigrants often sign these orders unaware of the rights they are giving up or of the consequences that may result. Moreover, the ACLU of Georgia documented instances of deportation officers verbally and physically coercing immigrant detainees into signing stipulated orders for their removal.⁶

This practice violates the American Declaration. Article XVIII of the American Declaration states that “[e]very person may resort to the courts to ensure respect of his legal rights.” As IACHR has previously stated, it is a violation of Article XVIII when a State fails to provide an individual facing deportation “a judicial mechanism to present their humanitarian defenses and offer an effective remedy.”⁷ The stipulated orders of removal that are signed under coercion clearly violate Article XVIII’s requirement that a judicial mechanism be provided.⁸

After final removal orders have been issued, immigrants have been subjected to arbitrary detention, including detention without adequate review.⁹ Article XXV of the Declaration requires that no person can be deprived of liberty except “by pre-existing law” and that anyone detained has the “right to be tried without undue delay or, otherwise, to be released.”¹⁰ In *Zadvydas v. Davis*, the U.S. Supreme Court held that once a final removal order has been issued, absent special circumstances, immigrants can only be detained for a “reasonable time” pending their removal from the country.¹¹ The Court established a presumptively “reasonable” six month period after which, “once an alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must furnish evidence sufficient to rebut that showing.”¹² Despite this ruling, detention centers in Georgia have held individuals well beyond six months after final removal orders without affording them a hearing to determine whether their further detention is justifiable, in violation of their due process rights under the U.S. Constitution.¹³

⁵ Interview with Angela Kelley conducted by the ACLU of Georgia at Irwin County Detention Center on March 10, 2011; interview with Gainesville-based immigration attorney conducted by ACLU of Georgia on March 22, 2011; interview with Jovita Campuzano Jimenez conducted by the ACLU of Georgia at Irwin County Detention Center on March 10, 2011; and interview with Atlanta-based attorney conducted by the ACLU of Georgia on March 28, 2011.

⁶ Prisoners of Profit, *supra* note 1 at 44.

⁷ Wayne Smith, Hugo Armendariz Et Al. v. United States of America, Case 12.562, Inter-Am. Comm'n H.R., Report No. 81/10, rev. ¶ 64 (2010).

⁸ See also, Article 9(4) of the International Covenant on Civil and Political Rights providing a right to “take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.” International Covenant on Civil and Political Rights, adopted Dec. 19, 1966, art. 7, Sen. Exec. Doc. E, 95-2, at 23, 25 (1978), 999 U.N.T.S. 171, 175 (entered into force Mar. 23, 1976), art. 9(4).

⁹ See e.g., interviews with Paul and Ido Yelkal conducted by the ACLU of Georgia at Stewart on July 25, 2011 and August 13, 2011. For purposes of the report, this detainee wished to be referred to as Paul.

¹⁰ American Declaration of the Rights and Duties of Man, May 2, 1948, Article XXV, OAS Doc. OAS/ser.L/V/I.4 rev. 8 (2001), available at <http://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm> (last visited July 22, 2013) [hereinafter American Declaration].

¹¹ See *Zadvydas v. Davis*, 533 U.S. 678 (2001).

¹² *Id.* at 680.

¹³ See Prisoners of Profit, *supra* note 1 at 45 (discussing multiple cases in which detainees were kept beyond six-months after issuance of final removal orders).

Despite the Supreme Court's ruling in *Zadvydas*, detained immigrants in Georgia are held beyond the six-month limit. This practice also deprives detainees of their right to be tried without undue delay. Thus, their confinement amounts to arbitrary detention in violation of Article XXV of the American Declaration.

2. Violations of Due Process Right to Legal Counsel

Due process rights guaranteed by Article XXVI of the American Declaration include the right to legal representation.¹⁴ Effective legal representation is crucial for immigrants facing deportation, and, according to one study, is, “the single most important non-merit factor” in determining the outcome of removal proceedings.¹⁵ However, ICE and CCA, acting under the authority of United States, prevent detainees from obtaining representation and accessing legal resources. Thus the U.S., both directly and through the actions of its agent, CCA, violates Article XXVI of the American Declaration.

Prisoners of Profit documents numerous ways in which the right to effective legal representation is violated:

- CCA staff fails to provide immigrant detainees with information regarding *pro bono* legal services.¹⁶
- Immigration attorneys are prohibited from meeting with their clients before or after court hearings.¹⁷
- Georgia's detention centers are situated in remote areas of the state and have defective communication systems.
- Legal libraries are poorly resourced and computer access is limited.

Immigrants detained at the Stewart Detention Center are especially impacted by these rights' violations. Stewart is located 145 miles south of Atlanta in an isolated part of the state. Attorneys face difficulties in effectively representing their clients due to the time it takes to travel to the facility and the costs of travel. Stewart's remote location deprives immigrant detainees of access to adequate legal representation in other ways as well. Overnight mail cannot

¹⁴ IACHR, *Andrea Mortlock*, (United States), Report No. 63/08 (Admissibility and Merits), Case No. 12.534, para. 83 (July 25, 2008), available at <http://www.cidh.org/annualrep/2008eng/USA12534eng.htm>; IACHR, *REPORT ON IMMIGRATION IN THE UNITED STATES: DETENTION AND DUE PROCESS*, OEA/ser.L/V/II., doc. 78/10, para. 336 (Dec. 30, 2010), available at <http://www.cidh.oas.org/countryrep/USImmigration/Chap.IV.d.htm>; Cardozo Law Review, "Accessing Justice II: A Model for Providing Counsel to New York Immigrants in Removal Proceedings." (Dec. 2012.), available at http://www.cardozolawreview.com/content/denovo/NYIRS_ReportII.pdf.

¹⁵ Andrew I. Schoenholtz & Hamutal Bernstein, "Improving Immigration Adjudications Through Competent Counsel", 21 *Geo. J. Legal Ethics* 55, 56 (2008).

¹⁶ Interview conducted by the ACLU of Georgia at Stewart on August 17, 2009; interview conducted by the ACLU of Georgia at Stewart on August 13, 2011; interview conducted by the ACLU of Georgia at Stewart on July 6, 2010; interview conducted by the ACLU of Georgia at Stewart on September 27, 2011.

¹⁷ This policy and practice is detailed in an email from Julio Moreno, The Fogle Law Firm (Jan, 10 2012) ("In the last few weeks, ICE officers escorting detainees to court have prevented all attorneys from having any conversation with their clients before or after their case is called. ... This policy has prevented us from both gathering necessary information before going in front of the judge and explaining the outcome of hearings afterwards. Also, this procedure has slowed down the docket because we are now forced to request time to speak with our client while we are in front of the judge."). See *Prisoners of Profit*, *supra* note 1 at 42, n. 344.

reach Stewart from Atlanta and the facility does not accept faxed documents.¹⁸ Attorneys are often unable to attend removal hearings in person and are forced to call in to hearings via telephone. Telephone communication is unreliable, making attorney-client communication difficult.¹⁹

CCA policies on attorney/client meetings further undermine detainees' right to counsel. For example, CCA policy does not permit contact visits during pre-representation meetings between attorneys and detained immigrants.²⁰ And, at one CCA facility, policy requires attorneys to disclose to the warden all information—much of it confidential—learned in attorney-client interviews.²¹

Detained immigrants, many of whom have to represent themselves, are also denied access to adequate legal resources. Requests to visit the law library may take days or even weeks to process and time limits placed on individual use often make visits impractical.²² The Atlanta City Detention Center has only one computer for 300 detainees.²³ Legal resources for non-English speaking detainees are extremely limited.²⁴

CCA's policies and infrastructure prevent adequate access to legal representation and resources violating detained immigrants' rights to due process. The forced reliance on faulty phone communications, even during hearings on the merits, and limited interview rooms is a greater obstacle to adequate legal access than the videoconferencing about which IACHR has previously expressed concern.²⁵ This is especially true when coupled with the remote location of the detention centers and limited legal libraries that deprive immigrants of adequate legal access. The severe restrictions on access to legal resources also violate immigrant detainees' rights to due process under Article 9(4) of the ICCPR.²⁶ This mirrors the concern with access that IACHR has previously expressed when examining detention centers in the United States.²⁷

II. Right to Humane Treatment and to Family Life

¹⁸ *Id.* at 37.

¹⁹ For more information about the remoteness of immigration detention centers, see Human Rights Watch, *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States* at 3-5 (2009), available at <http://www.hrw.org/node/86789>.

²⁰ *Prisoners of Profit*, *supra* note 1 at 14 (detailing the conditions placed on attorney visits and the negative effect they have on attorney-client communication).

²¹ Notification to Facility Visitors (Attorney) Form, obtained by the ACLU of Georgia via email from Stacey Stone, Warden (Mar. 29, 2012). The relevant section reads: "All other information is considered confidential and I agree to clear any other information through the Warden or designee...However any information which would have any affect [sic] on security and the welfare of detainees/residents or staff must be forwarded to the Warden or designee."

²² *Prisoners of Profit*, *supra* note 1 at 49.

²³ *Id.* at 97.

²⁴ *Id.* at 49.

²⁵ IACHR, *REPORT ON IMMIGRATION IN THE UNITED STATES: DETENTION AND DUE PROCESS*, OEA/ser.L/V/II., doc. 78/10, para. 403 (Dec. 30, 2010), available at <http://www.cidh.oas.org/countryrep/USImmigration/Chap.IV.d.htm>.

²⁶ Cf. *Kelly v. Jamaica*, Human Rights Comm., No. 253/1987, ¶5.6, U.N. Doc. CCPR/C/41/D/253/1987 (Apr. 10, 1991) (noting that inability of the detained to access a lawyer or communicate with family members exacerbated the Article 9(4) violation).

²⁷ IACHR, *REPORT ON IMMIGRATION IN THE UNITED STATES: DETENTION AND DUE PROCESS*, OEA/ser.L/V/II., doc. 78/10, para. 334 (Dec. 30, 2010), available at <http://www.cidh.oas.org/countryrep/USImmigration/Chap.IV.d.htm>.

1. Violations of the Right to Humane Treatment

Article XXV of the American Declaration states that every person who has been deprived of his liberty, “has the right to humane treatment during the time he is in custody.”²⁸ The IACHR has found that this right encompasses, in light of confinement, the right to health “understood to mean the enjoyment of the highest possible level of physical, mental, and social well-being.”²⁹

In violation of Article XXV, immigrant detainees in Georgia are held in unsafe and unhygienic living conditions. Officials sometimes detain low-security level detainees with those designated as high-security level detainees.³⁰ Detained immigrants are denied adequate bathing and washing facilities. Often, this means individuals must bathe, wash their hands, and flush the toilet when there is no running water. This is a recurring issue at Stewart.³¹ Even basic hygiene supplies are sometimes not provided. At one Georgia facility, a woman contracted a serious infection when she was provided only soiled underwear to wear. The infection became so severe that it left scars on her legs and genitals.³²

Detention centers in Georgia are also ill equipped to provide adequate care to immigrants, further exacerbating the inhumane conditions. Most guards, deportation officers, and medical personnel do not speak Spanish and even when bi-lingual detainees attempt to help, communication barriers persist.³³ The ACLU of Georgia documented at least one case of a detained immigrant placed in solitary confinement for interpreting for another immigrant detainee.³⁴

Detention facilities—including Stewart—have gone years without employing a full-time doctor.³⁵ Preventative care is not available; pre-existing medical needs are often ignored; and emergency care is grossly inadequate.³⁶ For instance, while working at Stewart’s kitchen, an immigrant detainee crushed his toe and shattered his toenail.³⁷ He was not allowed to see a doctor and was referred instead to nurse practitioners who refused to remove the shards of his nail from his toe. They gave him only over-the-counter pain medication, antibiotics, and instructions to apply ice to his toe. Six and a half months later, his nail had not grown back and his toe remained infected, causing him continuous pain. The same man was injured a second time while working when he twisted his leg, causing swelling from his ankle to his knee. Nurse practitioners at Stewart did not allow him to see a doctor for over three months while pain and swelling persisted. During this time, nurse practitioners denied him the necessary medication, permission slips allowing him not to work, and authorization to use physical assistance items

²⁸ American Declaration, *supra* note 1, Article XXV.

²⁹ Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, OEA/Ser/L/V/II.131, doc. 26 Principle X (Mar. 14, 2008), *available at* <http://www.oas.org/en/iachr/mandate/Basics/principlesdeprived.asp>.

³⁰ Interview conducted by the ACLU of Georgia at Irwin on December 7, 2011.

³¹ Interview conducted by the ACLU of Georgia at Stewart on September 27, 2011.

³² This detainee wished to be referred to by her first name only. Interview with Veronica conducted by the ACLU of Georgia at Irwin on July 22, 2011.

³³ *See* Prisoners of Profit, *supra* note 1 at 45-46.

³⁴ Interview with Damien Alvarez conducted by the ACLU of Georgia on August 3, 2011.

³⁵ Prisoners of Profit, *supra* note 1 at 18.

³⁶ *Id.* at 103-104.

³⁷ Interview with Eduardo Zuniga conducted by the ACLU of Georgia at Stewart on June 17, 2011.

such as a wheelchair or a second crutch.

The unsanitary and unhealthy conditions in Georgia's detention centers are clearly deplorable. The failure of the facilities to have adequate staff and provide proper medical treatment is unacceptable. These practices and conditions violate Article XXV of the American Declaration.

2. Violation of the Right to a Family Life

Article VI provides that “[e]very person has the right to establish a family ... and to receive protection therefor.”³⁸ The Commission has determined that this right encompasses a right on the part of families to visit an incarcerated relative.³⁹ The Commission has also recognized that States have an affirmative obligation to facilitate contact between detainees and their family.⁴⁰ This includes facilitating communication through mail, visits, and telephone calls.⁴¹ Furthermore, the IACHR emphasizes: “Visiting rights are a fundamental requirement for ensuring respect of the personal integrity and freedom of the inmate.”⁴² However, in Georgia, this assurance of respect and personal integrity has been stripped away from immigrant detainees.

In violation of Article VI, immigrants in Georgia are arbitrarily separated from their families during their detention pending immigration proceedings and, if they are ordered removed, during their detention pending removal. The separation of the family unit is one of the most devastating impacts of detention on both the family and the individual.⁴³ Further, most detention centers in Georgia are located in remote areas of the State.⁴⁴ This remoteness coupled with the fact that many immigrants have been transferred from other states makes visitation very difficult and in many situations impossible.⁴⁵ A detainee at the Irwin County Detention Center went over eight months without seeing his family due to distance and remoteness of the facility.⁴⁶ Another Irwin detainee has four children, the youngest only five years old, who are suffering immensely from the separation from their father.⁴⁷ The IACHR has expressed concern over similarly remotely

³⁸ See also, United Nations Declaration of Human Rights (UDHR), Art. 12; The International Covenant on Economic, Social, and Cultural Rights (ICESCR), Art. 10; Convention on the Rights of the Child, Art. 16, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990, (signed by U.S. Feb. 16, 1995) [hereinafter CRC]; African Charter on the Rights and Welfare of the Child, Art. 10 and 18, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986 [hereinafter African Charter]; American Convention on Human Rights, Art. 11 and 17, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, (signed by U.S. June 1, 1977); European Convention, Art. 8, [European] Convention for the Protection of Human Rights and Fundamental Freedoms, (ETS 5), 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols Nos. 3, 5, and 8 which entered into force on 21 September 1970, 20 December 1971 and 1 January 1990 respectively; Sonja Starr & Lea Brilmayer, *Family Separation as a Violation of International Law*, 21 Berkeley J. Int'l L. 213 (2003).

³⁹ IAHCR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc 64. (Dec. 31, 2011), available at <http://www.oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf>.

⁴⁰ Oscar Elias Biscet et. al. v. Cuba, Case 12.476, Inter-Am. Comm'n H.R., Report No. 67/06, paragraph 237 (2006); Report on the Human Rights of Persons Deprived of Liberty in the Americas, *supra* note 40 at ¶ 577.

⁴¹ *Id.*

⁴² Prisoners of Profit, *supra* note 1 at 84.

⁴³ *Id.*

⁴⁴ *Id.* at 15.

⁴⁵ *Id.*

⁴⁶ *Id.* at 84.

⁴⁷ *Id.*

located prisons.⁴⁸

To exacerbate the negative consequences of these already egregious circumstances, communicating with family members by the telephone is likewise difficult due to exorbitant prices and unreliable service.⁴⁹ At Irwin, phone calls are capped at 15 minutes and cost detainees about \$5.00 per call, regardless of whether they reach a family member or not.⁵⁰

Obvious flaws in policy and practice undermine the right to family visitation in all forms, whether in person or via telephone. These inadequate policies and practices fail to effectively facilitate family visitation. They have removed detainees from their families without any regard or respect for family unity, subjecting immigrants to arbitrary detention and erecting significant barriers to family visitation.

III. Forced Labor Programs

Article XIV of the American Declaration recognizes that every person who works is entitled to receive equitable remuneration for his or her labor.⁵¹ Taking into account the principles and provisions of multiple international instruments, including the American Declaration, the Inter-American Principles on Detention illuminate the nature and scope of this right, providing that “all persons deprived of liberty shall have the right to work, including the right to receive a fair and equitable remuneration.”⁵² However, in Georgia, immigrant detainees are made to work for as little as \$1.00 to \$3.00 a day, saving private facilities countless dollars in wages.⁵³ These wages are far below \$7.25, the federal minimum wage for full-time work.

Furthermore, while the work programs are referred to as “voluntary,” immigrants at several of Georgia’s detention centers are actually made to participate, as they are often not informed that participation is optional.⁵⁴ Work program consent forms are not consistently presented in Spanish, leaving Spanish-speaking immigrants unaware of the conditions they are “consenting” to. Furthermore, immigrant detainees wishing to cease work have been threatened with disciplinary action.⁵⁵

Detainees subjected to these conditions are unable to challenge their mistreatment due to inadequate grievance procedures. U.S. courts have repeatedly upheld the constitutionality of mandatory work programs for detainees, noting that common work arrangements such as activities designed “to occupy [the detainee]’s time” are not “restrictions placed upon [the detainee]” under the meaning of the Due Process Clause and the Cruel and Unusual Punishment Clause of the U.S. Constitution.⁵⁶ Such forced work programs, however, violate Article XIV of the American Declaration, as the detainees are not receiving equitable remuneration for their

⁴⁸ Oscar Elias Biscet et. al. v. Cuba, Case 12.476, Inter-Am. Comm’n H.R., Report No. 67/06, paragraph 238 (2006).

⁴⁹ Prisoners of Profit, *supra* note 1 at 15-16.

⁵⁰ *Id.* at 84.

⁵¹ American Declaration, *supra* note 1, Article XIV.

⁵² IACHR Principles and Practices, princ. XIV (Mar. 14, 2008),

<http://www.cidh.oas.org/Basicos/English/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm>.

⁵³ Prisoners of Profit, *supra* note 1 at 57.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 208.

work.

IV. Significant Barriers to Adequate Redress for Violations of Rights Guaranteed Under the American Declaration

1. Lack of Internal Grievance Procedures

According to Article XXVI of the American Declaration, “Every person accused of an offense has the right to be given an impartial and public hearing...”⁵⁷ Further, according to the Inter-American Principles on Detention: “Every person deprived of liberty shall, *at all times* and in all circumstances, have the right to the protection of and regular access to competent, independent, and impartial judges and tribunals, previously established by law.”⁵⁸ (Emphasis added). Thus, due process guarantees should apply to grievance proceedings just as they apply to civil and criminal trials and hearings.

As *Prisoners of Profit* documents, Georgia’s internal grievance procedures do not protect detainees from the violation of the rights guaranteed by the American Declaration. Guards have retaliated against immigrants for filing a grievance by placing them in segregation units.⁵⁹ Detainees may be held in the Segregation units for periods exceeding 60 days,⁶⁰ against the recommendation of the UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment of a 15-day limit on such confinement,⁶¹ and are denied access to the law library, telephone, recreation facilities, as well as standard portions of food.⁶² Further, the UN Special Rapporteur recommends that such confinement not be used for punitive purposes, though detainees are often confined as a form of punishment.⁶³

While detained immigrants also have a right to file complaints outside of the in-house grievance policy directly with the U.S. Department of Homeland Security, this avenue has failed in practice to provide any real redress. Records obtained by the ACLU of Georgia have revealed that almost no follow-ups have been made on complaints filed directly with the Department of Homeland Security. For example, of 94 complaints filed from the Stewart detention facility, only three were not administratively closed upon receipt.⁶⁴ Thus, in violation of Article XXVI, detainees are held without any real ability to seek meaningful redress for harms perpetrated against them by individual guards.

⁵⁷ American Declaration, *supra* note 1, Article XXVI.

⁵⁸ IACHR Principles and Practices, princ. V (Mar. 14, 2008), <http://www.cidh.oas.org/Basicos/English/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm>.

⁵⁹ Prisoners of Profit, *supra* note 1 at 64-65.

⁶⁰ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *2008 Operations Manual ICE Performance Based National Detention Standards* 15 Special Management Unit 2 (Dec. 2, 2008), *available at* <http://www.ice.gov/detention-standards/2008>.

⁶¹ Special Rapporteur On Torture Tells Third Committee Use Of Prolonged Solitary Confinement on Rise, Calls for Global Ban on Practice, (Oct. 18, 2011), <https://www.un.org/News/Press/docs/2011/gashc4014.doc.htm>.

⁶² *Id.* at 11 (detailing that despite specific requests from the ACLU of Georgia, CCA staff refused to grant access to the segregation units).

⁶³ Special Rapporteur On Torture Tells Third Committee Use Of Prolonged Solitary on Rise, Calls for Global Ban on Practice, (Oct. 18, 2011), <https://www.un.org/News/Press/docs/2011/gashc4014.doc.htm>.

⁶⁴ Prisoners of Profit, *supra* note 1 at 65.

2. Lack of Adequate Domestic Remedies for Violations of Rights Protected under the American Declaration

Article XVIII of the American Declaration states: “Every person may resort to the courts to ensure respect for his legal rights.”⁶⁵ However, immigrant detainees in Georgia are unable to access U.S. courts to vindicate violations of their rights protected under U.S. laws. This problem exists because the majority of immigrant detention facilities in the state are operated by private, for-profit companies that are essentially immune from suit for such violations.⁶⁶ In *Correctional Services Corp. v. Malesko*, the U.S. Supreme Court held that the U.S. Constitution did not “allow recovery against a private corporation operating a halfway house under contract with the [federal] Bureau of Prisons” for alleged violations of the U.S. Constitution.⁶⁷ Thus, *Malesko* effectively precludes private corporations from federal liability for constitutional violations.⁶⁸ Instead, the Court held that “alternative remedies” derived from *state* tort law or from agency regulations were to be utilized by a detainee alleging such violations, effectively limiting remedial possibilities to the state level only.⁶⁹

Three of Georgia’s four detention centers are owned and operated by private corporations, including the two largest facilities. Thus, detainees have virtually no viable federal avenues to effectively challenge the systematic violations of rights protected by the American Declaration. Instead, detainees must rely on Georgia’s law and Constitution for relief, as suggested in *Minneci v. Pollard*.⁷⁰

However, state remedies only provide individualized relief, and are ill-equipped to adequately address systematic human rights violations. Furthermore, all civil actions require capable and willing attorneys and significant resources. But, because immigrants are detained in remote areas of the state, there are substantial barriers preventing them from accessing attorneys. Additionally, the fact that many immigrants face removal when combined with state tort actions’ lengthy timetables increases the difficulty of bringing successful claims. Therefore, state tort actions are an inadequate means to address Georgia’s detention centers’ serious and systematic violations of rights guaranteed by the American Declaration.

V. Conclusion

In *Prisoners of Profit*, the ACLU of Georgia details deplorable conditions of confinement for immigrants in the privately owned and operated detention centers in Georgia. Detention center policies and overall inadequate facilities violate immigrants’ due process rights guaranteed by Articles XVIII, XXV, and XXVI of the American Declaration by (1) the establishment of coercive and constitutionally inadequate removal proceedings; (2) denying immigrants effective access to legal counsel; and (3) failing to provide them with effective grievance procedures.

⁶⁵ American Declaration, *supra* note 1, Article XVIII.

⁶⁶ See *Prisoners of Profit*, *supra* note 1 at 27.

⁶⁷ *Malesko*, 534 U.S. 61, at 63 (2001).

⁶⁸ *Id.* at 70-74

⁶⁹ *Id.* at 72-74

⁷⁰ See *Minneci v. Pollard*, 132 S. Ct. 617, 623 (2012).

Additionally, Immigrants' Article XXV right to humane treatment when in custody has also been violated. The detention centers' failure to properly facilitate family visitations for detained immigrants is in violation of Article VI. The centers' conditions also fall short of recognized international standards, as detained immigrants are held in dangerous and unsanitary conditions with inadequate access to medical treatment. Finally, immigrants' Article XIV rights to work and fair remuneration have been violated, and detainees are often threatened to participate, making these work programs the equivalent of forced labor.

Detainees suffer these violations without effective avenues for redress. Georgia's detention centers have failed to establish an adequate internal grievance system to protect immigrants from abuse by guards. Due to the privatization of the detention centers, immigrants face significant barriers in bringing domestic legal actions.

We believe these violations are clearly within the purview of the mandate of the Office of the Rapporteur on the Rights of Persons Deprived of Liberty. Accordingly, we request to meet with you to discuss our findings as well as the United States' obligations to guarantee due process rights to immigrants deprived of their liberty.

Sincerely,



Azadeh N. Shahshahani
National Security/Immigrant Rights' Project Director

Enclosed: Prisoners of Profit: Immigrants and Detention in Georgia (American Civil Liberties Union Foundation of Georgia, 2012).