



**Written Statement of the American Civil Liberties Union
Before the United States House of Representatives
Committee on the Judiciary's
Subcommittee on Crime, Terrorism, Homeland Security and
Investigations**

Hearing on

Oversight of the Federal Bureau of Prisons

*Thursday, September 19, 2013
10:00 a.m.*

Submitted by the

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The American Civil Liberties Union (ACLU) welcomes this opportunity to submit testimony to the House Committee on the Judiciary’s Subcommittee on Crime, Terrorism, Homeland Security and Investigations for its hearing on *Oversight of the Federal Bureau of Prisons*, and urges the Subcommittee to take action to bring the Bureau of Prisons into conformity with accepted legal, public-safety, and human-rights standards.

The ACLU is a nationwide, nonprofit, non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of liberty and equality embodied in our Constitution and our civil rights laws. Consistent with that mission, the ACLU established the National Prison Project in 1972 to protect and promote the civil and constitutional rights of prisoners. Since its founding, the Project has challenged unconstitutional conditions of confinement and over-incarceration at the local, state and federal levels through public education, advocacy, and successful litigation.

The Federal Bureau of Prisons (BOP) is the largest prison system in the country, comprising 119 prisons and jails and managing the detention of about 219,000 people.¹ While most federal prisoners are housed in BOP-operated jails and prisons, BOP also contracts with private prisons, as well as state and local prisons and jails, to house some of its prisoners and detainees.² Many of BOP’s facilities are out of compliance with legal standards, as well as with widely acknowledged human-rights and public-safety guidelines for the treatment of prisoners and detainees. In particular, BOP should improve its policies on the use of solitary confinement; on contracts with private, for-profit prisons; on compliance with the Prison Rape Elimination Act (PREA) and with requirements for treating transgender and transitioning individuals; on the abusive practice of using Special Administrative Measures and Communication Management Units; and on the proposed relocation of approximately 1,000 women from a Connecticut federal prison to a new facility in Aliceville, Alabama.

I. BOP’s use of Solitary Confinement is Excessive and Should Be Monitored
a. The BOP’s Use of Solitary Confinement

Solitary confinement is an extreme form of punishment that should be reserved only as a measure of last resort. Prisoners housed in solitary confinement are typically held in a small cell—no bigger than a parking space—for 22 to 24 hours a day, with little to no human interaction aside from prison guards and the occasional healthcare provider or attorney. Many in the legal and medical fields criticize solitary confinement as both unconstitutional and inhumane. It is widely accepted that the practice exacerbates mental illness and undermines a prisoner’s ability to successfully re-enter into society when his or her sentence is complete.³ An estimated 80,000 people are currently held in solitary confinement in prisons across the country. Many are nonviolent offenders, caught up in punitive disciplinary systems that sometimes send prisoners into solitary confinement for infractions such as “possession of contraband” or talking back.⁴ The United Nations Special Rapporteur on Torture has concluded that any period in solitary

confinement over 15 days amounts to torture.⁵ Yet many American prisoners can end up spending months or years in solitary confinement.

Over the last two decades, corrections systems across the country have increasingly relied on solitary confinement, even building entire “supermax”—super-maximum-security—facilities, where prisoners are held in conditions of extreme isolation, sometimes for years on end. In addition to posing humanitarian concerns, this massive increase in the use of solitary confinement has led many to question whether it is an effective use of public resources. Supermax prisons, for example, typically cost two or three times more to build and operate than traditional maximum-security prisons.⁶

BOP currently holds about seven percent of its population—more than 12,000 prisoners—in solitary confinement.⁷ About 435 of these people are incarcerated at ADX Florence, the federal supermax prison, in Colorado.⁸ Thousands more are held in “Special Housing Units” (SHU) or “Special Management Units” (SMU) within other prisons.⁹ Prisoners can be sent to these solitary confinement units for administrative reasons, as punishment for disciplinary rule violations, or as a result of gang affiliations or activity.¹⁰ That is to say, many prisoners held in solitary confinement are not particularly dangerous or even difficult to manage. Despite the human and financial costs of solitary confinement, the number of federal prisoners in solitary confinement and other forms of segregated housing has grown nearly three times as fast as the federal prison population as a whole.¹¹

b. The Need for Monitoring of BOP’s Use of Solitary Confinement, and Its Effects

Following a Senate hearing in the summer 2012 on the overuse of solitary confinement in American prisons, BOP announced that it would arrange for a third-party audit of its use of solitary confinement.¹² In particular, BOP planned to review the fiscal and public-safety consequences of solitary confinement.¹³ A BOP spokesman told reporters in February that the audit would begin “in the weeks ahead.”¹⁴ However, since then there has been no news on the progress of the planned audit.

In May, the U.S. Government Accountability Office (GAO) added to public calls for more information on BOP’s use of solitary confinement when it published a detailed report based on extensive investigations of BOP’s use of solitary confinement.¹⁵ The report found that BOP does not adequately monitor its use of solitary confinement and other segregated housing. It also found that BOP should be evaluating the effects that solitary confinement has on people in BOP custody. GAO further reported that BOP has not conducted any research to determine how the practice impacts prisoners or whether it contributes to maintaining prison safety.¹⁶ The report noted that BOP officials refused to acknowledge that long-term segregation can seriously harm

prisoners—even though BOP’s own policy recognizes the potential for damaging lasting effects.¹⁷

Solitary confinement does not make prisons safer. Indeed, the corrections departments in several states have limited their use of solitary confinement with little or no adverse impact on prison management and safety.¹⁸ Indeed, emerging research suggests that supermax prisons actually have a negative effect on public safety, because prisoners released from solitary confinement may be more likely to recidivate than those released from general population.¹⁹

c. BOP Can and Should Limit Its Use of Solitary Confinement

Another federal agency with many detention facilities, the U.S. Immigrations and Customs Enforcement (ICE), recently released a new directive regulating the use of solitary confinement in immigration detention.²⁰ While not perfect, the new ICE directives represent a major step in curbing the inhumane and unnecessary use of solitary confinement. BOP should look to the ICE directives as an example of a policy designed to monitor and control the use of solitary confinement significantly more effectively than current BOP policies.

If strictly enforced, ICE’s new directive will create a robust monitoring regime that will enable the agency to oversee the use of solitary confinement across its sprawling network of approximately 250 immigration detention facilities.²¹ The new directive also takes important steps to impose substantive limits on the use of solitary. For example, it requires centralized review of all decisions to place detainees in solitary confinement for more than 14 days at a time, including an evaluation of whether any less-restrictive option could be used instead of solitary.²² The directive requires heightened justifications to place vulnerable detainees—such as victims of sexual assault, people with medical or mental illnesses, and people at risk of suicide—in solitary confinement.²³ In addition, ICE now requires medically and mentally ill detainees to be removed from solitary if they are deteriorating.²⁴ It requires attorney notification in certain circumstances²⁵ and it requires regular reviews of all longer detentions in solitary.²⁶

In addition to examining ICE’s new directive, BOP should look to states that have reformed their use of solitary confinement, as examples of how close monitoring and reduction of the use of solitary confinement can improve prison management and safety, and can bring BOP more in line with accepted human-rights standards. We urge the Committee to inquire as to BOP’s plans in this area and to push the agency to move forward with reforms that have worked elsewhere.

II. BOP’s Contracts with Private Prisons Under the Criminal Alien Requirement Pose Human-Rights and Accountability Problems

Private prisons depend on and profit from America's high incarceration rates—more people in prison means, for these facilities, more business. In the past decade, BOP has become increasingly reliant on private prisons, and maintains 13 contracts, totaling a reported \$5.1 billion, with for-profit prison companies.²⁷ This increase in privatization demands that the companies who run private prisons subject themselves to the same degree of public accountability as would a federal agency running the same prison. However, contract companies that run these facilities dedicate significant resources to lobbying against subjecting their BOP contract facilities to the same transparency requirements as BOP facilities.²⁸

According to the Sentencing Project, 33,830 BOP prisoners were held in private facilities in 2010 (a 67% increase from the number of prisoners in 2002); by the end of 2011, while overall numbers of state prisoners in private prisons decreased, the federal number continued to climb, to 38,546 (18% of the total BOP population).²⁹ And the number of people in private facilities continues to grow; for fiscal year 2014, BOP requested funding to add 1,000 more beds in private facilities.³⁰ Of the private facilities holding BOP prisoners, 13 are private prisons operating under Criminal Alien Requirement (CAR) contracts with BOP. These CAR prisons are specifically dedicated to housing non-citizens in BOP custody. These people are at low custody levels, and many are serving sentences solely for unlawfully reentering the United States after having been previously deported.³¹

For-profit prisons—even those under BOP contract, housing BOP prisoners—are not subject to the same disclosure requirements under the Freedom of Information Act (FOIA) as are BOP prisons. This is due to an Executive branch interpretation of the statute, which established that most disclosure requirements that apply to federally-run prisons do not apply to private prisons.³² As a result, it is extremely difficult for the public to obtain the information necessary to help ensure that the constitutional rights of those held in private facilities are respected, and that their living conditions are humane.

Over the past several years, there have been reports of poor treatment—with devastating consequences—in BOP's CAR facilities. In one such instance, in 2009, at the GEO Group-operated Reeves County Detention Center in Pecos, West Texas, immigrant prisoners organized an uprising after a man with epilepsy died from a seizure while in solitary confinement. An ACLU lawsuit alleges that medical staff failed to provide the man anti-convulsant medication 90 times. His gums began to bleed and he suffered frequent seizures, but he was placed in segregation rather than treated. The lawsuit alleges that there was not even a nurse available on weekends.³³ And in 2012, immigrant prisoners at the Corrections Corporation of America (CCA)-operated Adams County Correctional Facility in Natchez, Mississippi, staged an uprising to demand better conditions of confinement. CCA staff then failed to quell the uprising, which resulted in 20 people being injured, one correctional officer being killed, and \$1.3 million in property damage.³⁴ Stories like these underscore the need for greater oversight and accountability of the conditions and policies at private, for-profit prisons within BOP's system—

and the need for BOP to cancel contracts when the private prison companies fail to meet appropriate standards.

III. BOP Should Share Results of Audits of the Implementation of the Prison Rape Elimination Act

The Prison Rape Elimination Act (PREA) passed unanimously through both houses of Congress and was signed into law in 2003. The Act charged the Department of Justice (DOJ) with gathering data on the incidence of prison rape,³⁵ and created a commission to study the problem and recommend national standards to DOJ.³⁶ After nine years of study and commentary by experts, the DOJ promulgated a comprehensive set of national standards implementing the Act in May 2012.³⁷ The Federal government was immediately bound to implement the PREA regulations in federal prison facilities.³⁸

The PREA regulations include detailed requirements for the prevention, detection, and investigation of sexual abuse in both adult and juvenile correctional facilities, with specific guidance related to Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) individuals. Testimony before Congress and National Prison Rape Elimination Commission (NPREC) highlighted the particular vulnerability of LGBTI people to sexual victimization at the hands of facility staff and other inmates and the Department of Justice recognized “the particular vulnerabilities of inmates who are LGBTI or whose appearance or manner does not conform to traditional gender expectations.”³⁹ This testimony led to the landmark inclusion of LGBTI-specific requirements for the prevention of sexual abuse.

Some of the most important regulations for protecting this vulnerable population include guidelines for housing, searches, and the use of protective custody. BOP’s implementation of PREA will set the tone for state and local agencies. It is essential that BOP take full and complete measures to comply with PREA’s mandate to eliminate sexual assault across the agency. We hope the Committee will ask BOP for details about its compliance plans and performance.

a. Individualized assessments for housing transgender individuals

The final PREA standards require adult prisons and jails to screen individuals within 72 hours of intake to assess the individual’s risk for sexual victimization or abuse.⁴⁰ This screening “shall consider, at a minimum...whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex or gender nonconforming.”⁴¹

The standards also require agencies to make individualized housing and program placements for all transgender and intersex individuals.⁴² This includes assignment of transgender and intersex individuals to male or female facilities.⁴³ All such program and housing assignments must “be

reassessed at least twice each year to review any threats to safety experienced by the inmate”⁴⁴ and an individual’s “own views with respect to his or her own safety shall be given serious consideration” in these assessments.⁴⁵ Agencies are required to provide transgender and intersex individuals with access to private showers in all circumstances.⁴⁶

One year later, reports from transgender and intersex prisoners in BOP custody continue to reveal that the agency does not provide individualized assessments in making housing, program, work and other assignments. Transgender detainees regularly report that they are housed solely based on their genital characteristics and birth-assigned sex, and many transgender prisoners report violence from staff and other prisoners with no safety precautions being taken by BOP despite clear guidance under PREA.⁴⁷

b. Searches of transgender individuals

The PREA regulations impose a number of requirements on how prison officials search transgender individuals. The regulations prohibit any search that is conducted for the sole purpose of determining an individual’s genital status.⁴⁸ All cross-gender searches are subject to strict guidelines under PREA, but restrictions on cross-gender pat searches of female individuals do not go into effect until August 2015.⁴⁹ Under the regular effective dates for PREA compliance, BOP is currently prohibited from conducting cross-gender strip and cavity searches except in exigent circumstances or when performed by a medical practitioner.⁵⁰

PREA further mandates that facilities implement policies to ensure that individuals are able to shower and undress without being viewed by staff of the opposite gender and that staff of the opposite gender announce themselves prior to entering any housing area.⁵¹ These limitations apply to transgender individuals in custody. BOP should take clear steps to protect transgender individuals from abusive cross-gender searches.

c. Strict Limits on the Use of Protective Custody

PREA also strictly regulates the use of protective custody. Prisoners cannot be placed in “involuntary segregated housing” unless (1) an assessment of all available alternatives is made AND (2) a determination has been made that no available alternative means of separation is available (and this determination must be made within the first 24 hours of involuntary segregation).⁵² The PREA standards recognize that protective custody is too often synonymous with solitary confinement by requiring that involuntary segregated housing should generally not exceed 30 days.⁵³ PREA also set standards geared to ameliorate isolation by requiring that, when prisoners are placed in protective custody, they must be given access to “programs, privileges, education, and work opportunities to the extent possible.”⁵⁴ For all placements in protective custody, the nature of, reason for and duration of any restrictions to program, privilege, education and work opportunities must be documented.⁵⁵

If the PREA regulations are subject to stringent and consistent enforcement, compliance, and monitoring, they are likely to protect many vulnerable prisoners from abuse and assault. In August, 2013, BOP commenced a series of PREA-mandated third-party audits, but has yet to release data or results.⁵⁶ These audits, along with publication of their results and implementation of follow-up compliance measures, should be a top priority and we urge the Committee to follow up on these reports.

IV. BOP Should Ensure Compliance with Requirements To Provide Hormones and Other Medical Care to Transgender Individuals

In 2011, BOP changed its policy for treating individuals in custody for Gender Identity Disorder (GID). As part of a settlement with one transgender prisoner who challenged BOP's policy that limited transition-related healthcare such as hormones to the level of treatment received prior to incarceration, the new policy promised to provide "a current individualized assessment and evaluation" to any prisoner with a possible GID diagnosis.⁵⁷

Despite this change, reports persist from transgender individuals who have not received evaluations for hormone therapy despite repeated requests. Others have had their ongoing hormone treatment disrupted without any clear medical basis for the disruption in care and with severe physical and psychological side effects. For individuals in BOP custody who experience gender dysphoria and/or other symptoms of GID, there continues to be delayed or in some cases no response from BOP medical staff.⁵⁸

BOP has an obligation under its own policy and the Eighth Amendment of the Constitution to provide necessary medical care, including transition-related medical care such as hormones, to prisoners in need of such care. To meet this obligation BOP should provide information on its compliance with the GID policy, and should take steps, including training of facility-level medical and mental health staff and contractors, to ensure that prisoners who are diagnosed or may be diagnosed with GID receive proper care.

V. BOP Should Stop Monitoring Contact Between Prisoners and Attorneys, and Should Close Its Communication Management Units

When BOP chooses to designate certain people as terrorists—including both post-conviction prisoners and pre-trial detainees—the agency removes constitutional safeguards that apply to other detainees. In some circumstances, BOP denies prisoners the basic right to confer confidentially with an attorney or to have normal limited visitation with loved ones. There should be greater transparency and accountability in the federal Bureau of Prisons' use of "Special Administrative Measures" and in its operation of Guantanamo-like "Communication Management Units" within two federal prisons.

a. Special Administrative Measures

After the September 11 attacks, the Department of Justice (DOJ) issued a rule that expanded BOP's powers under the special administrative measures (SAMs) promulgated in the 1990s. These SAM regulations allow the Attorney General unlimited and unreviewable discretion to strip any person in federal custody of the right to communicate confidentially with an attorney.⁵⁹ They apply to convicted individuals held by BOP, as well as others held by DOJ, even the pre-trial accused, material witnesses, and immigration detainees.⁶⁰

BOP should not have the power to monitor communications between detainees and attorneys; nor should it be able to restrict such communications. Because SAMs also permit extreme social isolation of certain prisoners, BOP should conduct a mental health screening of all those currently subject to SAMs; the seriously mentally ill should be relocated to an institution that can provide appropriate mental-health services.

b. Communication Management Units

After 9/11, BOP set up and began operating two Communication Management Units (CMUs) at federal prisons in Marion, Illinois, and Terre Haute, Indiana.⁶¹ BOP opened these CMUs in violation of federal law requiring public notice-and-comment rulemaking.⁶² The units severely restrict visitation privileges—for instance, prisoners in the CMU may receive fewer family visits per month than those in general population at even maximum-security prisons.⁶³ Many critics argue that this psychological punishment is arbitrary, and often the result of racial and religious profiling.⁶⁴ The criteria for placing prisoners in these extremely restrictive units remain so broad and ill-defined that they could apply to virtually anyone, inviting arbitrary, inconsistent and discriminatory enforcement.

VI. BOP Should Share Its Current Plan for FCI Aliceville

Earlier this year, BOP was enacting a plan to relocate approximately 1,000 women from a federal prison in Danbury, Connecticut—70 miles from New York City—to a new, \$250-million prison in Aliceville, Alabama, a small town 110 miles southwest of Birmingham.⁶⁵ The plan would leave only 200 federal prison beds for women in the northeast.⁶⁶ BOP planned to convert the vacated units at Danbury into more space for male prisoners. Last month, however, BOP suspended the relocation in the face of criticism from elected officials and the public.

Because of the remote location of the Aliceville facility, contact with family through visits would be severely limited. As Senator Chris Murphy noted, the “transfer would nearly eliminate federal prison beds for women in the Northeastern United States and dramatically disrupt the lives of these female inmates and the young children they often leave behind.”⁶⁷ Maintaining

relationships is crucial, and can be even more difficult for women prisoners than for men. One lawyer noted, in response to the proposed relocation that [w]omen get fewer visits in jail, they become alienated from families and children, husbands and boyfriends move on⁶⁸

The general public has a significant interest in prisoners' ability to stay connected with loved ones while serving a sentence. Maintaining important relationships helps former prisoners successfully reenter their communities after they are released. Upon release from prison, people who maintain strong family contact were shown to be more successful at finding and keeping jobs, and less likely to recidivate.⁶⁹ Disrupting the ability to visit a parent in prison, as the contemplated move would do in countless cases, can also victimize the children of incarcerated people.

BOP's plans to relocate many women from Danbury to Aliceville were criticized in the media and by a group of 11 senators in a high-profile public letter to BOP Director Charles Samuels.⁷⁰ As a result, plans to open Aliceville and relocate many women from Danbury have recently been suspended.⁷¹ However, BOP currently describes Aliceville as a "low security institution for female inmates" that is "currently undergoing the activation process."⁷² If the move occurs and the prison opens as originally planned, BOP will be the cause of hundreds of families being torn apart irreparably. We urge the Committee to put BOP on the record on this issue and urge members to oppose the relocation of women prisoners from Danbury to Aliceville.

¹ About the Bureau of Prisons, FEDERAL BUREAU OF PRISONS, <http://www.bop.gov/about/index.jsp>.

² *Id.*

³ *See, e.g.*, BUREAU OF PRISONS: IMPROVEMENTS NEEDED IN BUREAU OF PRISONS' MONITORING AND EVALUATION OF IMPACT OF SEGREGATED HOUSING 39, United States Government Accountability Office, Report to Congressional Requesters (May 2013) [hereinafter GAO Report].

⁴ *See, e.g.*, Angela Browne, Alissa Cambier, Suzanne Agha, *Prisons Within Prisons: The Use of Segregation in the United States*, 24 FED'L SENTENCING REPORTER 46-47 (2011).

⁵ *Solitary Confinement Should Be Banned in Most Cases*, *UN Expert Says*, UN News Centre, Oct. 18, 2011, <https://www.un.org/apps/news/story.asp?NewsID=40097>.

⁶ *See* DANIEL P. MEARS, URBAN INST., *EVALUATING THE EFFECTIVENESS OF SUPERMAX PRISONS* ii (2006).

⁷ Highlights of GAO-13-4929, at 1 (May 2013).

⁸ *See* GAO Report, *supra* note 3, at 2.

⁹ *See* GAO Report, *supra* note 3, at 5, 6, 7-10.

¹⁰ *See id.* at 7-8, 60 (describing disciplinary and administrative segregation conditions).

¹¹ From October 2007 through February 2013, the total prisoner population in BOP facilities increased by about six percent, yet the total prisoner population in segregated housing units increased approximately 17 percent. GAO Report, *supra* note 3, at 14.

¹² *U.S. Bureau of Prisons To Review Solitary Confinement*, REUTERS, Feb. 4, 2013, <http://www.reuters.com/article/2013/02/05/us-usa-prisons-solitary-idUSBRE91404L20130205>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *See generally* GAO Report, *supra* note 3.

¹⁶ *See* GAO Report, *supra* note 3, at 33-34.

¹⁷ See *id.* at 39 (outlining studies that document that adverse and long-lasting effects of solitary confinement on mental health); *id.* at 40 (citing BOP's own admission, in a Psychology Services Manual, that solitary confinement can have adverse effects on mental health).

¹⁸ See Erica Goode, *Prisons Rethink Isolation, Saving Money, Lives and Sanity*, N.Y. TIMES, March 11, 2012, <http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html?pagewanted=all> (noting that violence actually decreased after Mississippi closed its notorious supermax unit).

¹⁹ See JOHN J. GIBBONS AND NICHOLAS DE B. KATZENBACH, CONFRONTING CONFINEMENT: A REPORT OF THE COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS 55 (2006) (citing a study from Washington state that linked long-term solitary confinement to higher recidivism rates), *available at* http://www.vera.org/sites/default/files/resources/downloads/Confronting_Confinement.pdf.

²⁰ U.S. Immigration and Customs Enforcement Regulation 11065.1: Review of the Use of Segregation for ICE Detainees (Sept. 4, 2013) [hereinafter ICE Regulation 11065.1].

²¹ See Fact Sheet: Detention Management, Nov. 10, 2011, <http://www.ice.gov/news/library/factsheets/detention-mgmt.htm>.

²² ICE Regulation 11065.1, *supra* note 20, at Section 2 (Policy) and Section 5.1 (Extended Segregation Placements).

²³ ICE Regulation 11065.1, *supra* note 20, at Section 5.2 (Segregation Placements Related to Disability, Medical or Mental Illness, Suicide Risk, Hunger Strike, Status as a Victim of Sexual Assault, or other Special Vulnerability).

²⁴ ICE Regulation 11065.1, *supra* note 20, at Section 7.5.4 (Detention Monitoring Council).

²⁵ ICE Regulation 11065.1, *supra* note 20, at Section 5.2.4 (requiring notification of a detainee's attorney, if applicable, when a vulnerable detainee is placed in segregation).

²⁶ ICE Regulation 11065.1, *supra* note 20, at Section 5.1.

²⁷ Garance Burke & Laura Wides-Munoz, *Immigrants prove big business for Prison Companies*, ASSOCIATED PRESS (Aug. 2, 2012), available at <http://news.yahoo.com/immigrants-prove-big-business-prison-companies-084353195.html>.

²⁸ See Letter from Center for Constitutional Rights et al. to Rep. Sheila Jackson Lee 1 (Dec. 18, 2012) (citing the U.S. Senate's Lobbying Disclosure Electronic Filing System for the fact that Corrections Corporation of America has spent millions of dollars lobbying against the passage of various Private Prison Information Acts since 2005).

²⁹ THE SENTENCING PROJECT, DOLLARS AND DETAINEES: THE GROWTH OF FOR-PROFIT DETENTION, at 4 (July 2012); Prison Population Declined In 26 States During 2011, PR Newswire (Dec. 17, 2012), *available at* <http://www.marketwatch.com/story/prison-population-declined-in-26-states-during-2011-2012-12-17>.

³⁰ See FY 2014 Performance Budget Congressional Submission, Salaries and Expenses 86, U.S. Dept. of Justice, Federal Prison System, *available at* <http://www.justice.gov/jmd/2014justification/pdf/bop-se-justification.pdf> ("The BOP requests \$26.2 million to procure 1,000 contract beds to house low security male criminal aliens.").

³¹ Illegal reentry cases are prosecuted subject to 8 U.S.C. § 1326 – Reentry of removed aliens. See *US: Prosecuting Migrants is Hurting Families*, HUMAN RIGHTS WATCH (May 22, 2013), <http://www.hrw.org/news/2013/05/22/us-prosecuting-migrants-hurting-families>.

³² See Letter from Center for Constitutional Rights et al., *supra* note 28, at 1.

³³ Forrest Wilder, "The Lawsuit West of the Pecos." Texas Observer (Dec. 8, 2010), available at <http://www.texasobserver.org/forrestforthetrees/the-lawsuit-west-of-the-pecos>.

³⁴ Judith Greene & Alexis Mazon, PRIVATELY OPERATED FEDERAL PRISONS FOR IMMIGRANTS: EXPENSIVE. UNSAFE. UNNECESSARY 7, Justice Strategies (Sept. 13, 2012), available at <http://www.justicestrategies.org/sites/default/files/publications/Private%20Operated%20Federal%20Prisons%20for%20Immigrants%209-13-12%20FNL.pdf>. See also Associated Press, *FBI reports Mexican group "Paisas" started prison riot in Adams County* (Aug. 13, 2012) ("FBI spokeswoman Deborah Madden said Paisas are a loosely affiliated group within the prison, without ties to organized gangs."), available at <http://blog.gulflive.com/mississippi-press-news/2012/08/fbi-reports-mexican-group-paisas.html>.

³⁵ See Prison Rape Elimination Act (Sexual Violence in Correctional Facilities), Bureau of Justice Statistics (last visited May 31, 2013), available at <http://www.bjs.gov/index.cfm?ty=tp&tid=20> (listing Bureau of Justice Statistics data gathered since the act's passage).

³⁶ NAT'L PRISON RAPE ELIMINATION COMM'N, NAT'L PRISON RAPE ELIMINATION COMM'N REP. 18 (2009), *available at* <https://www.ncjrs.gov/pdffiles1/226680.pdf>.

³⁷ See Press Release, Department of Justice, Justice Department Releases Final Rule to Prevent, Detect and Respond to Prison Rape (May 17, 2012), *available at* <http://www.justice.gov/opa/pr/2012/May/12-ag-635.html> (summary of regulations).

³⁸ 42 U.S.C. 15601 §8(b) (2003). *See also* Memorandum from the President of the United States Implementing the Prison Rape Elimination Act (May 17, 2012), available at <http://www.whitehouse.gov/the-press-office/2012/05/17/presidential-memorandum-implementing-prison-rape-elimination-act>.

³⁹ <https://www.federalregister.gov/articles/2012/06/20/2012-12427/national-standards-to-prevent-detect-and-respond-to-prison-rape>

⁴⁰ 28 C.F.R. § 115.41(b); 28 C.F.R. § 115.241 (b).

⁴¹ 28 C.F.R. § 115.41(c)(7).

⁴² 28 C.F.R. § 115.42 (c) (“In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate’s health and safety, and whether the placement would present management or security problems.”).

⁴³ *Id.*

⁴⁴ 28 C.F.R. § 115.42 (d).

⁴⁵ 28 C.F.R. § 115.42 (e).

⁴⁶ 28 C.F.R. § 115.42 (e).

⁴⁷ The reports referenced in this paragraph come from prisoners, by mail, to legal and human-rights organization that advocate for PREA compliance, including the ACLU, National Center for Lesbian Rights (NCLR), National Center for Transgender Equality (NCTE), Just Detention International (JDI), Gay & Lesbian Advocates & Defenders (GLAD), Lambda Legal, and Sylvia Rivera Law Project (SRLP).

⁴⁸ 28 C.F.R. § 115.15 (e)

⁴⁹ 28 C.F.R. § 115.15 (b) and 28 C.F.R. §115.215(b)

⁵⁰ 28 C.F.R. § 115.15 (a)

⁵¹ 28 C.F.R. § 115.15 (d)

⁵² 28 C.F.R. § 115.43 (a).

⁵³ 28 C.F.R. § 115.43 (c).

⁵⁴ 28 C.F.R. § 115.43 (b).

⁵⁵ 28 C.F.R. § 115.43 (b).

⁵⁶ *See* Bureau of Justice Assistance, BJA PREA Audits, Aug. 29, 2013 (on file with the ACLU).

⁵⁷ *See* Memorandum for Chief Officers from Newton E. Kendig and Charles E. Samuels, Jr., U.S. Dept. of Justice, Federal Bureau of Prisons, at 2 (May 31, 2011), available at <http://www.glad.org/current/pr-detail/federal-bureau-of-prisons-makes-major-change-in-transgender-medical-policy/>.

⁵⁸ The reports referenced in this paragraph come from prisoners, by mail, to legal and human-rights organization that advocate for compliance with GID-treatment requirements, including the ACLU, National Center for Lesbian Rights (NCLR), National Center for Transgender Equality (NCTE), Just Detention International (JDI), Gay & Lesbian Advocates & Defenders (GLAD), Lambda Legal, and Sylvia Rivera Law Project (SRLP).

⁵⁹ 28 C.F.R. § 501.3(d); *see also* *Rights Groups Issue Open Letter on Upcoming NYC Trial of Syed Fahad Hashmi and Severe Special Administrative Measures*, Apr. 23, 2010, <https://ccrjustice.org/newsroom/press-releases/rights-groups-issue-open-letter-upcoming-nyc-trial-syed-fahad-hashmi-and-sev>.

⁶⁰ 28 C.F.R. § 501.3.

⁶¹ *See* Carrie Johnson and Margot Williams, “*Guantanamo North*”: *Inside Secretive U.S. Prisons*, NPR (March 3, 2011), <http://www.npr.org/2011/03/03/134168714/guantanamo-north-inside-u-s-secretive-prisons>.

⁶² *See* Letter from David C. Fathi et al. to Sarah Qureshi, Rules Unit, Bureau of Prisons, June 2, 2010, at 1-2 (submitting comments to Notice of Proposed Rulemaking and noting that CMUs had already been in operation prior to the commencement of the notice-and-comment process), available at <https://www.aclu.org/files/assets/2010-6-2-CMUCOMMENTS.pdf>.

⁶³ *See* Johnson, *supra* note 61.

⁶⁴ *See* Scott Shane, *Beyond Guantanamo, a Web of Prisons for Terrorism Inmates*, N.Y. TIMES, Dec. 10, 2010, available at <http://www.nytimes.com/2011/12/11/us/beyond-guantanamo-bay-a-web-of-federal-prisons.html?pagewanted=all> (noting that the CMUs are “Muslim-majority”).

⁶⁵ *See* Judith Resnik, *Harder Time*, SLATE, July 25, 2013, http://www.slate.com/articles/news_and_politics/jurisprudence/2013/07/women_in_federal_prison_are_being_shipped_from_danbury_to_aliceville.html

⁶⁶ *Id.*

⁶⁷ Karen Ali, *Federal Prison Officials Will Answer Questions Before Moving Women*, CONN. LAW TRIBUNE, Aug. 16, 2013,

[http://www.ctlawtribune.com/PubArticleCT.jsp?id=1202615866626&Federal Prison Officials Will Answer Questions Before Moving Women &slreturn=20130716182512](http://www.ctlawtribune.com/PubArticleCT.jsp?id=1202615866626&Federal_Prison_Officials_Will_Answer_Questions_Before_Moving_Women_&slreturn=20130716182512).

⁶⁸ *Id.*

⁶⁹ See Resnik, *supra* note 65 (“Being moved far from home limits the opportunities of women being moved out of Danbury; it hurts them in prison and once they get out. Recent research from Michigan and Ohio documents that inmates who receive regular visits are less likely to have disciplinary problems while in prison and have better chances of staying out of prison once released.”).

⁷⁰ See Letter from Chris Murphy, Senator, et al. to Charles E. Samuels, Jr., Director, Federal Bureau of Prisons (Aug. 2, 2013), available at <http://www.murphy.senate.gov/record.cfm?id=345491>.

⁷¹ See Ali, *supra* note 67.

⁷² FCI Aliceville, Federal Bureau of Prisons, <http://www.bop.gov/locations/institutions/ali/> (last visited Sept. 15, 2013).