

- evolutions in legislation (including the pending repeal of Don't Ask, Don't Tell), in community practices and attitudes, in case law (including the Supreme Court's holdings in *Lawrence* and *Romer*), and in social science regarding sexual orientation all make clear that sexual orientation is not a characteristic that generally bears on legitimate policy objectives.”).
- 62 *Umber v. Murphy*, 304 A.D.2d 931, 931-32 (N.Y. App. Div. 2003).
 - 63 The agency should commit to a multi-year pilot project implementing the recommended policies in a substantial number of BOP facilities. This policy could then serve as a model for other federal, state, and local detention agencies.
 - 64 See, e.g., 28 C.F.R. § 115.15(e)-(f) (2012) (restricting searches of transgender people), § 115.15.31 (a)(9) (requiring “professional” and “efficient” communication with LGBTI people).
 - 65 See Frequently Asked Questions, PREA Resource Center, <http://www.prearesourcecenter.org/faq>.
 - 66 See e.g., Harris County Texas Sheriff, Policy No. 413: Lesbian, Gay, Bisexual, Transgender and Intersex (2013).
 - 67 Invasive and degrading genital searches are a source of trauma for many people in prison. In recent years, increasing attention has been paid to the issue, in part because of advocacy efforts in Michigan to stop a routine invasive search at the Michigan Women’s Huron County Correctional Facility. See American Civil Liberties Union, “Invasive Searches,” available at <https://www.aclu.org/invasive-search>. Invasive genital searches are, unfortunately, a common experience for LGBT prisoners, especially trans prisoners who are often searched in this way when corrections staff do “gender checks” of them. The current language in PREA, which prohibits such searches “unless part of a broader medical examination” leaves too much discretion as to what constitutes a “broader medical examination,” given the ongoing problem of harassing and assaultive genital searching of LGBT prisoners and detainees.
 - 68 Such reforms have been advocated by many, including the Chairman of the National Prison Rape Elimination Commission, the American Bar Association and the Commission on Safety and Abuse in America’s Prisons. See, American Bar Association, Criminal Justice Section, “Report to the House of Delegates: Recommendation,” approved by the House of Delegates February 12, 2007; Commission on Safety and Abuse in America’s Prisons, “Confronting Confinement,” pp. 86-87; Letter from Reggie B. Walton, chairman, National Prison Rape Elimination Commission, to Representatives Bobby Scott (D-VA) and Randy Forbes (R-VA), January 24, 2008; Human Rights Watch, “No Equal Justice: The Prison Litigation Reform Act in the United States” (2009), available at <http://www.hrw.org/sites/default/files/reports/us0609webwcover.pdf>; “Reform the Prison Litigation Reform Act: Top 10 Harmful PRLA Results,” Stop Abuse and Violence Everywhere Coalition, <http://www.savecoalition.org/top10.html>.
 - 69 See e.g., The Center for HIV Law and Policy, Teen SENSE model policies and standards for sexual health care, sexual health literacy, and staff training for youth in state custody, available at <http://www.hivlawandpolicy.org/initiatives/teen-sense>.
 - 70 Properly used condoms reduce the risk of HIV transmission by as much as 90% and access to condoms has been found not to increase sexual activity or security risks. Alexander McKay, “Sex Research Update,” *Canadian Journal of Human Sexuality* 15 (1) (2006): 47, 49; John P. May & Earnest L. Williams, Jr., “Acceptability of Condom Availability in a U.S. Jail,” *AIDS Education and Prevention* 14 (5) (2002): 90 (“The experience in the Washington, DC jail has found condom access to be unobtrusive to the jail routine, no threat to security or operations, no increase in sexual activity, and accepted by most inmates and correctional officers.”); Mary Sylla, Nina Harawa, and Olga Grinstead Reznick, “The First Condom Machine in a US Jail: The Challenge of Harm Reduction in a Law and Order Environment,” *American Journal of Public Health* 100 (6) (2010). Meeting sexual health and prevention needs supports the health of prisoners and the partners and communities they return to after release.
 - 71 Economic and Social Council Res. 663C, Res. 2076, First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, UN Doc. A/CONF/611, annex 1, ESC Res. 663C, (XXIV) (1957), UN ESCOR, Supp. No. 1, at 11, UN Doc. E/3048 (1957), amended by ESC Res. 2076, (LXII) (1977), UN ESCOR, Supp. No. 1, at 35, UN Doc. E/5988 (1977) (Dec. 11, 2013); World Health Organization Europe, “Health in Prisons: A WHO guide to the essentials in prison health” (2007): 21, available at http://www.euro.who.int/_data/assets/pdf_file/0009/99018/E90174.pdf; United Nations Office on Drugs and Crime, “Handbook on Prisoners with Special Needs”; Diane L. Adams and Brenda A. Leath, “Correctional Health Care: Implications for Public Health Policy,” *Journal of the National Medical Association* 94 (5) (2002): 297, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2594357/pdf/jnma00322-0031.pdf>.
 - 72 “Methadone Maintenance Treatment and the Criminal Justice System”, April 2006, National Association of State Alcohol and Drug Abuse Directors, http://www.nasadad.org/resource.php?base_id=650; Drug Policy Alliance, “Methadone Maintenance Treatment-A Common Sense and Cost Effective Treatment Option for Bernalillo’s Metropolitan Detention Center,” January 2013; World Health Organization Europe, “Health in Prisons” (listing methadone as an essential medication and advising corrections systems, including prisons, to make methadone maintenance treatment available in order to significantly reduce adverse health and criminogenic consequences); Mark Parrino, “Methadone Treatment in Jail,” *American Jails* 14 (2) (2000): 9-12; Rebecca Boucher, “The Case For Methadone Maintenance Treatment in Prisons,” *Vermont Law Review* 27 (2002-2003), available at https://www.drugpolicy.org/docUploads/boucher_prison_methadone.pdf.
 - 73 Clothing, including undergarments, permitted or provided in female facilities should also be permitted and provided in male facilities, and vice versa. Staff should not prevent a prisoner from, or discipline a prisoner for, possessing or wearing an article of clothing because it does not match gender norms. Grooming rules and restrictions, including rules regarding hair, make-up, shaving, jewelry, etc., should be the same in male and female facilities. Staff should not prevent a prisoner from, or discipline a prisoner for, a form of personal grooming because it does not match gender norms. See N.Y. State Office of Children & Family Services, “Lesbian, Gay, Bisexual, Transgender, and Questioning Youth (PPM 3442.00)” (2008): 8, available at http://srhp.org/files/LGBT_Youth_Policy_PPM_3442_00.pdf.

- 74 Center for Nutrition Policy and Promotion, "Dietary Guidelines for Americans, 7th Edition" (Washington: United States Department of Agriculture, 2010); Aglaee Jacob, "Adult Vs. Teen Nutrition," *SFGate*, available at <http://healthyeating.sfgate.com/adult-vs-teen-nutrition-1083.html>.
- 75 David M. Reutter, Gary Hunter, and Brandon Sample, "Appalling Prison and Jail Food Leaves Prisoners Hungry for Justice," *Prison Legal News*, March 30, 2014, available at <https://www.prisonlegalnews.org/displayArticle.aspx?articleid=22246&AspxAutoDetectCookieSupport=1>.
- 76 Glenor Shirley, "Prison Libraries and the Internet," (Chicago: American Library Association's Office for Literacy and Outreach Program, 2004), available at <http://olos.ala.org/columns/?p=117>; Lois M. Davis, Robert Bozick, Jennifer L. Steele, Jessica Saunders, and Jeremy N. V. Miles, "Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults" (Santa Monica: RAND Corporation, 2013), available at http://www.rand.org/pubs/research_reports/RR266.html.
- 77 See, e.g., 28 C.F.R. § 115.15(e)-(f) (2012) (restricting searches of transgender people), § 115.15.31 (a)(9) (requiring "professional" and "efficient" communication with LGBTI people).
- 78 "Frequently Asked Questions," available at <http://solitarywatch.com/facts/faq/> (last accessed December 2013); Safety and Solidarity Across Gender Lines: Rethinking Segregation of Transgender People in Detention, 18 Temp. Pol. & Civ. Rts. L.Rev. 515 (2009).
- 79 "The Committee Against Torture, official governing body of the UN Convention Against Torture that the United States ratified in 1994, has recommended that the practice of isolation be abolished. The UN Human Rights Committee has, in 1992, suggested that prolonged isolation may amount to a violation of international human rights law. Similarly the UN committee on the Rights of the Child has urged for an end to the use of solitary confinement against minors." "Frequently Asked Questions," <http://solitarywatch.com/facts/faq/>. See also, "Growing up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States" (Washington: Human Rights Watch and ACLU, 2012), available at <http://www.hrw.org/reports/2012/10/10/growing-locked-down>; Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>, p. 19, section J.
- 80 Prison Rape Elimination Act National Standards, 28 C.F.R. § 115.42(c) (2012).
- 81 Id.; BOP Program Statement 5324.09, Sexually Abusive Behavior Prevention and Intervention Program (2012).
- 82 Gary Gates, "LGBT Adult Immigrants in the United States" (Los Angeles: Williams Institute, 2013) at <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/us-lgbt-immigrants-mar-2013/> (This likely is a low estimate as many people do not self-identify and data are not systematically collected.). See also, Crosby Burns, Ann Garcia and Philip E. Wolgin, "Living in Dual Shadows: LGBT Undocumented Immigrants," (Washington: Center for American Progress, 2013), available at <http://www.americanprogress.org/issues/immigration/report/2013/03/08/55674/living-in-dual-shadows/>.
- 83 Personal communication from Keren Zwick, Managing Attorney for LGBT Immigrant Rights Initiative and Adult Detention Program, National Immigrant Justice Center, September 30, 2013; see also website of Immigration Equality at <http://immigrationequality.org/about/> ("Each year, Immigration Equality fields inquiries from over 1,000 LGBT or HIV-positive foreign nationals and their loved ones about their options under U.S. immigration law.").
- 84 LGBT people were inadmissible to the U.S. for much of the 20th century, and excludable from naturalization as persons "afflicted by a psychopathic personality." People living with HIV were banned from visiting and immigrating until 2010. (See, Siobhan Somerville, "Queer Alienage: The Racial and Sexual Logic of the 1952 Immigration and Naturalization Act," Working Papers on Historical Systems, Peoples and Cultures, No. 12, September 2002, p. 4, Department of Ethnic Studies, Bowling Green State University, available at <http://www2.bgsu.edu/downloads/cas/file46880.pdf>). Until the *Windsor* decision in 2013, LGBT families were denied recognition of marital ties, which represent a key pathway to achieving lawful immigration status. People with HIV were barred from visiting or immigrating until 2010 (See Centers for Disease Control, "Final Rule Removing HIV Infection from US Immigration Screening," available at <http://www.cdc.gov/immigrantrefugeehealth/laws-regs/hiv-ban-removal/final-rule.html>).
- 85 "Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) Organizations Call for the Immediate Elimination of ICE's 'Secure Communities' Program," October 11, 2011, available at <http://www.cuav.org/LGBTQ-organizations-come-out-for-the-immediate-elimination-of-ices-secure-communities-program/>; Andrea Ritchie, "Coming Out Against ICE Secure Communities Program," October 11, 2011, available at <http://andrea Ritchie.wordpress.com/2011/10/11/coming-out-against-ice-secure-communities-program/>.
- 86 Padron et. al. v. ICE, February 2013, at http://www.immigrantjustice.org/court_cases/padron-et-al-v-ice-et-al. The National Immigration Forum (NIF) reports that in FY2013, ICE contracted with 244 state and county facilities and seven (7) privately run Contract Detention Facilities, and itself operated six (6) detention facilities, known as Service Processing Centers. (National Immigration Forum, "The Math of Immigration Detention: Runaway Costs For Immigration Detention Do Not Add Up To Sensible Policies" (2013): 4, available at <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf>.)
- 87 Ibid.: 1, 3. (DHS requested nearly \$2 billion dollars in FY 2014 for immigration detention alone. The cost of detention is estimated at \$159 per person per day, while the cost of alternatives to detention range from 70 cents to \$17 dollars per person per day.)
- 88 Michael Shear, "Obama, Citing Concern for Families, Orders Review of Deportations," *New York Times*, March 13, 2014, available at <http://www.nytimes.com/2014/03/14/us/obama-orders-review-of-deportations.html>.
- 89 See, for example, Adriana Maestas, "Deportations are Down but Calls to Stop the Removals Continue," *Politics 365*, December 10, 2013, available at <http://politic365.com/2013/12/20/deportations-are-down-but-calls-to-stop-the-removals-continue/>; "American Federation of Teachers Calls for Moratorium on Deportations," February 10, 2014, available at <http://www.notionemoredeportation.com/2014/02/14/american-federation-of-teachers-calls-for-moratorium-on-deportations/>.

- 90 Sharita Gruberg, "Dignity Denied: LGBT Immigrants in US Immigration Detention" (Washington: Center for American Progress, 2013): 4 ("The complaints include incidents of sexual assault, denial of adequate medical care, long-term solitary confinement, discrimination and abuse, and ineffective complaints and appeals processes."), available at <http://www.americanprogress.org/wp-content/uploads/2013/11/ImmigrationEnforcement.pdf>; National Center for Transgender Equality, "Our Moment For Reform: Immigration and Transgender People" (2013), available at http://transequality.org/Resources/CIR_en.pdf; Ian Thompson, comment on "Trauma Compounded: The Plight of LGBT Immigration Detainees," American Civil Liberties Union Blog, posted October 31, 2011, available at <https://www.aclu.org/blog/prisoners-rights-immigrants-rights/trauma-compounded-plight-lgbt-immigration-detainees>; American Civil Liberties Union of Arizona, "In Their Own Words: Enduring Abuse in Arizona Immigration Detention Centers" (2011): 23-28, , available at <http://www.acluaz.org/sites/default/files/documents/detention%20report%202011.pdf>. Advocates have noted significant gaps in staff training, medical access and overuse of segregation at the Santa Ana City Jail, the only facility designated to house LGBT immigrants in protective custody. See, for example, Christina Fialho, "Who Is Overseeing Immigration Detention?" *Huffington Post*, July 22, 2013, available at http://www.huffingtonpost.com/christina-fialho/who-is-overseeing-immigration-detention_b_3632009.html.
- 91 Sharita Gruberg, "Dignity Denied": 13; see also Burns, Garcia, and Wolgin "Living in Dual Shadows": 5.
- 92 National Immigrant Justice Center, "NIJC Principles and Priorities for Reforming the U.S. Immigration System" (2012), available at <http://www.immigrantjustice.org/immigrationreformpriorities#.UqEsKcRUeWk>.
- 93 Gruberg, "Dignity Denied": n.4; National Center for Transgender Equality, National Center for Lesbian Rights, ACLU, NGLTF, Sylvia Rivera Law Project, Immigration Equality, Human Rights Campaign, Lambda Legal, Transgender Law Center, "Protecting Lesbian, Gay, Bisexual, Transgender, Intersex, and Gender Nonconforming People From Sexual Abuse and Harassment in Immigration Detention" (2013), available at <http://immigrationequality.org/wp-content/uploads/2013/03/DHS-PREA-LGBT-comments-final.pdf>; American Civil Liberties Union, "Sexual Abuse in Immigration Detention" available at <https://www.aclu.org/sexual-abuse-immigration-detention>; Human Rights Watch, "Detained and At Risk: Sexual Abuse and Harassment in United States Immigration Detention" (2010), available at <http://www.hrw.org/node/92629/section/1>; American Civil Liberties Union, "Documents Obtained by ACLU Show Sexual Abuse of Immigration Detainees Is Widespread National Problem," October 19, 2011, available at <http://www.aclu.org/immigrants-rights-prisoners-rights-prisoners-rights/documents-obtained-aclu-show-sexual-abuse>; National Center for Transgender Equality, "Our Moment For Reform": 20, available at http://transequality.org/Resources/CIR_en.pdf.
- 94 Gruberg, "Dignity Denied": n.4, at pp. 3-5. In April 2011, the National Immigrant Justice Center (NIJC) filed a civil rights complaint with the DHS office of Civil Rights and Civil Liberties (CRCL) on behalf of sexual minorities in immigration detention, several of whom were victims of sexual abuse in U.S. immigration custody. As of the writing of this report, CRCL has not responded to this complaint.
- 95 Government Accountability Office, "Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse," GAO-14-38, November 2013, available at <http://www.gao.gov/assets/660/659145.pdf> (This report was requested by 28 members of Congress in January 2012. Of the 15 incidents substantiated in the GAO review, three involved transgender detainees; see "Appendix II: Summary of Substantiated Sexual Abuse and Assault Allegations October 2009 Through March 2013," pp. 60-62.).
- 96 These deficiencies included: inconsistent procedures for receiving, investigating and tracking sexual abuse and assault complaints; poor documentation of investigations of complaints; inconsistency in the various standards governing the care of persons in detention with respect to sexual assault and lack of clarity among operators of detention facilities and investigators about which standards apply; and difficulty in the ability of detainees to access hotlines and resources created to facilitate reporting of an assault. Government Accountability Office, "Immigrant Detention."
- 97 Ibid., Appendix IV and V pp. 66-75.
- 98 Department of Homeland Security, "Standards to Prevent, Detect and Respond to Sexual Abuse and Assault in Detention Facilities, Final Rule, 79 FR 13099," March 7, 2014, available at <https://www.federalregister.gov/articles/2014/03/07/2014-04675/standards-to-prevent-detect-and-respond-to-sexual-abuse-and-assault-in-confinement-facilities>. A coalition of LGBT organizations filed detailed comments to the Proposed DHS rules covering, among others, expanding the definition of sexual abuse, insuring time-delimited implementation of regulations, expanding the rules on cross-gender searches to include adult and juvenile males, adding language to ensure investigation of incidents of abuse, providing training for all medical providers, insuring safe shower access, and limiting automatic housing assignments and protective custody based on sexual orientation and gender identity. See NCTE et al., "Protecting Lesbian, Gay, Bisexual, Transgender, Intersex, and Gender Nonconforming People."
- 99 National Prison Rape Elimination Commission, "Standards for the Prevention, Detection, Response and Monitoring of Sexual Abuse in Adult Prisons and Jails" (2009): 67-68.
- 100 We recognize a danger that this recommendation, like many others in this document, could be applied in a biased way that would limit its use to LGBT prisoners and prisoners living with HIV. We recommend that the agencies implementing these recommendations establish procedures to review such implementation and address any potential bias.
- 101 NCTE, "Our Moment For Reform": 20; Arkles, "Safety and Solidarity Across Gender Lines."
- 102 Alexis Perlmutter and Mike Corradini, "Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigrant Detention" (Chicago: National Immigrant Justice Center, 2012), available at https://www.immigrantjustice.org/sites/immigrantjustice.org/files/Invisible%20in%20Isolation-The%20Use%20of%20Segregation%20and%20Solitary%20Confinement%20in%20Immigration%20Detention.September%202012_7.pdf; Christy Fujio, "Buried Alive: Solitary Confinement in the U.S. Detention System" (Cambridge: Physicians For Human Rights, 2013), available at <http://physiciansforhumanrights.org/library/reports/buried-alive-solitary-confinement-in-the-us-detention-system.html>.

- 103 Laurel Anderson, "Punishing The Innocent: How the Classification of Male-to-Female Transgender Individuals in Immigration Detention Constitutes Illegal Punishment Under the Fifth Amendment," *Berkeley Journal of Gender, Law and Justice* 25 (1) (2010).
- 104 United States Immigration and Customs Enforcement, "Directive 11065.1: Review of the Use of Segregation for ICE Detainees," September 4, 2013, available at http://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.
- 105 National Immigrant Justice Center, "NIJC Welcomes New ICE Directive To Improve Oversight of Solitary Confinement in Immigrant Detention," September 5, 2013, available at http://www.immigrantjustice.org/press_releases/ice-directive-solitary-confinement#.UjjEWbWOS1 ("We are concerned that the new directive does not eliminate the use of extended solitary confinement, and that the reporting period exceeds the 15 days which the United Nations Special Rapporteur on Torture has observed can have detrimental and irreversible effects on individuals' mental health," McCarthy said. "We will continue to work with the administration and Congress to reduce the use of solitary confinement, and eliminate the use of extended solitary confinement.").
- 106 Recommendations 4 and 5 on segregation were also made by the ACLU of Arizona in its report documenting the experience and incidents of sexual abuse of vulnerable immigrants in the Arizona ICE facilities (including women, transgender persons and LGBT persons). See, ACLU of Arizona, "In Their Own Words": 4.
- 107 Government Accountability Office, "Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse," GAO-14-38, November 2013, available at <http://www.gao.gov/assets/660/659145.pdf>.
- 108 At its formation in 2000, ICE operated under a set of standards known as the National Detention Standards, which included standards governing the provision of medical care (ICE, "National Detention Standards, 2000 Detention Operations Manual," available at <http://www.ice.gov/detention-standards/2000/>). In 2008, ICE promulgated Performance Based National Detention Standards (ICE, "2008 Operations Manual ICE Performance Based National Detention Standards (PBNDS)," available at <http://www.ice.gov/detention-standards/2008/>). These standards were subsequently amended in 2011 (ICE, "2011 Operations Manual ICE Performance Based National Detention Standards (PBNDS)," available at <http://www.ice.gov/detention-standards/2011/>). Today, each of these three different standards applies to different detention facilities contracted for or run by ICE. In a fact sheet on its website, ICE acknowledges that "different versions of these three sets of national detention standards currently apply to ICE's various detention facilities. ICE has begun implementing PBNDS 2011 across its detention facilities, with priority initially given to facilities housing the largest populations of ICE detainees" (ICE, "Fact Sheet ICE Detention Standards," available at <http://www.ice.gov/news/library/factsheets/facilities-pbnds.htm>).

A Congressional Hearing on Immigrant Detainee Health Care in 2007 surfaced a wide range of problems and challenges associated with the provision of health care to immigrant detainees. ("Detention and Removal: Immigration Detainee Medical Care," Testimony before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and

International Law, 2007). These problems included the fact that there was no law requiring health care in immigrant detention facilities, multiple standards that were not uniformly enforced, and poor enforcement of existing standards. (See also, Brianna M. Moity, "Solving The Medical Crisis for Immigration Detainees: Is the Proposed Detainee Basic Medical Care Act Of 2008 The Answer?" *Law & Inequality* 28 (1) (2010): 223.)

A 2009 DHS report found many problems with medical care delivery in immigration detention, including: "...[M]edical care services provided vary considerably by location, as does the staffing in the specialty areas...on-site provider staff is comprised predominately of contract employees, who face more relaxed professional credentialing procedures than regular employees.... ICE does not have an electronic medical records system for all facilities or uniform paper reporting requirements and little reliable medical care information is available about the population as a whole. There is no medical classification system other than a limited use coding of healthy and unhealthy, and there is no mental health classification system. There is no policy on the maintenance, retention, and centralized storage of medical records; instead, a new medical record is opened each time a detainee is transferred to another detention facility. After the detainee is transferred from the facility the file remains on site. While a medical summary should accompany detainees upon their transfer, it does not routinely occur." (Dr. Dora Schirro, "Immigration Detention Overview and Recommendations" (Washington: Department of Homeland Security, ICE, 2009), 25-26, at <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>).

- 109 Gruberg, "Dignity Denied": n. 4; Noah Nehemiah Gillespie, "Positive Law: Providing Adequate Medical Care for HIV-Positive Immigration Detainees," *George Washington Law Review* 89 (4) (2013): 1329. For example the National Immigrant Justice Center has filed detailed complaints on behalf of LGBT immigrant detainees on issues including denial of medical and mental health treatment, see for example at <http://www.immigrantjustice.org/stop-abuse-detained-lgbt-immigrants>; the ACLU of Arizona report details inadequate medical care, see *supra* note 28; NCTE, "Our Moment for Reform."
- 110 Methicillin-resistant *Staphylococcus aureus*, is a bacterium responsible for several difficult to treat infections in humans. MRSA is any strain of *Staphylococcus aureus* that has developed, through the process of natural selection, resistance to beta-lactam antibiotics (<http://www.mayoclinic.org/diseases-conditions/mrsa/basics/definition/con-20024479>).
- 111 See complaint and pleadings at *Padron et. al v. ICE et. al* available at http://www.immigrantjustice.org/court_cases/padron-et-al-v-ice-et-al.
- 112 Recommendations 5-9 on medical care were made by Physicians for Human Rights in their 2011 report, "Dual Loyalties," available at <http://physiciansforhumanrights.org/library/reports/report-03-21-2011.html>.
- 113 Bernadette Pelissier et al, "Federal Prison Residential Drug Treatment Reduces Substance Use and Arrests After Release" Federal Correctional Institution Butner, available at http://www.bop.gov/resources/research_projects/published_reports/recidivism/orepramjalcd.pdf; Cindy Eigler, "Treatment Behind Bars: Substance Abuse Treatment in New York Prisons 2007-2010" (New York: The Correctional Association of New

- York, 2011), available at http://www.correctionalassociation.org/wp-content/uploads/2012/05/satp_report_and_appendix_february_2011.pdf; Mary Carmichael, "The Case For Treating Drug Addicts in Prison," *Newsweek*, June 28, 2010, available at <http://www.newsweek.com/case-treating-drug-addicts-prison-73561>.
- 114 New York Immigration Representation Study, "Accessing Justice: The Availability and Adequacy of Counsel At Immigration Hearings" (2011): 1, 3, available at http://www.cardozolawreview.com/content/denovo/NYIRS_Report.pdf.
- 115 8 U.S.C. § 1362 (Supp. 5 2006). *Id.*, p. 3.
- 116 Nina Sulic, Zhifen Cheng, Arnold Son, and Olga Byrne, "Improving Efficiency and Promoting Justice in the Immigration System: Lessons From the Legal Orientation Program, Report Summary" (New York: Vera Institute of Justice, 2008), available at http://www.vera.org/sites/default/files/resources/downloads/LOP_Evaluation_May2008_final.pdf.
- 117 Stephen H. Legomsky, "The New Path of Immigration Law: Asymmetric Incorporation of Criminal Justice Norms," *Washington and Lee Law Review* 64 (2) (2007): 469.)
- 118 Estimate drawn from National Juvenile Justice and Delinquency Prevention Coalition, "Recommendations for Juvenile Justice Reform: Opportunities for the Obama Administration" (2011), available at http://www.juvjustice.org/media/resources/public/resource_549.pdf, which states that 2.1 million youth are arrested nationwide; Angela Irvine, "We've Had Three of Them: Addressing the Invisibility of Lesbian, Gay, Bisexual, and Gender Nonconforming Youths in the Juvenile Justice System," *Columbia Journal of Gender and Law* 19 (3) (2010).
- 119 Indian Law and Order Commission, "A Roadmap to Making Native America Safer."
- 120 Irvine, "We've Had Three of Them."
- 121 Hunt and Moodie-Mills, "The Unfair Criminalization of Gay and Transgender Youth."
- 122 U.S. Department of Health and Human Services, Administration on Children, Youth and Families (ACYF) Memorandum, "Lesbian, Gay, Bisexual, and Transgender Youth in Foster Care" (2011), available at: <http://www.acf.hhs.gov/sites/default/files/cb/im1103.pdf>.
- 123 Hunt and Moodie-Mills, "The Unfair Criminalization of Gay and Transgender Youth."
- 124 *Ibid.*
- 125 Michelle Sarche and Paul Spicer, "Poverty and Health Disparities for American Indian and Alaska Native Children: Current Knowledge and Future Prospects," *Annals of New York Academy of Sciences*, 1136 (2008): 126-136, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2567901/>.
- 126 Gretchen Ruth Cusick, Mark E. Courtney, Judy Havlicek, and Nathan Hess, "Crime during the Transition to Adulthood: How Youth Fare as They Leave Out-of-Home Care" (Chicago: Chapin Hall at the University of Chicago, 2011): 1-7, available at http://www.chapinhall.org/sites/default/files/Crime%20During%20Transition_03_16_11.pdf.
- 127 *Ibid.*
- 128 ACYF, "Lesbian, Gay, Bisexual, and Transgender Youth in Foster Care."
- 129 See Native American Program of Legal Aid Services of Oregon, Indigenous Ways of Knowing Program at Lewis & Clark College, Basic Rights Oregon, and Western States Center, "Tribal Equity Toolkit 2.0: Tribal Resolutions and Codes to Support Two Spirit & LGBT Justice in Indian Country" (2013), available at <https://graduate.lclark.edu/live/files/15810-tribal-equity-toolkit-20>.
- 130 See Wilber, Ryan, and Marksamer, "Best Practice Guidelines for Serving LGBT Youth in Out-of-Home Care"; National Center for Lesbian Rights, "Model Policy & Practice Guideline for Providing Non-Discriminatory Services to Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Justice Facilities" (2008), available at http://www.nclrights.org/wp-content/uploads/2013/07/LGBT_POLICY_final_9_18_8.pdf.
- 131 Jerome Hunt and Aisha C. Moodie-Mills, "The Unfair Criminalization of Gay and Transgender Youth;" Gay and Lesbian Student Education Network (GLSEN), "2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools" (2012), available at: <http://glsen.org/sites/default/files/2011%20National%20School%20Climate%20Survey%20Full%20Report.pdf>.
- 132 GLSEN, "2011 National School Climate Survey."
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APPENDIX A

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