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Written statement of
Human Rights Watch

to

The United States Senate Committee on the Judiciary,
Subcommittee on the Constitution, Civil Rights
and Human Rights

**“The State of Civil and Human Rights
in the United States”**

December 9, 2014

Human Rights Watch submits the following statement to the Committee on current human rights challenges facing the United States, and how Congress should address them. Human Rights Watch is an independent, international organization that works in over 90 countries around the world as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all. We scrupulously investigate abuses, expose the facts widely, and press those with power to respect rights and secure justice.

Human Rights Watch has documented the state of human rights within the United States in 15 in-depth investigative reports over the span of the 113th Congress. We have issued policy briefings on the need for US immigration reform¹ and on reducing the US dependence on incarceration.² In the last 12 months we have also submitted comprehensive reports on US compliance with three core human rights treaties: the International Covenant on Civil and Political Rights,³ the International Convention on the Elimination of All Forms of Racial Discrimination,⁴ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁵ Taken together, these reports provide a much fuller picture of the state of human rights in the United States than can be covered in this brief statement.

For purposes of this statement, we focus on US domestic human rights concerns most directly under the purview of the Committee, particularly on civil and political rights in the arenas of immigration, criminal justice, and privacy. Defending human rights, of course, is not solely the responsibility of this Committee—it is the responsibility of all congressional committees. Human rights are about safe and non-discriminatory workplaces, be they on an almond farm⁶ or an aircraft carrier.⁷ Human rights are about accountability for torture and other ill-treatment,⁸ ending the use

¹ Human Rights Watch, *Within Reach: A Roadmap for US Immigration Reform*, <http://www.hrw.org/roadmap-to-immigration-reform>

² Human Rights Watch, *Nation Behind Bars: A Human Rights Solution*, http://www.hrw.org/sites/default/files/related_material/2014_US_Nation_Behind_Bars_o.pdf

³ Human Rights Watch, *Submission to the Human Rights Committee during its consideration of the Fourth Periodic Report of the United States*, <http://www.hrw.org/news/2013/01/04/us-human-rights-watch-submission-un-human-rights-committee> (2012)

⁴ Human Rights Watch, *Submission to the Committee on the Elimination of Racial Discrimination during its consideration of the seventh to ninth periodic reports of the United States of America*, http://www.hrw.org/sites/default/files/related_material/2014%20HRW%20US%20CERD.pdf (2014)

⁵ Human Rights Watch, *Submission to the United Nations Committee Against Torture during its consideration of the third to fifth periodic reports of the United States of America*, http://www.hrw.org/sites/default/files/related_material/HRW%20Submission%20to%20CAT%20-%20October%202014.pdf (2014)

⁶ Human Rights Watch, *Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment*, May 2012, <http://www.hrw.org/reports/2012/05/15/cultivating-fear>

⁷ “Sexual Violence Continues to Undermine US Military,” Cornell University Law School, <http://www.lawschool.cornell.edu/academics/clinicalprogram/int-human-rights/Military-Sexual-Assault-Petition-to-IACHR.cfm> (accessed December 4, 2014)

⁸ Human Rights Watch, *Getting Away with Torture: The Bush Administration and Mistreatment of Detainees*, July 2011, <http://www.hrw.org/reports/2011/07/12/getting-away-torture-o>.

of fundamentally flawed military commissions,⁹ and once and for all closing the Guantanamo Bay detention facility.¹⁰ Human rights should be promoted in US schools¹¹ and US businesses.¹²

Without question, this Committee has frequently played a vital role in protecting human rights in the United States. At the same time, on some occasions the Committee has fallen short of its promise, and the progress of human rights in the United States has suffered as a result. Through this testimony we hope to highlight a few of the successes of this Committee, while also flagging areas on which we hope the Committee will go further in the next Congress.

Immigration reform

The work of this Committee resulted in a landmark immigration reform measure, Senate Bill 744.¹³ The bill reflected a commitment to keeping families unified, to protecting immigrants from abuses and crime, and to acknowledging the contributions of long-term residents in the United States. It created a pathway to legal status for a vast majority of the 11 million unauthorized immigrants currently living in the United States and included several insightful protections that could help to keep families with mixed immigration status together. For example, it empowered the Department of Homeland Security to allow certain people already removed from the country but with strong family ties in the United States to return and apply for legalization. It also better aligned immigration detention policies with human rights requirements, reducing mandatory detention, improving detention conditions by restricting the use of solitary confinement, and requiring the appointment of counsel for children and persons with mental disabilities in immigration proceedings.

The bill that passed out of this Committee was far from perfect; for example, it shut out from relief people with criminal convictions, even non-violent convictions and those convictions far in the past. Yet overall, it was a massive improvement over the immigration system currently in place, and was broadly supported, with 13 out of 18 members of this Committee voting in favor the bill. This vote presaged the broad bipartisan support that resulted in over two-thirds of the full Senate voting in favor of the final version of the bill. It was disappointing that even with this broad veto-proof majority, however, the House of Representatives refused to even consider the bill, paying short shrift to the human rights protections it included.

⁹ Laura Pitter (Human Rights Watch), "Guantanamo's System of Injustice," *Salon*, January 19, 2012, <http://www.hrw.org/news/2012/01/19/guantanamo-s-system-injustice>

¹⁰ "US: Send Guantanamo's Yemenis Home," Human Rights Watch news release, April 7, 2014, <http://www.hrw.org/news/2014/04/07/us-send-guantanamo-s-yemenis-home>.

¹¹ Human Rights Watch and the American Civil Liberties Union, *A Violent Education: Corporal Punishment of Children in US Public Schools*, August 2008, <http://www.hrw.org/reports/2008/08/19/violent-education-o>.

¹² Human Rights Watch, *Tobacco's Hidden Children: Hazardous Child Labor in United States Tobacco Farming*, May 2014, <http://www.hrw.org/reports/2014/05/13/tobacco-s-hidden-children>. See also Arvind Ganesan (Human Rights Watch), "Predatory Lending and Indian Country," *The Hill*, September 24, 2013, <http://thehill.com/blogs/congress-blog/economy-a-budget/324007-predatory-lending-and-indian-country>.

¹³ "US: Immigration Reform Clears Major Hurdle," Human Rights Watch news release, June 27, 2013, <http://www.hrw.org/news/2013/06/27/us-immigration-reform-clears-major-hurdle>.

While President Barack Obama has announced executive measures that offer some protections to a segment of unauthorized immigrants in the United States, those measures are insufficient to resolve the harms caused by the immigration status quo.¹⁴ This Committee should continue to support the protections embodied in Senate Bill 744 in the new Congress, and should work to engage the House of Representatives in taking up immigration reform legislation while keeping the protections outlined in the Senate bill.

Mass incarceration

In the last few years, the Committee has attempted to tackle the problem of mass incarceration in the United States. This marks a departure from the past four decades, where incarceration rates and sentence lengths have been driven more by political considerations—appearing “tough on crime”—than careful considerations of the nature of the offense and the offender and proportionate sentence lengths no longer than necessary. As a result, the United States has the largest reported incarceration rate in the world and the highest per capita rate of imprisonment.¹⁵ The most recent data available indicates 2.4 million individuals are being held in confinement in the United States.¹⁶ Drug offenders represent 50.6 percent of federal prisoners and an estimated 21.3 percent of all prisoners in the United States. Many are serving sentences that are grossly disproportionate to their culpability and the severity of the offense.¹⁷

In January, the Committee approved the Smarter Sentencing Act, which, according to the Urban Institute, would have “dramatically” reduced overcrowding in federal Bureau of Prison facilities.¹⁸ If the bill were to become law, in 10 years federal prisons would be only 20 percent over capacity, instead of 50 percent overcrowding under the status quo— over those 10 years the bill would reduce federal incarceration by over 240,000 bed-years and save \$2.5 billion. More importantly, the bill would begin to address some of the unjust, disproportionate sentencing practices that have been a significant factor in the US over-incarceration problem.

Much like Senate Bill 744, the Smarter Sentencing Act was not a perfect bill. It failed to fully address draconian sentencing enhancements used by prosecutors to coerce guilty pleas in drug cases.¹⁹ The safety valve expansion, which would have allowed judges to bypass some mandatory minimum sentencing requirements, was minimal compared to other bills considered by the

¹⁴ “US: Immigrant Plan Laudable but Incomplete,” Human Rights Watch news release, November 21, 2014, <http://www.hrw.org/news/2014/11/21/us-immigration-plan-laudable-incomplete>.

¹⁵ *Nation Behind Bars*, p.5.

¹⁶ “Mass Incarceration: The Whole Pie,” Prison Policy Initiative, March 12, 2014, <http://www.prisonpolicy.org/reports/pie.html> (accessed December 4, 2014).

¹⁷ *Nation Behind Bars*, p. 9.

¹⁸ Urban Institute, “Stemming the Tide: Strategies to Reduce the Growth and Cut the Cost of the Federal Prison System,” November 2013, <http://www.urban.org/uploadedpdf/412932-stemming-the-tide.pdf> (accessed December 4, 2014).

¹⁹ Human Rights Watch, *An Offer You Can't Refuse: How US Federal Prosecutors Force Drug Defendants to Plead Guilty*, December 2013, <http://www.hrw.org/reports/2013/12/05/offer-you-can-t-refuse>.

Committee.²⁰ The bill itself was amended in committee to include even more mandatory minimums for certain crimes. Yet again, like Senate Bill 744, the bill was a major improvement over the current status quo. Again, the bill also passed out of the Committee with a strong bipartisan 13 to 5 vote, and the bill ultimately stalled, never getting a vote by the full Senate.

The Committee should continue to work to address mass incarceration and excessive punishment in the upcoming Congress. Legislation it considers to reform the federal prison system should, like the Smarter Sentencing Act, prioritize eliminating disproportionate sentences and thus reducing incarceration rates, particularly for non-violent and drug-related crimes. When it comes to mass incarceration, the United States should aim to not be a global leader.

Solitary confinement

Human Rights Watch has been reporting on the harms caused by prolonged isolation of prisoners for over a decade. As we noted to this Committee in 2012:

For many, the absence of normal social interaction, of reasonable mental stimulus, of exposure to the natural world, of almost everything that makes life human and bearable, is emotionally, physically, and psychologically destructive. People suffer grievously in prolonged solitary confinement because human beings are social animals whose well-being requires interaction and connection with others as well as mental, physical, and environmental stimulation.²¹

Prolonged isolation can be especially damaging to children, as we documented in 2012.²²

This Committee played a crucial role in highlighting the overuse of solitary confinement in US jails and prisons by holding two separate hearings on the practice. Those hearings helped to raise public awareness about prolonged isolation and resulted in the federal Bureau of Prisons agreeing to an independent review of its practices (those findings are still pending).

Unfortunately, no bill to restrict the use of solitary confinement in the federal prison system was taken up by the Committee. The Committee should therefore, in the next Congress, build on the momentum of these solitary confinement hearings by developing and approving legislation that bans prolonged or indefinite isolation, as well as bans the isolation of youth or of persons with mental disabilities.

²⁰ Justice Safety Valve Act of 2013, Senate Bill 619, <https://www.congress.gov/bill/113th-congress/senate-bill/619> (accessed December 4, 2014).

²¹ "US: Look Critically at Widespread Use of Solitary Confinement," Human Rights Watch news release, June 18, 2012, <http://www.hrw.org/news/2012/06/18/us-look-critically-widespread-use-solitary-confinement>.

²² Human Rights Watch, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, October 2012, <http://www.hrw.org/reports/2012/10/10/growing-locked-down>.

Mass surveillance

The Senate Judiciary Committee has attempted to rein in the use of electronic surveillance and intelligence gathering practices that violate the right to privacy of people in the United States. Beyond the harm to privacy rights, Human Rights Watch has documented how current mass surveillance programs also threaten basic freedoms essential to a democratic society and public accountability, including freedom of expression and the right to counsel.²³ In July we reported on how US government surveillance programs are impeding the work of journalists, who increasingly find that sources are unwilling to speak with them, even about unclassified matters of public concern, out of fear that their communications could be monitored. Ultimately, this means that less information about matters of public interest reaches the public, and it is harder for the public to hold the US government to account. Large-scale surveillance is also interfering with the ability of attorneys to represent their clients, creating a concern about their ability to meet their professional responsibilities to maintain confidentiality of client information. Fear of surveillance makes it harder for attorneys to build trust with their clients or protect legal strategies.

The most recent version of the USA FREEDOM Act, as introduced by Chairman Patrick Leahy, which failed to pass the Senate in November, would have reformed government surveillance programs in part by prohibiting “bulk” and limiting large-scale data collection under Section 215 of the USA PATRIOT Act and other authorities.²⁴ Passing the USA FREEDOM Act would have been an incremental step in the fight to protect the right to privacy enshrined in article 17 of the International Covenant on Civil and Political Rights. The bill as it was considered by the full Senate did not deal with other problematic surveillance programs, like those under Section 702 of the FISA Amendments Act or Executive Order 12333. The bill further did not acknowledge or address a duty to respect the right to privacy of individuals outside the United States. But it was an important, incremental step, and Congress should have adopted it. This Committee, in the upcoming Congress, should move to take up legislation that challenges the vast surveillance practices undertaken by the US government.

Unfinished business

Finally, while this statement has primarily focused on the ways the Senate Judiciary Committee should build on efforts to protect human rights in the upcoming Congress, there are key human rights concerns still to be resolved in the waning days of the current Congress. With police accountability at the forefront of concern after the deaths of Michael Brown and Eric Garner, among others, the Senate should immediately pass the Death in Custody Reporting Act.²⁵ If passed, the Act would require law enforcement agencies to track and report on the death of any

²³ Human Rights Watch, *With Liberty to Monitor All: How Large-Scale US Surveillance is Harming Journalism, Law, and American Democracy*, July 2014, <http://www.hrw.org/reports/2014/07/28/liberty-monitor-all-o>.

²⁴ Letter from Human Rights Watch to the US Senate in support of the USA FREEDOM Act, November 14, 2014, <http://www.hrw.org/news/2014/11/14/letter-us-senate-support-usa-freedom-act-s-2685>.

²⁵ Death in Custody Reporting Act of 2013, House Resolution 1447, <https://www.congress.gov/bill/113th-congress/house-bill/1447>, (accessed December 4, 2014).

person in the process of being arrested, arrested, or being transferred or placed in a jail or prison. This data would fill a crucial gap in the US understanding of very basic information about police behavior, and would better inform the national debate around improving law enforcement behavior and ensuring police accountability in cases of misconduct.

This Committee should also recommit itself to defending the Prison Rape Elimination Act (PREA). The Committee recently attached to the laudable Second Chance Reauthorization Act a provision that would have weakened the penalty provisions of the Act.²⁶ Close to 200,000 people in confinement experienced some form of sexual victimization in US confinement facilities in 2013.²⁷ This is no time to restrict the ability of the federal government to penalize non-compliance with PREA. The Committee should oppose any changes to PREA and reexamine in the next Congress not only how to defend the Act, but how to make it stronger.

The responsibility of the Senate Judiciary Committee and its Subcommittee on the Constitution, Civil Rights and Human Rights to improve the domestic US human rights record is a serious and considerable one. In many ways, the story of how this Committee has worked to promote and protect human rights is a story of unfinished business. Difficult work remains. We urge the Senators returning to the Committee in January to take up the mantle of human rights and to take measurable steps to defend and protect human rights at home.

²⁶ "Senate Committee Authorization Could Impact PREA Penalties," *Correctional News*, September 24, 2014, <http://www.correctionalnews.com/articles/2014/09/24/senate-committee-authorization-could-impact-prea-penalties> (accessed December 4, 2014).

²⁷ Human Rights Watch submission to the UN Committee Against Torture, 2014.