

October 18, 2017

Elaine C. Duke, Acting Secretary
John Roth, Inspector General
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528-0305

Cameron Quinn
Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Building 410, Mail Stop #0190
Washington, D.C. 20528

Re: Complaint by F.A.C.P. regarding sexual abuse and inappropriate segregation at the Stewart Detention Center in Lumpkin, Georgia

Dear Ms. Duke, Mr. Roth, and Ms. Quinn:

The Southern Poverty Law Center (SPLC) submits this complaint (Complaint) on behalf of F.A.C.P.,¹ a gay immigrant from Honduras currently detained by Immigration Customs and Enforcement (ICE), a sub-agency of the Department of Homeland Security (DHS), at the Stewart Detention Center in Lumpkin, Georgia. The Stewart Detention Center is operated by CoreCivic, a private prison company, via an Intergovernmental Service Agreement with Stewart County and ICE.

SPLC is a nonprofit legal organization dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of society. Since its founding in 1971, SPLC has won numerous landmark legal victories on behalf of incarcerated and detained individuals throughout the Deep South, thereby assuring their constitutional rights are protected and their conditions of confinement are humane. SPLC represents F.A.C.P. as part of its Southeast Immigrant Freedom Initiative (SIFI), a project dedicated to representing immigrants held in detention across the Southeast and advocating for the civil rights of undocumented individuals across the country.

This Complaint is filed on behalf of F.A.C.P. by SPLC pursuant to his express consent. Ex. A (F.A.C.P. Declaration), at 6 (“I give my consent to my attorneys to submit a complaint to the U.S. Department of Homeland Security based on the information contained in this declaration.”). This Complaint alleges that DHS has failed to protect F.A.C.P. from sexual abuse and discrimination inflicted on F.A.C.P. by detainees and custodial staff. It further alleges that DHS has exacerbated F.A.C.P.’s emotional distress by housing him in disciplinary segregation, in violation of its own detention standards.

¹ Due to the sensitive nature of the content, this Complaint refers to the complainant by his initials.

SPLC urges the Office of Civil Rights and Civil Liberties (CRCL) and the Inspector General, pursuant to its authority under 6 U.S.C. § 345, to investigate the egregious mistreatment experienced by F.A.C.P. under the purview and at the behest of DHS, ICE and CoreCivic.

The first section of this Complaint describes the persistent harassment, abuse and mistreatment experienced by F.A.C.P. at the Stewart Detention Center. The second section summarizes the manner in which ICE has failed to protect F.A.C.P. from discrimination and sexual abuse and the egregiousness of its placement of F.A.C.P. in disciplinary segregation. The final section requests specific relief to remedy the discrimination experienced by F.A.C.P. and prevent future discrimination against LGBT detainees housed at the Stewart Detention Center.

I. Discrimination and sexual abuse against F.A.C.P. based on his identity as a gay man

F.A.C.P. is a nineteen-year old immigrant from Honduras who has been held at the Stewart Detention Center in Lumpkin, Georgia for more than eleven months.² Ex. A, at 1 (F.A.C.P. Declaration). F.A.C.P. fled his home country in fear of his life, because he is gay and has been repeatedly threatened by gangs. Since his arrival at Stewart, F.A.C.P. has endured continual discrimination and harassment from detainees and custodial staff on the basis of his sexual orientation.

In his words, “[t]he discrimination I experience at Stewart is worse than what I experienced in Honduras. It happens more often and being in detention, I can’t escape my harassers. I fear for my personal safety at Stewart, because of the persistent harassment by detainees and guards, and the lack of precautions by the staff.” *Id.*

Harassment by Detainees

Nearly every day since his arrival, detainees harass F.A.C.P. because he is gay. They publicly degrade him, yelling offensive slurs and laughing at him in the cafeteria, in the dorm where he sleeps, and during recreation. *Id.* at 1-2. A group of detainees have frequently tormented F.A.C.P. for using the urinal. They ridicule him, saying that women sit down when they urinate. “There has never been a space at Stewart where [F.A.C.P.] felt comfortable.” Ex. A, at 2. Other detainees confirm F.A.C.P.’s reports of constant harassment. *See* Ex. B, at 1-2 (S.A.C. Declaration) (noting that F.A.C.P. has been bullied by detainees and guards because he is gay).

This harassment marks the tip of the iceberg. Beginning in December 2016, a detainee named Dennis began tormenting F.A.C.P. Dennis would publicly harass F.A.C.P., calling him, among other things, the “dirtiest bitch” at Stewart. On one such occasion, F.A.C.P. told a guard that he was having a problem with Dennis, and she responded that she didn’t care. Ex. A., at 2-3.

² In *Demore v. Kim*, 538 U.S. 510, 530 (2003), the Supreme Court found that detention of noncitizens in removal proceedings should last “roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal.” As a noncitizen’s detention passes these thresholds, “the constitutional case for continued detention without inquiry into its necessity becomes more and more suspect.” *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1217 (11th Cir. 2016); *see also id.* (noting that one year in detention may mark the “outer limit of reasonableness”).

F.A.C.P. regularly encountered Dennis due to housing assignments and programming at Stewart, and the threatening nature of the harassment increased over time. It culminated in an incident in which Dennis accosted F.A.C.P. in the shower. Dennis stood in front of F.A.C.P.—holding his erect penis and shaking his behind—and told F.A.C.P. that if they were in his home country, Dennis would rape him. *Id.* at 3. When F.A.C.P. complained to Stewart staff, they moved Dennis to the unit adjacent to the dorm where F.A.C.P. sleeps. This meant that F.A.C.P. continued to encounter Dennis on a daily basis in the dining hall, and Dennis continued to harass F.A.C.P., calling him a “bitch” and “maricón.”³ *Id.*

F.A.C.P. has regularly informed Stewart staff⁴ of this torment. He met with a social worker, Ms. Harvey, numerous times and “nearly every time” he told her about the harassment by detainees. *Id.* at 2. He has also reported the harassment to officers on several occasions—to no avail. *Id.* at 6.

Not once, has Stewart adequately addressed this harassment. Once, Ms. Harvey had F.A.C.P. moved to a different unit, where he experienced increased discrimination. *Id.* F.A.C.P. has never been completely separated from the individuals who target him—except during five agonizing days when he was placed in disciplinary segregation “for [his] own good.” *Id.* at 3; *see also id.* at 3 (continued to encounter Dennis in the dining hall); *id.* at 6 (failure to move Jones R. from his cafeteria duty). Rather, Stewart staff continually accuse F.A.C.P. of being the problem. *Id.*

Harassment by Stewart Staff

Indeed, custodial staff similarly target F.A.C.P. and discriminate against him. Officer McCoy—when supervising his unit—threatened to place him in disciplinary segregation for allowing other detainees to call him “Lucy.” *Id.* at 3. When McCoy heard F.A.C.P. referred to by this name, she brought him into her office and said “[t]here are no women at Stewart.” She then threatened to put him in segregation if anyone called him Lucy again. *Id.* This appears to be a pattern. On a separate occasion, McCoy confronted a transgender detainee for identifying as a woman. McCoy had the detainee placed in disciplinary segregation because she is a trans woman and uses a traditionally female name. Ex. B, at 1.

Most recently, F.A.C.P. has been repeatedly harassed by Officer Jones R. In early August, F.A.C.P. approached Jones R. and asked for permission to leave the dining hall and go to another unit. Jones R. told F.A.C.P. that “[he doesn’t] talk to maricones.” *Id.* at 4. He then told F.A.C.P. that he liked vagina and simulated a woman’s vagina with his hands. *Id.*

Jones R. again harassed F.A.C.P. on August 28, 2017. On that day, F.A.C.P. was sitting at a dining table in the cafeteria with three of his co-workers. He looked up and saw Jones R.—standing about eight feet away—staring at F.A.C.P. while repetitively inserting his pointer finger into his closed hand, simulating penetration by a penis. This behavior was witnessed and similarly interpreted by F.A.C.P.’s co-workers. *Id.* at 4-5. *See e.g.*, Ex. C (V.H.P. Declaration) (noting that Officer Jones R. made “lewd signs at [F.A.C.P.] that were meant to indicate

³ *See* Ex. A, at 1 (“‘Maricon’ is a very offensive word in Spanish and Latin culture. It is a slur against gay people.”)

⁴ This Complaint references “Stewart staff,” “Stewart management,” and “Stewart administration” in recognition that the individuals controlling detainees could be direct employees of ICE or contractors, but subject to the same requirements. *See supra*, note **Error! Bookmark not defined.**

penetration”). In F.A.C.P.’s words, “This instance affected me much more than the previous one. In my mind, there were only two ways to interpret his behavior. Either he was threatening me with sexual assault or degrading me because I am gay.” Ex. A, at 4-5.

The next day, F.A.C.P. made a complaint against Jones R. He relayed the details of the two separate instances to three Stewart staff, including Officer Jennifer Frederick, and then wrote a formal complaint. *Id.* at 5. Officer Frederick brought in a man who Frederick and the others referred to as the “chief,” and F.A.C.P. likewise informed him of the two incidents. F.A.C.P. also completed two declarations that were translated from Spanish to English. *Id.* Additionally, F.A.C.P. provided the names of his three co-workers who witnessed the second incident. *Id.* Seven days later, the “chief” informed F.A.C.P. that the investigation was closed, and there would be no finding against Jones R. *Id.* at 5-6.

Yet, this “investigation” was tainted by the failure to review the entirety of the evidence, an apparent unwillingness to treat Jones R. with any objectivity, and no recourse for F.A.C.P. to challenge the findings. First, F.A.C.P. was given no opportunity to review all of the evidence or appeal the findings. F.A.C.P. never had an opportunity to view video footage that purportedly captured the events, despite being told by the “chief” that “the cameras don’t lie.” *Id.* at 5. Second, no one interviewed F.A.C.P.’s co-workers who witnessed Jones R.’s offensive behavior and corroborated F.A.C.P.’s account. Two of those witnesses have since been deported. *Id.* at 5-6. Finally, F.A.C.P. was denied copies of the complaint, declarations and the findings from the investigation. *Id.* at 6.

During the investigation, Jones R. remained on cafeteria duty, where he regularly encountered F.A.C.P. *Id.* He continued to harass F.A.C.P.—staring at him, making feminine gestures and comments in English that F.A.C.P. could not understand. *Id.* When F.A.C.P. asked Ms. Harvey for protection from Jones R., she told him that segregation was his only option. *Id.*

Stewart Staff Exacerbated F.A.C.P.’s Distress by Placing Him in Segregation

F.A.C.P. had been in segregation and would not agree to return. *Id.* at 6. F.A.C.P. has experienced severe depression and occasional thoughts of suicide at Stewart—one consequence of this unabated harassment and discrimination. *Id.* at 2. For months, he sought medical assistance and was denied. *Id.* He then lodged a complaint for failing to treat his depression and thoughts of self-harm, and Stewart staff responded by placing him in disciplinary segregation. *Id.* at 3. He was told that it was “for [his] own good.” *Id.*

F.A.C.P. was held in a single cell in the disciplinary segregation unit for five days. He was housed directly across from the cell where a detainee had recently committed suicide.⁵ *Id.* at 3-4.

⁵ See, e.g., Jeremy Redmon, *GBI: ICE detainee who died in Georgia was isolated for 19 days*, AJC.com (May 16, 2017), <http://www.ajc.com/news/breaking-news/gbi-ice-detainee-who-died-georgia-was-isolated-for-days/DcGHSwotmwlu5oi8yGJqwM/>; Madison Pauly, *A Private Prison Company Put This Immigrant Detainee in Solitary. 19 Days Later He Was Dead.*, Mother Jones (May 18, 2017), <http://www.motherjones.com/politics/2017/05/immigration-detention-ice-death-stewart/>; Annie Rose Ramos, *Death of Panamanian Detainee Held in Solitary Confinement Initially Ruled Suicide*, NBC News (May 16, 2017), <https://www.nbcnews.com/news/latino/death-panamanian-detainee-held-solitary-confinement-initially-ruled-suicide-n760346>.

From his window, he could see the yellow cautionary tape and “do not enter” signs. *Id.* at 4. This exacerbated his own thoughts of self-harm: “Being so close to that cell made me think about killing myself—because [segregation] was such a horrible place to be.” *Id.* There was nothing in his cell but a shoddy mattress. Over the course of the five days, Stewart staff visited him on just two occasions. *Id.* He had an attorney visit during those five days; his hands were cuffed and his ankles were shackled throughout that visit. *Id.*

F.A.C.P. continues to endure discrimination and harassment. Most recently, a detainee publicly harassed F.A.C.P., saying that he “like[s] to suck dick.” *Id.* at 6. When he tried to report this incident to Officer Frederick, she told F.A.C.P. that he is “trouble.” Frederick refers to him as “trouble” nearly every day. *Id.*

II. DHS has violated both federal regulatory and administrative standards for treatment of detainees by failing to adequately protect F.A.C.P. from sexual abuse and mental deterioration.

The persistent mistreatment endured by F.A.C.P. arises within a long history of discrimination against and abuse of LGBT detainees.⁶ In that context, DHS issued “Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities,” pursuant to a 2012 Executive Memorandum clarifying that the Prison Rape Elimination Act (PREA) governs all federal confinement facilities.⁷ In regards to the PREA standards, DHS stated that:

DHS is committed to preventing, detecting, and responding to sexual abuse in facilities used to detain individuals for civil immigration purposes. Sexual abuse is not an inevitable feature of detention, and with DHS’s strong commitment, DHS immigration detention and holding facilities have a culture that promotes safety and refuses to tolerate abuse. DHS is fully committed to its zero-tolerance policy against sexual abuse in its confinement facilities, and these standards will strengthen that policy across DHS confinement facilities. DHS is also fully committed to the full implementation of the standards in DHS confinement facilities, and to robust oversight of these facilities to ensure this implementation.⁸

Three years later, DHS continues to fail detainees like F.A.C.P., who bear the brunt of unabated sexual abuse from detainees and staff alike.⁹

⁶ See e.g., *With Justice and Liberty for All*, U.S. Commission on Civil Rights, 36-39, (Sep. 2015), available at http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf; Sharita Gruberg, *Dignity Denied*, Center for American Progress, 3-7 (Nov. 2013), available at <https://www.americanprogress.org/wp-content/uploads/2013/11/ImmigrationEnforcement.pdf>; *National Prison Rape Elimination Commission Report*, National Prison Rape Elimination Commission, 175-188 (June 2009), available at <https://www.ncjrs.gov/pdffiles1/226680.pdf>.

⁷ 79 Fed. Reg. 45, 131,100, 131,100 (Mar. 7, 2014).

⁸ *Id.*

⁹ PREA, U.S. Immigration & Customs Enforcement, <https://www.ice.gov/prea> (accessed on October 11, 2017). See also U.S. Commission, *supra* note 6, at 71 (“While it is clear that federal agencies provide written policies mandating zero tolerance for all forms of sexual abuse and harassment, it is less obvious whether DHS implements these policies or if these policies simply serve as platitudes.”).

a. Stewart management violated PREA by failing to protect F.A.C.P. from sexual abuse by detainees and staff.

The PREA standards prohibit sexual abuse of one detainee by another detainee or by an officer, and protect detainees from retaliation when they report violations. Under the standards, the torment inflicted by Dennis and Jones R. amounts to sexual abuse by a detainee¹⁰ and an officer,¹¹ respectively. Stewart staff repeatedly violated PREA, by failing to take appropriate action when F.A.C.P. reported the abuse, failing to adequately investigate the abuse, and retaliating against F.A.C.P. for making complaints.

Dennis sexually abused F.A.C.P. when he threatened F.A.C.P. in the shower—holding his erect penis and saying that, in El Salvador, he would rape F.A.C.P. Yet, Stewart management failed to effectively separate Dennis from F.A.C.P., as required by PREA.¹² Instead, F.A.C.P. continued to encounter Dennis in the cafeteria—who publicly shamed F.A.C.P. by calling him “bitch” and “maricón”—until Dennis was deported.

The PREA standards define staff-detainee sexual abuse to include “repeated verbal statements or comments of a sexual nature” to a detainee.¹³ Officer Jones R. has continually directed lewd gestures and comments to F.A.C.P.—comments and gestures that have been corroborated by other detainees. *See, e.g.*, Ex. A, at 4-6; Ex. B, at 1-2; Ex. C. Yet, Jones R. has never been removed from his cafeteria duty and F.A.C.P. regularly encounters the officer.

The PREA standards required Stewart staff to separate F.A.C.P. and Jones R., particularly during the investigation into Jones R.’s behavior.¹⁴ Jones R. intimidated F.A.C.P. during the investigation and continues to do so.

The investigation into Jones R.’s actions was inadequate under the PREA standards, which require investigators to interview “alleged victims, suspected perpetrators, *and witnesses*.”¹⁵ F.A.C.P. had three witnesses, who were sitting right next to him when Jones R. made the lewd gestures simulating penis penetration. All three were available to the investigators, and they interviewed not one. Now, two of those witnesses have been deported, and the one who remains at Stewart continues to corroborate F.A.C.P.’s version of the events. Ex. C.

¹⁰ Sexual abuse by detainees against other detainees is defined by DHS to include: “Threats, intimidation, or other actions or communications by one or more detainees aimed at coercing or pressuring another detainee to engage in a sexual act.” 6 C.F.R. § 115.6.

¹¹ Sexual abuse by a staff member, contractor or volunteer against a detainee is defined to include: “Threats, intimidation, harassment, indecent, profane or abusive language, or other actions or communications, aimed at coercing or pressuring a detainee to engage in a sexual act” and “[r]epeated verbal statements or comments of a sexual nature to a detainee.” *Id.*

¹² 6 C.F.R. § 115.64 (“Upon learning of an allegation that a detainee was sexually abused, the first security staff member to respond to the report, or his or her supervisor, shall be required to: . . . [s]eparate the alleged victim and abuser”); § 115.66 (“Staff, contractors, and volunteers suspected of perpetrating sexual abuse shall be removed from all duties requiring detainee contact pending the outcome of an investigation.”)

¹³ 6 C.F.R. § 115.6.

¹⁴ 6 C.F.R. § 115.66 (“Staff, contractors, and volunteers suspected of perpetrating sexual abuse shall be removed from all duties requiring detainee contact pending the outcome of an investigation.”).

¹⁵ 6 C.F.R. § 115.71 (emphasis added).

Finally, the ongoing harassment by Jones R. against F.A.C.P. indicts Stewart management for failing to protect F.A.C.P. from retaliation for making the complaint in the first place.¹⁶ The standards explicitly prohibit retaliation against a detainee for making a complaint of sexual abuse.¹⁷ Moreover, there is a 90-day monitoring requirement, after the filing of a sexual abuse report, to ensure that retaliation is not occurring.¹⁸ Stewart management has not taken any measures to actually protect F.A.C.P. from the retaliation he experienced. Rather, they have responded by telling him that he is the problem.

b. Stewart management violated the 2011 Performance Based National Detention Standards by housing F.A.C.P. in disciplinary segregation.

The 2011 Performance Based National Detention Standards (PBNDS) make clear that administrative segregation of vulnerable populations—like F.A.C.P.—should be used as “a last resort” and “when no other viable housing options exist.”¹⁹

When seeking protection, F.A.C.P. has been given two false options: (1) daily encounters with his abusers, or (2) placement in disciplinary segregation. The PBNDS prohibits “commingl[ing]” vulnerable populations²⁰ placed on administrative segregation with detainees housed in disciplinary segregation.²¹ F.A.C.P.—who had expressed depressive and suicidal thoughts—was placed in solitary confinement for five days, directly across from the scene of a recent suicide. This placement merely escalated those thoughts of self-harm and depression. Yet, he was told that the placement was “for his own good.”

This placement further implicates the PBNDS, which prohibits detainees who exhibits symptoms of serious mental health problems from automatic placement in segregation “on the basis of such mental illness.”²² The PBNDS further states that “[e]very effort shall be made to place detainees with serious mental illness in a setting in or outside of the facility in which appropriate treatment can be provided, rather than [segregation], if separation from the general population is necessary.”²³

¹⁶ 6 C.F.R. § 115.67.

¹⁷ 6 C.F.R. § 115.67. To ensure compliance with this duty, the agency is required to “employ multiple protection measures, such as housing changes, removal of alleged staff or detainee abusers from contact with victims, and emotional support services for detainees or staff who fear retaliation for reporting sexual abuse or for cooperating with investigations.” *Id.*

¹⁸ 6 C.F.R. § 115.67.

¹⁹ U.S. Immigration and Customs Enforcement, Performance Based National Detention Standards (hereinafter, “PBNDS”), § 2.12 (V)(A)(1)(c). *See also* 6 C.F.R. § 115.43(b) (“Use of administrative segregation by facilities to protect detainees vulnerable to sexual abuse or assault shall be restricted to those instances where reasonable efforts have been made to provide appropriate housing and shall be made for the least amount of time practicable, and when no other viable housing options exist, as a last resort.”).

115.68(a) (“The facility shall take care to place detainee victims of sexual abuse in a supportive environment that represents the least restrictive housing option possible (e.g., protective custody), subject to the requirements of § 115.43.”).

²⁰ PBNDS § 2.12(V)(C)(2)(d) (“For the purposes of this standard, detainees with special vulnerabilities include those: . . . [w]ho would be susceptible to harm in the general population due in part to their sexual orientation or gender identity”).

²¹ PBNDS § 2.12(V)(A).

²² PBNDS § 2.12(II)(8).

²³ *Id.*

When a detainee who has exhibited symptoms of mental health problems is placed in administrative segregation, the PBNDS requires “at a minimum” that health care staff “conduct a “daily assessment” of that detainee.”²⁴ F.A.C.P. was in segregation for five days, and was visited twice. Stewart staff knew that F.A.C.P. was at some risk of suicide, and they failed to adequately monitor him to determine whether that placement was increasing the risk that he’d engage in self-harm. He has made clear that this placement did increase his thoughts of suicide, Ex. A, at 3-4. Therefore, Stewart management violated the PBNDS requirement that:

Detainees with a medical or mental illness, or identified as being a suicide risk or on a hunger strike shall be removed from segregation if IHSC or facility medical staff determine that the segregation placement has resulted in deterioration of the detainee's medical or mental health, and an appropriate alternative is available.²⁵

c. The conditions under which F.A.C.P. has been detained implicate the constitutional prohibition on punitive conditions of civil detention.

Since he was taken into custody, F.A.C.P. has been subject to egregious mistreatment, under the purview of—and perpetrated by—the very people charged with his protection. Not only have the custodial parties (DHS, ICE and CoreCivic) failed to meet their own standards of operation, the circumstances of F.A.C.P.’s civil detention implicate constitutional prohibitions against punitive conditions of detention.²⁶

This gross violation of F.A.C.P.’s rights make it incumbent on DHS to expediently rectify this ongoing harm.

III. Requested Relief

DHS is failing its duty to protect F.A.C.P. from imminent harm and discrimination. We therefore urge DHS to promptly take the following actions:

- a. DHS must provide F.A.C.P. with the “least restrictive housing” that will eliminate continued encounters with his abusers. Given F.A.C.P.’s previous mental health deterioration in segregation, DHS should transfer F.A.C.P. to alternative housing that does not constitute isolation or segregation. If DHS is unable to provide such housing, it must release F.A.C.P. from detention on bond, awarded at a reasonable amount, pursuant to ICE authority under 8 C.F.R. § 1236.1(c)(8);

²⁴ PBNDS §§ 2.12(II)(7); 2.12(P) (“Health care personnel shall conduct face-to-face medical assessments at least once daily for detainees in [administrative segregation].”).

²⁵ PBNDS § 2.12(P).

²⁶ *E.g., Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (“In evaluating the constitutionality of conditions or restrictions of pretrial detention that implicate only the protection against deprivation of liberty without due process of law, we think that the proper inquiry is whether those conditions amount to punishment of the detainee.”); *Magluta v. Samples*, 375 F.3d 1269, 1276 (11th Cir. 2004) (“[A]n ‘intent to punish may be inferred when a condition of pretrial detention is not reasonably related to a legitimate governmental goal.’” (internal citation omitted)).

- b. DHS must promptly conduct a thorough assessment of the actions taken by Stewart staff in relation to the complaints made by F.A.C.P. If DHS finds that the conduct of Officers McCoy or Jones R. amounted to sexual abuse, or that the conduct of any staff member violated the PREA standards for responding to F.A.C.P.'s complaints, DHS must discipline those individuals in accordance with the PREA standards, which provide that staff be "subject to disciplinary or adverse action up to and including removal from their position and the Federal service";²⁷
- c. DHS must promptly conduct a thorough assessment of the management of Stewart Detention Center and its adherence to the standards that protect vulnerable detainees like F.A.C.P. Should DHS find that the experience of F.A.C.P. represents a pattern or practice at Stewart, DHS should promptly implement a remedial program to train and monitor all Stewart administration, management and staff under the applicable standards.²⁸

We look forward to your prompt attention to this Complaint. Please direct any questions to SPLC Staff Attorney, Natalie Lyons at natalie.lyons@splcenter.org or (334) 306-5020.

Sincerely,



Natalie Lyons
Staff Attorney



Dan Werner
Director, Southeast Immigrant Freedom Initiative



Lisa Graybill
Deputy Legal Director, Criminal Justice Reform

Enclosures

²⁷ 6 C.F.R. § 115.76.

²⁸ DHS' duty to train custodial staff is implicated by F.A.C.P.'s experience. Among other things, DHS must train all staff on "[c]ommunicating effectively and professionally with lesbian, gay, bisexual, transgender, intersex, or gender nonconforming individuals, and members of other vulnerable populations." PBNDS § 5.2(2)(i).

EXHIBIT A

SWORN DECLARATION OF F.A.C.P.

I, F.A.C.P., hereby declare as follows:

1. I am a citizen of Honduras, born on April 13, 1998. I am currently detained at the Stewart Detention Center in Lumpkin, Georgia. I arrived at Stewart on November 9, 2016, over 11 months ago. This past April, I turned nineteen while detained at Stewart.
2. I am gay. When I was fifteen, I began to understand and accept my sexual orientation. But I was harassed and discriminated against for my sexual preference. When I was about sixteen, my godfather tried to rape me, by putting his hands down my pants. At the time, I was working a carpentry job with him. I had to quit that job to avoid him. My parents have said that my sexual preference is a sickness. They think that it will go away. It makes me feel really bad when they say that.
3. At the Stewart Detention Center, detainees and guards discriminate against me because I am gay. It started on the first week of my arrival and it hasn't stopped since. The discrimination I experience at Stewart is worse than what I experienced in Honduras. It happens more often and being in detention, I can't escape my harassers. I fear for my personal safety at Stewart, because of the persistent harassment by detainees and guards, and the lack of precautions by the staff.
4. Since I came to Stewart, detainees constantly harass and intimidate me. In the dorm where I sleep, a detainee threatened to "give it to me so hard" that my anus would collapse. The others who heard him say this looked at me and began laughing. When I go to the cafeteria, I've had detainees scream "bitch" or tell me that they won't eat with a "maricon." "Maricon" is a very offensive word in Spanish and Latin culture. It is a slur against gay people. When I've gone out to play soccer with other detainees, they say "he

can teach us how to grab balls.”

5. On several occasions, a group of three detainees have seen me in the bathroom standing at the urinal and taunted me, saying: “Women sit down, why don’t you? Why don’t you urinate like a woman?” This is very upsetting to me. The bathroom should be a safe space, but even there, I can’t feel comfortable. There has never been a space at Stewart where I felt comfortable.
6. This treatment exacerbated the feelings of depression that I was having when I got to Stewart. I began having thoughts of hurting myself. One time, I had my shaving razor in the bathroom and was about to cut myself, when some people entered the bathroom. I am glad I didn’t do it, but it was a long time before I got real help for my depression.
7. I was able to meet with a social worker, Ms. Harvey, during this time. But I didn’t receive any medication for my depression. She advised me to ask for help if I experience those thoughts again. A couple of times, I did this. I asked night guards if they would take me to the medical unit, and they said they couldn’t help me. They don’t take people to the medical unit unless there is a medical emergency.
8. When I first met with her, I told Ms. Harvey about the discrimination I was experiencing. She moved me from Unit 1 to Unit 2, but the harassment was worse there. I’ve met with Ms. Harvey about ten times; nearly every time, I have told her about the persistent discrimination against me. Most of the time, the only solution Ms. Harvey offers is to place me in segregation.
9. In December 2016, a detainee named Dennis kept harassing me. In the cafeteria, he would say “here comes the biggest bitch in detention” or “there’s the dirtiest bitch here.” Once, I told a guard that I was having a problem with Dennis; that he wanted to fight me. The

guard said that she didn't care.

10. On one occasion in January 2017, Dennis accosted me in the shower. He stood naked facing me in the shower, holding his erect penis and shaking his behind. I told him that he was making me uncomfortable, and he said that if he had me by himself in El Salvador, he would rape me. I reported this to the guards. They moved Dennis to Unit 3, right next to my Unit 2, where I sleep. The detainees in Unit 3 eat with the detainees in Unit 2. So, I continued to see him in the cafeteria and he continued to call me "bitch" and "maricon," until he was deported about three months ago.
11. Officer McCoy doesn't accept gay people. Sometime in December or January, she was supervising Unit 2, when a friend called me "Lucy." I like it when good friends call me "Lucy." When I'm with them, I am Lucy. When McCoy heard this, she said, "Who is Lucy?" and my friend pointed at me. McCoy brought me into the office and took my I.D. She said, "There are no women at Stewart." McCoy then showed me my I.D. and said, "Your name is not Lucy." She told me that if anyone calls me Lucy again, I'd be put in segregation.
12. Before May 2017, I had not been seen by a psychiatrist or any other medical professional about my depression and thoughts of self-harm. I submitted a complaint, saying that I had experienced suicidal thoughts and no one helped me. Around that time, a detainee killed himself in his segregation cell. After the suicide, I was given a chance to speak with medical staff about my depression. Even though I told them that I was not currently having suicidal thoughts, I was placed in a segregation cell and told that it was "for my own good."
13. I was in segregation for five days. The cell was located in the disciplinary segregation unit,

across from the cell where the detainee had committed suicide. From my window, I could see yellow tape and the words “do not enter,” and I could hear the click of cameras. Being so close to that cell made me think about killing myself—because it was such a horrible place to be. I had nothing in my cell, except a shoddy mattress. For three days, I was alone without any visitors. On the last two days, I was visited once a day, at nighttime.

14. During the time I was in segregation, I had a videoconference meeting with my attorney. They brought me to the meeting in a wheelchair, dressed in a hospital gown, with my wrists handcuffed and my ankles shackled. I was restricted like that for about two hours.
15. In early August 2017, I was in line at the cafeteria. Officer Jones R was supervising the ID scan area. I had noticed him before. He would talk with other detainees who speak English; they would point at me and my friends, some of whom are also gay. I asked Jones R for permission to go to Unit 5. Jones R said, “I don’t talk to maricones.” He spoke in English, but said the word “maricones.” He then said he liked vagina, and put his hands together, making a triangle with his index fingers and thumbs—simulating a woman’s genitals. Officer Jones R was in front a video camera when he did this. I was embarrassed and uncomfortable, but I tried to ignore him.
16. On August 28, 2017, after working at intake, I went with co-workers to the cafeteria for lunch. I sat down with three friends to eat. At one point, I noticed the same guard, Jones R, standing about eight feet from where I was sitting. While looking at me, he started making obscene gestures, repeatedly inserting his pointer finger into his closed hand—the gesture people commonly use to imitate penis penetration. I was sitting with co-workers, in the cafeteria surrounded by more than 100 people who were eating lunch. This instance affected me much more than the previous one. In my mind, there were only two ways to

interpret his behavior. Either he was threatening me with sexual assault or degrading me because I am gay.

1. I immediately left the cafeteria to make a complaint against Jones R. The Unit Manager, Jennifer Frederick, was not in her office. I wanted to make a complaint as soon as possible. Not only did I felt unsafe and uncomfortable, I knew that there were eight video cameras in the cafeteria, and I wanted Frederick to view the footage from the cameras.
2. I went to Frederick's office on the morning of August 29, 2017. There were three people there: Frederick, the case manager (Mr. Wilson) and a counselor. I told them what happened. They gave me a formal complaint application to fill out and took me to another room where I filled it out. When I was done, they brought me back to Frederick's office and she took a declaration from me, with someone interpreting over the phone.
3. While I was in Frederick's office, they began reviewing the video footage on a computer, while I sat on the other side of the computer. I was not allowed to watch the video. I gave them the names of my co-workers, who had been sitting at my table in the cafeteria and witnessed Jones R's behavior. They told me that they would interview the witnesses.
4. They also brought in someone they referred to as the "chief." He asked what happened, and I told him everything—including the gestures that Jones R had made and the names he called me.
5. Three days later, an ICE investigator, Ms. Bautista, met with me and took my declaration in Spanish, with an interpreter present.
6. About seven days after I made the formal complaint, they closed the investigation. I was told that, in the first instance, the video showed Jones R looking at his watch, and in the second instance, Jones R was talking to another guard. When I objected, the chief said "the

cameras don't lie." I was never allowed to watch the video. And they didn't interview the three witnesses who were with me in the cafeteria. When I asked if I could have a copy of my formal complaint or the declaration taken by Ms. Bautista, I was told that they don't give copies to detainees. Two of my witnesses have since been deported.

7. While the investigation was going on, they did not remove Jones R from the cafeteria. He would stare at me, make feminine gestures and make comments in English that I couldn't understand. Once during that time, I was with about 10 of my co-workers waiting on our supervisor when Jones R. approached me, took my ID, and asked why I was there. He didn't do that to any of my co-workers. It felt like he was trying to intimidate me.
8. I met with Ms. Harvey who told me that the only way I could avoid Jones R would be to let them send me to segregation. I did not want to go to segregation. The five days I spent there were awful. I would have felt punished if they put me in segregation. Instead of going to segregation, I stayed in my unit and continued to see Jones R in the cafeteria. I continue to see Jones R every day in the cafeteria.
9. Detainees continue to harass me, calling me a "bitch" (in English), "slut" and "maricon." Several times, I've tried to report it, but Stewart staff won't let me file a written report. They tell me that I'm the problem. Recently, in the cafeteria, a detainee said that I "like to suck dick." I went to Frederick to report it, and she was reluctant to let me file a formal complaint. She told me that I am trouble—she says that to me nearly every day.
10. This declaration contains information provided by me to my attorneys and was read back to me in its entirety in the Spanish language, which I speak and understand, and I confirm that its contents are correct and accurate.
11. I give my consent to my attorneys to submit a complaint to the U.S. Department of

Homeland Security based on the information contained in this declaration.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 16 day of oct 2017.



A handwritten signature in black ink, appearing to be "FAA".

[PRINTED NAME OF DECLARANT]

INTERPRETER'S CERTIFICATION

I certify under penalty of perjury that 1) I am fluent in the English and Spanish languages; 2) I am certified by the Supreme Court of Ohio as a court interpreter in the English-Spanish language combination; 3) I truly and accurately interpreted the attached English-language document into the Spanish language to the best of my knowledge, ability and belief, and; 4) the declarant confirmed that he understood my interpretation and that the contents of the document were true and accurate.

So sworn this 16 day of October, 2017.

Signature: 

Printed name: Brian J. Hoffman, Esq.

SIFI
PO Box 158
Lumpkin, GA 31815
229-838-6501

EXHIBIT B

SWORN DECLARATION OF S.A.C.

I, S.A.C., hereby declare as follows:

1. My birth name is S.A.C. I was born on April 11, 1974. I am a citizen of Guatemala. I was born a male, but I identify as a transgender woman.
2. I was detained at the Stewart Detention Center in Lumpkin, Georgia from January 14, 2017 to October 3, 2017.
3. On October 3, 2017, I was granted asylum in the United States. In my country, there is a lot of violence against the gay community, and especially trans women. They want to kill us, or use us to sell drugs or sex. I wouldn't work with them, so they wanted to kill me. I fled because I feared for my life.
4. At Stewart, I was housed in Unit 2A. In late January, an officer who we called Manager McCoy was supervising my unit. One of my friends called me by my chosen name, which is a female name. And Manager McCoy said that there were no women at Stewart and that the other detainees were not allowed to call me by that name. And I said "but I'm gay and I like that they call me that name because I'm transgender and I like to dress as a woman."
5. Later that day, they transferred me to the "well." The "well" is where they put people in segregation for disciplinary reasons. They said that they were putting me in segregation because I was transgender and I go by a female name.
6. When I was in the "well," a psychologist met with me. She told me that Manager McCoy had said I was crazy. I spoke with the psychologist about my identity as a trans woman. She said I was in a good mental place and let me out of segregation.
7. At Stewart, I stayed in the same unit with another detainee, whose initials are F.A.C.P. I

saw the guards bully him because he was gay. I saw detainees do the same thing to him.

I declare under penalty of perjury pursuant to 28 USC 1746 that the foregoing is true and correct.

Executed on this 5th day of October 2017.

S.A.C.

S.A.C.

[PRINTED NAME OF DECLARANT]

INTERPRETER'S CERTIFICATION

I certify under penalty of perjury that 1) I am fluent in the English and Spanish languages; 2) I have read the attached document aloud in its entirety to the declarant, who confirmed that its contents were true and correct.

So sworn this 5th day of October 2017.

Signature: Erica Thomas

Printed name: Erica Thomas

SIFI
PO Box 158
Lumpkin, GA 31815
229-838-6501

EXHIBIT C


SWORN DECLARATION OF V.H.P.

I, V.H.P., hereby declare as follows:

1. I recall eating lunch with F.A.C.P. and J.S. in the cafeteria. While we were eating lunch, Officer Jones R. walked around the table and made lewd signs at F.A.C.P. that were meant to indicate penetration. Because I was sitting with F.A.C.P., I saw Officer Jones R. make these offensive signs. Officer Jones R. laughed as he made the signs. I do not recall the specific date of this incident.
2. On another occasion, F.A.C.P. and I were on our way to our job folding new detainee clothes. This is a job that F.A.C.P. and I had been performing for some time. In all, there were 10 people who did this job, and Officer Jones R. was familiar with all of us. On this particular occasion, our officer had asked us to wait in the cafeteria for a moment. In the cafeteria, Officer Jones R. came up and asked for F.A.C.P.'s identification. He did not ask for anyone else's identification, and he knew that F.A.C.P.'s job was to fold clothes.
3. This declaration contains information provided by me to my attorneys was read back to me in its entirety in the Spanish language which I speak and understand, and I confirm that its contents are correct and accurate.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 17 day of October 2017.


VHP
(Printed Name of Declarant)