



January 25, 2016

John Roth
Inspector General, Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528-0305

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

Sarah Saldaña
Director, U.S. Immigration and Customs Enforcement
500 12th St., SW
Washington, D.C. 20536

Andrew R. Lorenzen-Strait
Deputy Assistant Director, Custody Programs
U.S. Immigration and Customs Enforcement
500 12th St., SW
Washington, D.C. 20536

David Jennings
Field Office Director, U.S. Immigration and Customs Enforcement
300 North Los Angeles St., Room 7631A
Los Angeles, CA 90012

Mayor Miguel Pulido
Santa Ana City
20 Civic Center Plaza
Santa Ana, CA, 92701

Christina Holland
Police Administration Manager
Santa Ana City Jail
62 Civic Center Plaza
Santa Ana, CA 92701

Dear Inspector General Roth, Officer Mack, Director Saldaña, Deputy Director Lorenzen-Strait, Director Jennings, Mayor Pulido, and Administrator Holland:

Community Initiatives for Visiting Immigrants in Confinement (CIVIC) submits this complaint on behalf of 31 women in the custody of U.S. Immigration and Customs Enforcement (ICE) at the Santa Ana City



Jail in Santa Ana, California. This complaint details civil and human rights violations, particularly unlawful strip searches. We urge the Office for Civil Rights and Civil Liberties (CRCL) at the Department of Homeland Security (DHS), pursuant to its authority under 6 U.S.C § 345, to immediately investigate this complaint, to promptly develop policies to address the violation, and to provide ongoing oversight on the implementation of the changes. Moreover, we urge the Santa Ana City Jail to adopt a strip search policy that conforms to federal ICE standards as well as state and federal law, and we urge ICE to ensure that the City of Santa Ana meets its contractual obligations. We further request that the Santa Ana City Council require that Santa Ana City Jail’s policy on and practice of strip searches comply with all relevant laws and standards prior to any further modifications of its contract with ICE. We ask that the City of Santa Ana, the Santa Ana City Jail, and ICE confirm in writing by no later than February 25, 2016, that they will cease and desist from conducting unlawful strip searches at the Santa Ana City Jail.

The Santa Ana City Jail has received \$38,099,876.53 in taxpayer funding since 2009 for detaining immigrants for ICE.¹ Each day, the Santa Ana City Jail detains up to 200 individuals in ICE custody, receiving \$105 per person per day.² Prior to 2015, the facility detained up to 64 transgender, gay, and bisexual individuals in a “dedicated protective custody” module for ICE.³ However, when ICE and the Santa Ana City Jail renegotiated their contract in 2015, the guaranteed beds for this population were removed.⁴ Currently, according to the jail administrator Christina Holland, it is the practice of the Santa Ana City Jail to keep transgender immigrants in a separate unit as well as gay and bisexual men in another separate unit “based on operational and safety concerns.”⁵ Between July and December 2015, these modules held between 84 and 95 GBT individuals.⁶ ICE and the City of Santa Ana are in the process of negotiating the establishment of two dedicated modules for transgender women and for gay and bisexual men, which will require ICE to pay for all the beds in these two dedicated housing modules. Santa Ana City Council is scheduled to review this contract modification on February 2, 2016.⁷

CIVIC’s mission is to end the isolation and abuse of people in U.S. immigration detention through visitation, independent monitoring, storytelling, and advocacy with the ultimate goal of eliminating immigration detention. We support a network of immigration detention visitation programs, including one operating at the Santa Ana City Jail. This letter summarizes complaints lodged directly with CIVIC by 31 cisgender and transgender women, under the custody of ICE at the Santa Ana City Jail. Six of these women are willing to state their claims publicly:

¹ Letter to Christina Fialho, response to CIVIC’s California Public Record Act request, *available at* <https://www.dropbox.com/s/iup66baxhyq00b3/PRA%20Request%20Response%20Letter%20for%20C.%20Fialho%20Dec%202015.pdf?dl=0>.

² ICE Intergovernmental Service Agreement with the Santa Ana City Jail (2015), response to CIVIC’s California Public Record Act request, *available at* https://www.dropbox.com/s/3bntdmq2khu3j1y/ICE_Contract_SACJ_2015.pdf?dl=0.

³ ICE Intergovernmental Service Agreement with the Santa Ana City Jail’ LGBT modification (2006), response to CIVIC’s California Public Record Act request, *available at* <http://blog.endisolation.org/wp-content/uploads/2012/12/ICE-Transgender-Attachement.pdf>.

⁴ Email to Christina Fialho, Co-Executive Director of CIVIC, from Christina Holland, Santa Ana City Jail Administrator, response to CIVIC’s California Public Record Act request, *available at* <https://www.dropbox.com/s/1wcgo3npd0iakmd/Public%20Records%20Act%20Request%20Letter%202.pdf?dl=0>.

⁵ *Ibid.*

⁶ Letter to Christina Fialho, response to CIVIC’s California Public Record Act request, *available at* <https://www.dropbox.com/s/iup66baxhyq00b3/PRA%20Request%20Response%20Letter%20for%20C.%20Fialho%20Dec%202015.pdf?dl=0>.

⁷ Email to Christina Fialho, Co-Executive Director of CIVIC, from Christina Holland, Santa Ana City Jail Administrator, response to CIVIC’s California Public Record Act request, *available at* <https://www.dropbox.com/s/1wcgo3npd0iakmd/Public%20Records%20Act%20Request%20Letter%202.pdf?dl=0>.



1. Nicole Albrecht (206-407-728)
2. Sonia Marcias Esteves (091-028-855)
3. Fabiola Espinoza Delgado (205-711-889)
4. Maria Escobar (094-376-252)
5. Araksi Torkramadzhyan (028-137-853)
6. Gloria Hernandez (094-945-100)

We also are in touch with other individuals who agreed to be referred to by pseudonym because they fear retaliation:

7. SE
8. TF
9. XJ
10. YK
11. AM
12. BN
13. CO
14. DP
15. EQ
16. FR
17. GS
18. HT
19. IU
20. JV
21. KW
22. LX
23. MY
24. NZ
25. OA
26. PB
27. QC
28. KD
29. LM
30. NP
31. SD

A. Strip searches of people in immigration detention at the Santa Ana City Jail are conducted without reasonable suspicion, sometimes by members of the opposite gender, in view of other detainees, in unsanitary conditions, and have turned into sexual assaults; these strip searches re-traumatize victims of past sexual assault, deter attorney visits, and are inhumane.

The Santa Ana City Jail has an 11-page policy on “periodic and routine strip searches” supposedly in line with California Penal Code section 4030.⁸ The policy defines strip searches as “the act of removal or

⁸ Santa Ana City Jail Inmate Searches Policy, response to CIVIC’s California Public Record Act request, *available at* https://www.dropbox.com/s/m4uh811mo8lacf0/SAJ_Inmate_Searches_Policy.pdf?dl=0.

rearrangement of some or all of an individual's clothes for the act of visually inspecting that individual's underclothing, breasts, buttocks, genitalia, or corresponding body cavities."⁹ The policy defines pat searches as "the act of frisking or running hands over, a person's body and clothing, including the removal of items contained within pockets, for the purpose of detecting and retrieving contraband."¹⁰ The policy explains that "pat searches will be conducted immediately when custodial responsibility is turned over to jail personnel" and "periodic pat searches of in-custody inmates" will occur in at least four situations: "1. Upon inmates' entry and exit of housing modules. 2. Following inmates' exit from multi-purpose rooms after program attendance. 3. After in-custody inmates dress out in their personal attire for transfer escort or transport. 4. Subsequent to any incident that requires the reinforcement of behavioral parameters or contraband detention."¹¹

While the policy stipulates that officers must have "reasonable suspicion" to strip search "inmates booked solely for misdemeanor charges"¹² and that the "[c]ontractual requirements of the ICE contract and Federal standards must be applied to the ICE inmates,"¹³ the policy also gives wide discretion to officers to strip search individuals. For example, "[d]uring module or individual cell searches inmates will be subject to pat or strip searches at the discretion of Correctional staff."¹⁴ The only guidance the policy provides for the correctional staff in this situation is that the "[o]fficers shall base their decisions on the item or items for which the search is conducted."¹⁵ The policy also is vague and contradictory. For example, the policy explains that "California Penal Code prohibits strip-searching of inmates booked solely on misdemeanor charges,"¹⁶ but in the same subsection explains that "all persons booked in jail, regardless of the circumstances will fall under the same criteria for the purpose of strip searches."¹⁷ This language combined with the fact that the policy requires that "pat searches will be conducted immediately when custodial responsibility is turned over to jail personnel" would lead a reasonable person to believe that the policy allows for only pat searches of all persons booked into the jail. However, in practice, as detailed below, all persons booked into the jail are actually strip searched. The policy's contradictory language and vagueness combined and the overly broad discretion provided to officers has created an environment in which people in immigration detention are unlawfully strip searched and the officers conducting the search and their supervisors may be charged criminally and held civilly liable for violating California Penal Code section 4030.

The Complainants are 31 transgender and cisgender women who are or were in the custody of U.S. Immigration & Customs Enforcement (ICE) at the Santa Ana City Jail, pursuant to an agreement between ICE and the City of Santa Ana. These individuals were strip searched by the Santa Ana Police Department without reasonable suspicion or probable cause to believe that they were in the possession of weapons or drugs, pursuant to a blanket policy, practice or custom of the Santa Ana City Jail of strip searching the following women: 1) women being booked into the Santa Ana City Jail; 2) women being transferred back from the Immigration Court in Los Angeles to the Santa Ana City Jail; and 3) women conducting in person (not behind plexi-glass) visits with their attorneys.

⁹ *Ibid.*, section I.B.

¹⁰ *Ibid.*, section I.A.

¹¹ *Ibid.*, section II.D.

¹² *Ibid.*, section IV.B.

¹³ *Ibid.*, section IV.A.5.

¹⁴ *Ibid.*, section V.B.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, section IV.A.1.

¹⁷ *Ibid.*, section IV.A.6.

It is our understanding that the strip searches conducted at the Santa Ana City Jail before women are booked into the jail and after women visit in person with their attorneys has been a policy, practice, or custom at the jail at least since the City began contracting with ICE. In the latter situation, women are not informed prior to the visit with their attorney that they will be forced to undergo a strip search and they are not told that they have the option to meet with their attorney behind plexi-glass. Strip searches under such circumstances are particularly unwarranted. Visits with attorneys pose extremely limited risks because attorneys are themselves screened prior to their admittance into the facility and because of the low probability that an attorney would agree to smuggle narcotics or weapons into the jail. Strip searches may even deter people in immigration detention from meeting with their attorneys, compromising legal representation.

It also is our understanding that the policy, practice, or custom of strip searching women who have been returned to the jail from the Immigration Court was institutionalized around March or April 2015. For example, AM who had been detained at the Santa Ana City Jail since 2013, was one of the first women to experience a strip search after returning to the Santa Ana City Jail from Immigration Court. AM's first strip search after court occurred in March or April 2015. These searches are conducted under a blanket policy, practice, or custom and without reasonable suspicion. For example, Ms. Sonia Marcias Esteves (091-028-855) explains that she has undergone approximately five strip searches at the jail in the last two months; she was first strip searched after being transferred from the Adelanto Detention Facility, another immigration detention facility in Southern California. She then experienced strip searches each time she was brought back from Immigration Court. Likewise, Ms. Fabiola Espinoza Delgado (205-711-889) believes she has experienced approximately 10 strip searches in just the last seven months at the Santa Ana City Jail.

Women being transferred back from the Immigration Court in Los Angeles to the Santa Ana City Jail now undergo at least one pat down by an ICE officer and/or jail officer, while the women remain clothed. Next, these women are taken to a holding cell and are forced to undergo a strip search before being transferred back into the general housing population or to the transgender module.¹⁸ These searches occur even when the officers have no particularized reason to suspect concealment of contraband.

In all of these cases, the trans women are not allowed to choose the gender of the person performing the search. Most of the trans women complainants have been forced to undergo strip searches by male guards. Both the transgender and cisgender women are told to strip naked, and an officer performs a visual inspection of the breasts, armpits, buttocks, and genitalia of the woman. The women are told to lift up their breast, spread apart the sides of their labia and to pull back their clitoral hoods to prove that they are not hiding contraband in their vagina or vulva. They are told to bend at the waist, spread their buttocks, and cough three times. Women who did not bend to the officers' satisfaction are told to cough again.

¹⁸ The transgender module used to be referred to as the LGBT pod or the GBT pod, but ICE has moved the gay men and bisexual individuals out of this pod.

In some cases, these visual strip searches turned into physical body cavity searches by non-medical officers. One cisgender woman explained that a female officer¹⁹ patted her down with her hands while naked after returning from Immigration Court. One transgender woman, OA, explained that during some of her strip searches, the officers have come very close to touching her, while making her feel humiliated about her body. For example, OW, KW, LM, NP, and SD explained that all the transgender women underwent a strip search on or around January 5, 2016, after a plate supposedly fell and broke. As the male officers were unable to locate one piece of the broken plate, the male officers put the entire transgender module on lockdown for approximately three hours and performed a strip search on all or at least most of the transgender women in the dedicated transgender module. There was no female officer present and the transgender women were not provided with the option to have a female officer perform this strip search. CIVIC received a handwritten letter in Spanish signed by an additional 18 transgender women not included in this complaint attesting to the fact they were strip searched as part of this module shakedown.²⁰

OA explained that several male deputies performed a strip search on her at this time, although OA was never in possession of the plate fragment. They came very close to touching her body, and they looked with a flashlight in all orifices including her ears, mouth, and nose. They made her bend over and cough, as they looked with a flashlight into her buttocks. They made her lift her penis, while the officers pointed at her in a mocking manner. The officers then made OA physically lift her testicles and looked under them with a flashlight.²¹ OA explains she felt completely humiliated.

Most women have not tried to resist the strip searches because the women believe that the officers have unquestioned authority to use force if necessary, and the women fear other forms of retaliation. For example, people in immigration detention fear they will be transferred to facilities farther away from their attorneys and networks of support or thrown into isolation or solitary confinement. This fear may explain why between January 1, 2012, and January 21, 2015, only two people submitted a formal grievance to the Santa Ana City Jail about strip searches, including one man.²²

No special provisions are made for women who are menstruating. Some of the women complainants who were menstruating during a strip search bled directly onto the floor, which posed a health risk to the women and to any other person who may come into contact with that blood. Menstruating women also have to lift up their period pad in their underwear so that the officer can inspect underneath the pad. These women complainants are not provided with a new period pad or allowed to use the restroom before putting their underwear with the used pad back on.

¹⁹ Although CIVIC has the names of officers whose actions are detailed in this complaint, we will not name them publicly. Instead we call for an independent investigation of all the accusations. If an independent investigative body requests the identities of the deputies to aid their investigation, CIVIC will provide the names at that time.

²⁰ This letter is on file with CIVIC and we will gladly provide a copy of it to appropriate parties upon request.

²¹ This treatment of transgender women at the Santa Ana City Jail is consistent with a pattern of mistreatment, abuse, and discrimination by officers who are inadequately trained. See *Trapped in detention, transgender immigrants face new traumas*, MSNBC, August 29, 2015, available at <http://www.msnbc.com/msnbc/trapped-detention-transgender-immigrants-face-new-traumas>; *A model immigration detention facility for LGBTI?*, Forced Migration Review, 2013, available at <http://www.fmreview.org/en/sogi/fialho.pdf>; *Multi-individual complaint regarding mistreatment and abuse of sexual minorities in DHS Custody*, National Immigration Justice Center, April 13, 2011, available at <https://www.immigrantjustice.org/sites/immigrantjustice.org/files/OCRCL%20Global%20Complaint%20Letter%20April%202011%20FINAL%20REDACTED.pdf>.

²² Strip Search Grievances for 2012 through 2016 submitted directly to Santa Ana City Jail, response to CIVIC's California Public Record Act request, available at <https://www.dropbox.com/s/4349cew9wl6rlzl/Strip%20Search%20Grievances%202012%20to%202016%20for%20SAJ.pdf?dl=0>.

No special provisions seem to be made for the elderly or women with chronic physical pain. For example, Araksi Torkramadzhyan (028-137-853) has undergone multiple strip searches at the Santa Ana City Jail, despite the fact that she is approximately 67 years old and suffers from hip dislocation and pain.

Many of the women complainants explained that the searches were not done in a private room. Instead, in some cases where multiple women were returning from court at the same time, the women were strip searched in front of one another. The only precaution the officers took to gain a degree of privacy was to tell the women not to look at one another as they were strip searched.

During the strip searches, women are exposed to blood and other unsanitary conditions. They stand and walk barefoot on dirty floors contaminated with bodily fluids and material tracked on shoes. Often, women are required to throw their clothing on these floors and re-dress in the same clothing after it has lain on the dirty floor. If women refuse to be searched, they are isolated, denied food, and pressured by threats of transfers and deportations until they comply with the search.

These searches are particularly traumatizing for asylum seekers who have survived sexual assault and rape, and the strip searches undermine the healing these women need. For example, Gloria Hernandez (094-945-100) identifies as lesbian and was a victim of sexual assault in Honduras because of her sexual identity. She takes medication for anxiety and depression. She explains that the approximately seven or eight times that she has been strip searched at the Santa Ana City Jail have re-traumatized her and resulted in suicide attempts. Studies have shown that humiliating treatment, such as strip searches, exacerbate mental illness and make reentry into society more difficult.²³ As psychiatrists who have extensive experience dealing with strip searches explained in an amicus curiae, strip searches cause psychological damage, such as sleep disturbance, recurrent and intrusive recollections of the event, inability to concentrate, anxiety, depression, and development of phobic reactions.²⁴ Some victims of strip searches have developed post-traumatic stress disorder (PTSD) and others, like Ms. Hernandez, have been moved to attempt suicide.²⁵

Ms. Nicole Albrecht (206-407-728) describes her most recent strip search at the Santa Ana City Jail in detail:

On Monday, December 21, 2015, at 3:00 a.m., Ms. Albrecht was awoken to be transported to court. At approximately 4:30 a.m., she left the Santa Ana City Jail in handcuffs, and was the only person in the transportation vehicle going to court. The portion of the vehicle in which she was held was freezing cold.

At 5:15-5:20 a.m., she arrived at the immigration courthouse in Los Angeles. Officers patted her down, and then placed her in the holding cell.

At 8:00 a.m., she was patted down again, handcuffed at the feet and hands, and taken into court.

²³ Dr. Terry Kupers, *Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It* 135 (1999).

²⁴ Brief for Psychiatrists as Amicus Curiae, *Florence v. Board of Chosen Freeholders*, 566 U.S. ____ (2012), available at http://www.americanbar.org/content/dam/aba/publishing/previewbriefs/Other_Brief_Updates/10-945_petitioneramicuspsychiatrists.authcheckdam.pdf.

²⁵ *Id.*

After her court hearing, she was patted down again, then placed in the holding tank.

At 5:00 p.m. that evening, she was patted down again, handcuffed, and put into the transportation vehicle. Again, the heater was supposedly not working, and she remained freezing cold during the 1.5 hour journey back to the Santa Ana City Jail.

She arrived at the jail at approximately 6:30 p.m., and she was placed in a holding cell for 10 minutes. Then, a female officer²⁶ took her out of the cell, and took her to a separate room. The officer told Ms. Albrecht that she had to take off her clothes, but Ms. Albrecht refused and cited ICE's Performance-Based National Detention Standards. Ms. Albrecht offered to show the officer a copy of the Standards, but the officer did not want to review them.

Instead, Ms. Albrecht was put in a room and left alone for approximately three minutes. The same officer returned along with two other female officers and one male supervisor. The three female officers took Ms. Albrecht into another room and demanded that she take off her shoes and socks. Ms. Albrecht complied. Then, the three officers demanded that she take off her clothes, and Ms. Albrecht refused, once again appealing to the Standards. All three officers refused to consult the Standards.

The officers then grabbed Ms. Albrecht's arm and took her out of the room barefoot. The officers pulled Ms. Albrecht's arms behind her back and cuffed them and took her downstairs in an elevator to booking.. During this entire ordeal, Ms. Albrecht remained barefoot, walking on the jail floors.

The officers then placed Ms. Albrecht into a booking cell. They hurt her when removing handcuffs from her body, nearly pulling her arms from their sockets. Ms. Albrecht asked for her shoes and socks, but they refused. The holding cell was freezing cold.

Then, the male supervisor came to speak with Ms. Albrecht, and he tried to encourage her to consent to the strip search. She explained to him that he must have a justified reason, and she once again cited the Standards. He replied that he did not care, and that he only goes by his policy. Ms. Albrecht requested a copy of the jail policies, but he refused. Ms. Albrecht again stated that she was in the custody of ICE and that the Standards apply to her. According to Ms. Albrecht, the officer then said, "I don't care what they call you guys—detainees, inmates, refugees or arrestees—whatever you want to call that, we treat you the same, and that's why we house you together. Since I cannot send you back to housing, they [ICE] can send you to Arizona. This here [Santa Ana City Jail] is the best facility." He also told Ms. Albrecht that he knows about her case and that she should submit to the strip search and then file a grievance later. She continued to refuse the strip search, and he said that he would have to keep her in the holding cell until she consents.

He along with another female officer continued to come back to her cell every few minutes encouraging her to consent to the strip search. Around 7:30 p.m., the male officer came into the cell and said that Ms.

²⁶ Although CIVIC has the names of the officers whose actions are detailed in this complaint, we will not name them publicly. Instead we call for an independent investigation of all the accusations. If an independent investigative body requests the identities of the deputies to aid their investigation, CIVIC will provide the names at that time.



Albrecht was being put on “pre-discipline” for refusing the search and that they had spoken to ICE, who would be transferring Ms. Albrecht to the Otay Detention Facility in San Diego in the morning.

Ms. Albrecht asked to speak with her attorney. The officer refused her the ability to call her attorney, Josh Effron, and said she would be able to make the call from San Diego.

As Ms. Albrecht was afraid to be sent to San Diego or Arizona, further away from her attorney and her U.S. citizen husband who are both based in Los Angeles. As a result, she called the officer back into her cell about 10 minutes later and agreed to the strip search.

At about 8:00 p.m., the officer brought her back upstairs to her jail cell. She was locked in her cell without the opportunity to use the day room or have dinner. Her cellmate asked one of the guards if she could bring Ms. Albrecht some clean water, and the guards refused. She remained locked in her cell for the next 24 hours.

Ms. Albrecht’s attorney, Josh Effron, emailed the Santa Ana City Jail Administrator, Christina Holland, on January 10, 2016, to ask for documentation about the strip search. Administrator Holland responded that although “strip searches are conducted and documented in accordance with CA penal code, Department policies and ICE standards,” she would “not release strip search documents without a court order.”²⁷ Less than 72 hours later, Ms. Albrecht was transported to the ICE office in Los Angeles, before a series of transfers to a holding cell in Arizona, the LaSalle Detention Facility in Louisiana, and finally the Chautauqua County Jail in New York where she is currently detained.

B. ICE and the Santa Ana City Jail are under notice of the disturbing blanket strip search policy, practice, or custom.

Organizations, including the Transgender Law Center (TLC) and Familia, have raised the issue of strip searches with the Los Angeles ICE Field Office, ICE’s National Office, and with the Santa Ana City Jail directly for years. As far back as April 2011, the National Immigrant Justice Center filed a multi-individual complaint regarding the mistreatment and abuse of sexual minorities in ICE custody, which included the singling out of a trans women for public searches in which officers mocked her breasts.²⁸

More recently, in August 2015, 22 LGBT individuals detained at the Santa Ana City Jail signed and submitted a complaint, explaining that “the LBGT community considers ourselves humiliated and demoralized. The majority of the officials lack professional etiquette. We consider the search of private parts ... an unnecessary practice.”²⁹

On September 8, 2015, TLC sent an email to Andrew Lorenzen-Strait and Richard Rocha at ICE’s National Office reiterating the concerns voiced in the complaint and attaching the petition. TLC sent another similar email to Christina Holland of the Santa Ana City Jail and Jorge Field, an Assistant Field Office Director (AFOD) in ICE’s Los Angeles Office. Flor Bermudez, TLC’s Managing Attorney and Detention Project Director, also raised the concerns regarding the strip search procedure at the last two

²⁷ Email from Christina Holland to Joshua Effron, January 10, 2016 (on file with CIVIC and with Joshua Effron).

²⁸ <https://www.immigrantjustice.org/sites/immigrantjustice.org/files/OCRCL%20Global%20Complaint%20Letter%20April%202011%20FINAL%20REDACTED.pdf> (note this incident occurred at Theo Lacy Facility in Orange County, which used to house trans women in large numbers prior to the creation of Santa Ana City Jail’s GBT module, which was created in response to NIJC’s complaint)

²⁹ This letter is on file with CIVIC and we will gladly provide a copy of it to appropriate parties upon request.

Non-Governmental Organization meetings with ICE on October 1, 2015, and on January 7, 2016. The recurring stories of re-traumatization that TLC has heard from the transgender women at the Santa Ana City Jail provides clear evidence that the strip search procedure is actively harming these women, as it is causing symptoms of post-traumatic stress and triggering feelings of isolation and powerlessness.

In the months following this correspondence, advocates have seen no significant improvement to Santa Ana City Jail's policy on strip searches, which is particularly concerning given the fact that ICE's Performance-Based National Detention Standards unequivocally prohibit these kind of blanket strip searches.

C. Strip searches require individualized reasonable suspicion under ICE's Standards, California law, and the U.S. Constitution.

a. ICE Standards expressly prohibit strip searches absent individualized reasonable suspicion.

It should go without saying that officials at the Santa Ana City Jail are under an obligation to uphold California laws, while also abiding by the U.S. Constitution and federal standards. Federal standards expressly prohibit strip searches in the immigration detention context, absent individualized reasonable suspicion of contraband possession. Under ICE's 2011 Performance-Based National Detention Standards (PBNDS), to which the Santa Ana City Jail is contractually bound,³⁰ a "strip search shall be conducted only when properly authorized by a supervisor and only in the event that there is reasonable suspicion that contraband may be concealed on the person, or when an officer has reasonable suspicion that a good opportunity for concealment has occurred or as may be outlined in facility procedures for post contact visits."³¹ Moreover, in "accordance with standard '5.7 Visitation,' facilities may not adopt policies permitting strip searches after contact visits in the absence of reasonable suspicion unless detainees are provided the right to choose non-contact visitation instead of contact visitation and are fully informed of such right."³²

Federal regulations under "Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facility," 79 Fed. Reg. 13,100 (Mar. 7, 2014),³³ herein after PREA, prohibit cross-gender pat downs and strip searches of females, except when there are exigent circumstances.³⁴ PREA requires any cross-gender pat downs or strip searches to be documented and for all staff to be trained in proper procedures for conducting all pat down searches.³⁵ ICE's June 19, 2015, memo provides further guidance regarding PREA regulations and ICE's Standards. "All strip searches shall be performed by staff of the same gender as the detainee. In the case of an emergency, a staff member of the same gender as the detainee shall be present to observe a strip search performed by an officer of the opposite gender."³⁶

³⁰ ICE Intergovernmental Service Agreement with the Santa Ana City Jail (2015), response to CIVIC's California Public Record Act request, available at https://www.dropbox.com/s/3bntdmq2khu3j1y/ICE_Contract_SACJ_2015.pdf?dl=0 (see Article 5).

³¹ ICE PBNDS 2.10.II.7

³² *Ibid.*

³³ ICE Intergovernmental Service Agreement with the Santa Ana City Jail (2015), response to CIVIC's California Public Record Act request, available at https://www.dropbox.com/s/3bntdmq2khu3j1y/ICE_Contract_SACJ_2015.pdf?dl=0 (see Article 5, explaining that the Santa Ana City Jail also is contractually bound by this federal regulation).

³⁴ PREA ("Limits to Cross-Gender Viewing and Searches," §§ 115.15, 115.115)

³⁵ *Ibid.*

³⁶ ICE PBNDS 2.11; ICE PBNDS 2.10.II.3 ("An officer of the same gender as the detainee shall perform the search.").

“Whenever possible, transgender detainees shall be permitted to choose the gender of the staff member conducting a body-cavity search”³⁷ in addition to when an officer is performing “any necessary pat-down and strip searches.”³⁸ It is important to note that Santa Ana City Jail’s practice of having men strip search transgender women seems to conflate gender identity and sex. Also, “[s]pecial care should be taken to ensure that transgender detainees are searched in private.”³⁹ “All strip searches shall be documented.”⁴⁰ The requirement for reasonable suspicion has been part of ICE’s Standards since at least 2007.⁴¹

b. California Penal Code Section 4030 prohibits visual strip searches absent individualized reasonable suspicion, and prohibits physical body cavity searches by non-medical personnel.

The Standards reflect state and federal law, which generally prohibit suspicion-less strip searches. In California, people in places of incarceration who are subjected to a strip search fall into one of three categories: (1) arrestees strip searched before being admitted to jail; (2) arrestees strip searched pursuant to California Penal Code section 4030; and (3) prisoners searched because jail officials have reasonable suspicion that the prisoner is concealing weapons or contraband. The U.S. Supreme Court has found that officials may strip-search people arrested for any offense, however minor, before admitting them to jails even if the officials have no reason to suspect the presence of contraband. *Florence v. Board of Chosen Freeholders*, 566 U.S. ___ (2012). Two years earlier, the Ninth Circuit held similarly, explaining that conducting a visual strip search for weapons and drugs before placing even new arrestees in the general jail population did not violate their Fourth Amendment rights. *Bull v. City and County of San Francisco*, 595 F.3d 964, 966 (9th Cir. 2010). However, once the person is admitted and placed into the general jail population, other standards apply.

California defines a strip search as “a search which requires a person to remove or arrange some or all of his or her clothing so as to permit a visual inspection of the underclothing, breasts, buttocks, or genitalia of such person.” Cal. Pen. Code § 4030(c). “Persons conducting a strip search or a visual body cavity search shall not touch the breasts, buttocks, or genitalia of the person being searched.” Cal. Pen. Code § 4030(j). Section 4030 requires that a misdemeanor or infraction arrestee not be strip searched absent reasonable suspicion that the arrestee is concealing weapons or contraband. Cal. Pen. Code § 4030(f). Moreover, no “strip search or visual body cavity search or both may be conducted without the prior written authorization of the supervising officer on duty. The authorization shall include the specific and articulable facts and circumstances upon which the reasonable suspicion determination was made by the supervisor.” Cal. Pen. Code § 4030(f).

A physical body cavity search, as opposed to a strip search, “shall be conducted under sanitary conditions, and only by a physician, nurse practitioner, registered nurse, licensed vocational nurse or emergency medical technician Level II licensed to practice in this state.” Cal. Pen. Code § 4030(k). No misdemeanor or infraction arrestee “shall be subjected to a physical body cavity search except under the

³⁷ ICE PBNDS 2.10.V.2.c.

³⁸ ICE Memo: Further Guidance Regarding the Care of Transgender Detainees, June 19, 2015.

³⁹ ICE PBNDS 2.10.V.3.g.

⁴⁰ ICE Memo: Further Guidance Regarding the Care of Transgender Detainees, June 19, 2015.

⁴¹ See ICE Memo: Admission and Release – National Detention Standard Strip Search Policy, Oct. 15, 2007, *available here* http://iwp.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/ENF_%20National%20Detention%20Standard%20Strip%20Search%20Policy%202007.pdf

authority of a search warrant issued by a magistrate specifically authorizing the physical body cavity search.” Cal. Pen. Code § 4030(h).⁴² The authorization under subsection (f) and subsection (h) must be “placed in the agency’s records and made available, on request, to the person searched or his or her authorized representative.” Cal. Pen. Code § 4030(i).

After *Bull*, California Penal Code section 4030 remains law, and even misdemeanor or infraction arrestees cannot be strip searched before being placed into the general jail population, unless all of the following are true: “(i) The person is not cited and released. (ii) The person is not released on his or her own recognizance pursuant to Article 9 (commencing with Section 1318) of Chapter 1 of Title 10 of Part 2. (iii) The person is not able to post bail within a reasonable time not less than three hours.” Cal. Pen. Code 4030(g). After the Ninth Circuit ruling in *Bull*, a California court made it very clear that section 4030 could still have been violated. *Bull v. City and County of San Francisco*, 758 F.Supp.2d 925 (N.D. Cal. 2010) (explaining that a section 4030 claim would have been available even after the Ninth Circuit ruling in *Bull* had the class contained a representative who was searched before being given a reasonable opportunity of at least three hours in which to post bail).

Although section 4030 does not explicitly apply to people in immigration detention, it is likely that a court would find that the section does apply to people in immigration detention in California because the intent of the legislature in enacting this section is to “protect the state and federal constitutional rights of the people of California by establishing a statewide policy strictly limiting strip and body cavity searches.” Cal. Pen. Code § 4030(a). People in ICE custody, like misdemeanor and infraction arrestees, are not in custody for the conviction of a crime. In fact, people in ICE custody are not in custody for a criminal charge; they are civil detainees awaiting determination of a civil removal order. The same policy purposes that led the legislature to adopt special protections for misdemeanor arrestees should apply to civil detainees. Moreover, the Ninth Circuit has recognized that “[w]ith respect to an individual confined awaiting adjudication under civil process, a presumption of punitive conditions arises where the individual is detained under conditions identical to, similar to, or more restrictive than those under which pretrial criminal detainees are held . . .” *Jones v. Blanas*, 393 F.3d 918, 934 (9th Cir. 2004). Accordingly, treating a civil ICE detainee any worse than a misdemeanor arrestee is treated creates a presumption that the treatment is unconstitutionally punitive. Under California Penal Code section 4030, the Santa Ana City Jail would need reasonable suspicion to search a person in immigration detention. And because people in immigration detention are not provided with the opportunity to seek, let alone, post a bail within three hours, a strip search of an individual prior to being first placed in the general jail population may also violate California Penal Code section 4030(g).

In addition to violating California Penal Code section 4030 whenever it conducts a strip search of a person in immigration detention without reasonable suspicion, the Santa Ana City Jail also violated California Penal Code section 4030(i) by refusing to provide Ms. Albrecht and her authorized representative, Joshua Effron, with a copy of the authorization document for her strip search on December

⁴² Note the Ninth Circuit also has held that physical cavity searches are generally not permissible without a search warrant. *United States v. Fowlkes*, 804 F.3d 954 (9th Cir. 2015) (holding that police officers violated Fourth Amendment when subjecting a man during the jail intake process to a physically invasive search and seizure from defendant’s rectum.)

31, 2015.⁴³ The Santa Ana City Jail also violated its own jail policy, which requires strip search documentation to be made available to the person searched and her authorized representative.⁴⁴

Even if California Penal Code section 4030 does not apply to people in immigration detention, people in immigration detention would fall into the third category of people searched, and reasonable suspicion would be required prior to a strip search nonetheless. Unlawful strip searches violate an individual's right to privacy under Article 1, Section 1 of the California Constitution. See *White v. Davis*, 13 Cal. 3d. 757 (1975); *Hill v. NCAA*, 7 Cal.4th 1 (1994); *American Airlines, Inc. v. Superior Court*, 114 Cal. App. 4th 881 (2003).

c. The U.S. Supreme Court, the Ninth Circuit, and California courts have interpreted the Fourth Amendment to prohibit strip searches absent individualized reasonable suspicion.

Under the U.S. Constitution, the Fourth Amendment is the governing standard for carceral strip searches. *Way v. County of Ventura*, 445 F.3d 1157, 1161-62 (9th Cir. 2006) (holding that a county jail's blanket strip search policy violated the Fourth Amendment); *Jordan v. Gardner*, 986 F.2d 1521, 1524 (9th Cir. 1993) (en banc) (the "Fourth Amendment guarantees the right of the people to be secure against unreasonable searches, and its protections are not extinguished upon incarceration"); *Thompson v. Souza*, 111 F.3d 694, 699 (9th Cir. 1997) (same). In *Bell v. Wolfish*, 441 U.S. 520 (1979), the Supreme Court created a balancing test for determining if a person's Fourth Amendment right to be free from unreasonable searches in the carceral context has been violated. Courts assess the constitutionality of a strip search by balancing "the need for the particular search against the invasion of personal rights that the search entails." *Id.* at 559. This requires courts to weigh "the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted." *Id.*

Applying this balancing test, California courts have held that a blanket strip search policy for arrestees after returning from court is unconstitutional. *Craft v. County of San Bernardino*, 468 F. Supp. 2d 1172, 1179 (C.D. Cal. 2006) (policy of strip searching all arrestees who are returned to a jail facility from court violates the Fourth Amendment). These constitutional protections apply to people in the immigration detention context. *Flores v. Meese*, 681 F. Supp. 665 (C.D. Cal. 1988) (holding unconstitutional routine strip search of juveniles at INS detention facilities stating that they have a reasonable expectation of constitutional protections it was "axiomatic that a strip search entails perhaps the most severe intrusion upon personal rights").

In alignment with California Penal Code section 4030, the U.S. Supreme Court and the Ninth Circuit have held that physical cavity searches are generally not permissible without a search warrant. *United States v. Fowlkes*, 804 F.3d 954 (9th Cir. 2015) (holding that police officers violated Fourth Amendment when subjecting a man during the jail intake process to a physically invasive search and seizure from defendant's rectum).

⁴³ Email from Christina Holland to Joshua Effron, January 10, 2016 (on file with CIVIC and with Joshua Effron).

⁴⁴ Santa Ana City Jail Inmate Searches Policy, response to CIVIC's California Public Record Act request, available at https://www.dropbox.com/s/m4uh811mo8lacf0/SAJ_Inmate_Searches_Policy.pdf?dl=0.



Even if the strip search policy, practice, or custom at Santa Ana is constitutional on its face, if it is conducted in an unreasonable manner or goes too far in scope, it can still be considered unconstitutional as applied. Carceral strip searches that are “excessive, vindictive, harassing, or unrelated to any legitimate penological interest are not reasonable.” *Michenfelder v. Sumner*, 860 F.2d 328, 332 (9th Cir. 1988). Moreover, California law specifically requires that all California prisoners be searched “in a professional manner.”⁴⁵ California prohibits opposite-sex guards from performing unclothed body inspections “except under emergency conditions with life or death consequences.”⁴⁶ Past sexual and physical abuse experienced by female prisoners may affect the way they react to searches by male prison guards. Thus, the Ninth Circuit has held that female prisoners have a greater privacy interest than males; random, non-emergency, clothed body searches on female prisoners were cruel and unusual punishment, violating the Eighth Amendment. *Jordan v. Gardner*, 986 F.2d 1521 (9th Cir. 1993). Other courts have found that searches performed on transgender women may also violate the Eighth Amendment, particularly when the woman believes the guards made her strip to harass her and to “view her unique physical characteristics.” *Meriwether v. Faulkner*, 821 F.2d 408, 411 (7th Cir. 1987). And strip searches being conducted in an open setting is a form of gratuitous humiliation that raises constitutional questions. *See, e.g., Vaughan v. Ricketts*, 859 F.2d 736, 741-42 (9th Cir. 1988) (searched in an open hallway).

The Santa Ana City Jail cannot justify its policies on grounds of administrative convenience. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 392 (1992) (“financial constraints may not be used to justify the creation or perpetration of Constitutional violations.”); *Stone v. City and County of San Francisco*, 968 F.2d 850, 858 (9th Cir. 1992) (“federal courts have repeatedly held that financial constraints do not allow states to deprive persons of their constitutional rights”).

The Santa Ana City Jail and ICE’s conduct concerning strip searches clearly violates California and federal law as well as ICE’s standards. We look forward to your response by February 25, 2016. If you have any questions, please contact Christina Fialho at CFialho@endisolation.org or at 385-212-4842. You also may contact Flor Bermudez, Managing Attorney/Detention Project Director at the Transgender Law Center at Flor@transgenderlawcenter.org, or the other organizations listed below who urge the City of Santa Ana to adopt a sensible and humane strip search policy.

Sincerely,

A handwritten signature in cursive script that reads "Christina Fialho".

Christina Fialho
Co-Executive Director/General Counsel
Community Initiatives for Visiting Immigrants in Confinement (CIVIC)
www.endisolation.org
P.O. Box 40677
San Francisco, CA 94140

⁴⁵ Cal. Code Regs. tit. 15, § 3287(b) (2006) (requiring that all searches of prisoners “be conducted in a professional manner which avoids embarrassment or indignity to the prisoner. Whenever possible, unclothed body inspections of prisoners shall be conducted outside the view of others.”).

⁴⁶ Cal. Code Regs. tit. 15, § 3287(b)(1) (2006). The CDCR Department Operations Manual (the DOM) reflects the same policies. CDCR Department Operations Manual §§ 52050.18.2, 52050.18.3 (1989), available at http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/DOM/Ch_5_Printed_Final_DOM.pdf.



CC:

Mary Giovagnoli
Deputy Assistant Secretary for Immigration Policy
Department of Homeland Security
Mary.Giovagnoli@hq.dhs.gov

Moreen Murphy
Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Moreen.Murphy@HQ.DHS.GOV

Richard Rocha
Communications Advisor
U.S. Immigration and Customs Enforcement (ICE)
Richard.A.Rocha@ice.dhs.gov

Lana Khoury
LGBT Liaison
U.S. Immigration and Customs Enforcement (ICE)
Lana.Khoury@ice.dhs.gov

Andre Quinones
Assistant Field Office Director
U.S. Immigration and Customs Enforcement (ICE), Los Angeles
Andre.G.Quinones@ice.dhs.gov

Art Trevino
Assistant Field Office Director
U.S. Immigration and Customs Enforcement (ICE), Los Angeles
Arturo.Trevino@ice.dhs.gov

Jorge Field
Assistant Field Office Director
U.S. Immigration and Customs Enforcement (ICE), Los Angeles
Jorge.Field@ice.dhs.gov

Sonia R. Carvalho
City Attorney, Santa Ana
City of Santa Ana
Sonia.Carvalho@bbklaw.com



Organizational Letter of Support

We, the undersigned organizations, are deeply concerned about the strip searches of detained immigrants that are occurring at the Santa Ana City Jail. We urge the Office for Civil Rights and Civil Liberties (CRCL) at the Department of Homeland Security (DHS), pursuant to its authority under 6 U.S.C § 345, to investigate the complaint filed on January 25, 2016, by Community Initiatives for Visiting Immigrants in Confinement (CIVIC). Furthermore, we urge CRCL to develop policies to address any violations and to provide ongoing oversight on the implementation of any necessary changes. Moreover, we urge the City of Santa Ana to adopt a sensible and humane strip search policy that conforms to federal ICE standards, to state and federal law, and to human decency.

American Civil Liberties Union of Southern California
Immigration Equality
LGBT Center Orange County
National Day Labor Organizing Network
National Immigrant Justice Center
Public Counsel
Public Law Center
Transgender Law Center
University of Southern California (USC) Gould School of Law Immigration Clinic