



October 13, 2021

Attn: Katherine Culliton-González
U.S. Department of Homeland Security
Office for Civil Rights and Civil Liberties

Via email: CRCLCompliance@hq.dhs.gov

RE: Complaint Regarding ICE's Use of The WRAP as a Restraint Device

Dear Officer Culliton-González:

The undersigned organizations submit this complaint on behalf of three individuals who were subjected to a full-body restraint called “The WRAP” by Immigration and Customs Enforcement (ICE) before and/or during mass deportation flights to Cameroon that occurred on October 13, 2020, and November 11, 2020. Their detailed declarations are submitted in support of this complaint, along with a declaration by Sarah Towle, who has interviewed dozens of men and women who witnessed ICE using The WRAP. Ms. Towle’s declaration includes the accounts of two additional individuals who were subjected to The WRAP but fear retaliation by ICE if they come forward. One of them, an individual from Uganda, also witnessed The WRAP being used on several other Africans.¹

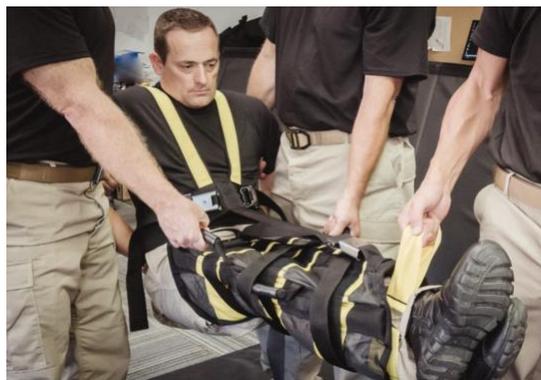
As explained below, ICE Enforcement and Removal Operations (ERO) is using The WRAP in a manner that constitutes torture or cruel, inhuman, and degrading treatment in violation of the Convention Against Torture. Additionally, ICE’s use of The WRAP violates the Fifth Amendment Due Process Clause, the Rehabilitation Act, federal civil rights laws, state

¹ Sarah Towle previously published an opinion in the Boston Globe about ICE’s use of The WRAP based on her interviews. See Sarah Towle, *Grim stories from asylum seekers caught up in America’s cranked up deportation machine*, Boston Globe, Dec. 31, 2020, available at <https://www.bostonglobe.com/2020/12/31/opinion/grim-stories-asylum-seekers-caught-up-americas-cranked-up-deportation-machine/>.

criminal and tort laws, and ICE's own detention standards. We request that your office and/or the Department of Homeland Security (DHS) Office of Inspector General (OIG) promptly investigate ICE's use of The WRAP and grant humanitarian parole to the deported complainants so that they can fully participate in this investigation.

BACKGROUND ON THE RESTRAINT DEVICE CALLED "THE WRAP"

The device known as "The WRAP" is manufactured by California-based Safe Restraints, Inc. and marketed as a "humane restraint" intended for use on people who have become a danger to themselves and need urgent medical treatment. This is a photograph of The WRAP from the website of Safe Restraints, Inc.:



In 2017, the ICE Office of Firearms and Tactical Programs (OFTP) included The WRAP on a list of authorized restraint devices. *See* OFTP Authorized Restraint Devices Guidelines (Rev. 09-2017).

The WRAP was "developed by former law enforcement officials as an alternative to the hog-tie system, which tended to lead to death by asphyxiation." *Declaration of Sarah Towle* at ¶ 12. "Instead of restraining the upper body and tying the legs to it from behind, The WRAP restrains the legs, with the arms cuffed at the back, leaving the restrained in a seated, upright, 90-degree position so that the lungs and airways are free from compression." *Id.*

However, the complainants were "cinched up to a 30- or 45-degree angle, not the 90-degree angle intended by the manufacturer, making it very hard for them to breathe, causing extreme anxiety, and escalating, rather than defusing, their emotional torment." *Id.* at ¶ 17.

In an email to Sarah Towle dated December 14, 2020, ICE spokesperson, Mary G. Houtmann, indicated that The WRAP is used only in very limited circumstances, stating:

Only during the instances when a deportee on an ICE Air flight **becomes non-compliant, poses a risk to himself and/or others onboard the flight**, is the deportee placed in the ICE authorized WRAP soft restraint device for the safety and security of all onboard the aircraft.

Id. at ¶ 18 (quoting the email, emphasis added).

However, ICE is not using The WRAP in this manner. ICE places individuals in The WRAP before flights, or even at detention centers and on bus rides, not just onboard flights. ICE also uses The WRAP on individuals who are already in five-point shackles and therefore do not pose a threat to themselves or others.

Additionally, the CEO of Safe Restraints, Charles Hammond, has stressed that individuals subject to The WRAP “should never be left alone while in The WRAP” and “that The WRAP should only be left on for as long as it takes for emotions to de-escalate and for calm to be achieved.” *Id.* at ¶ 15. But the declarations submitted in support of this complaint indicate that ICE leaves people in The WRAP without direct supervision for hours, even if they have serious medical conditions.

INDIVIDUALS SUBJECTED TO THE WRAP

The complainants are referred to here by the pseudonyms “Castillo,” “Godswill,” and “Ray.” Their real names are included in their declarations, which are being submitted separately in support of the complaint. The accounts of two other individuals subjected to The WRAP, who are not complainants are also included below with the pseudonyms “Earnest” and “Sam.”

1. “Castillo”

Castillo was placed on the October deportation flight but was removed from that flight. *Castillo Decl.* at ¶ 21. He was taken back to the Prairieland Detention Center in Alvarado, Texas, and remained there until the November flight.

On the morning of the November flight, Castillo resisted being shackled because he had a pending appeal with the Fifth Circuit. *Id.* at ¶ 24. He explains what happened next as follows:

. . . They took me to isolation again. They tried to shackle me. Eventually, a team of around eight or ten officers came. They shot me four times with rubber bullets: two on my left thigh, two on my right shin. It was a shock. I was powerless. They fell on me and dragged me out of the cell. They threw me down and pushed my face to the ground. One pressed on my back, two held my hands, two held my feet. Someone said, “Get The WRAP.”

It was like being rolled into a bag. They tied my feet together, then they tightened The WRAP around my legs with three straps. They put something over my neck and around my torso and arms. They cuffed my hands in front of me and attached them to a chain around my waist. They snapped a rope or strap or cord from my neck to my feet. Then they leaned on my back and pushed my face toward my knees, and pulled the strap tight.

My body was at a 40-degree angle. I was left completely immobile.

I was forced into The WRAP while we were still at Prairieland Detention Center. I was left in The WRAP from around 10:30 a.m. on November 11, 2020, until we were

somewhere over the Atlantic ocean that night. They carried me all the way—four to six guys—from the detention center onto the bus, then onto the plane. While we were at the airport, I pleaded several times that I wanted to use the restroom but no one came to help me. **It was so painful. The position was very stressful on my body, my muscles were shot with pain the entire bus ride and flight back to Cameroon.**

They eventually took The WRAP off, but **I remained shackled all the way to Douala—around sixteen hours.** I couldn't talk. I couldn't eat. All I remember is the pain and the yelling of the officers.

I was detained in the U.S. for two years and four months. When I arrived in my country, I was arrested at the airport and taken to police detention for further investigation. I was detained for 12 days. **There were open sores my wrists where the ICE cuffs had cut into my skin. In detention I had no water or soap to keep them clean. They got infected.** I was in a cell with many men. There was no toilet. My family finally managed to get me out and now I am in hiding in a third country. I cannot remember what it is like to feel safe.

Id. at ¶¶ 25-30 (emphasis added).

Castillo's declaration indicates that he was in The WRAP for around nine hours, which inflicted severe pain. It does not appear that anyone checked on Castillo's medical condition before placing him in The WRAP or while he was in it. While detained in the United States, he suffered from gastrointestinal bleeding and anemia. *Id.* at ¶ 17. At one point when he was very depressed, he was also placed in isolation for what appears to be some type of suicide watch. *Id.* at ¶ 12. However, ICE did not take into account either his physical or mental health history before placing him in The WRAP.

2. "Godswill"

Godswill was detained at Jackson Parish, Louisiana, before being transferred to Prairieland, Texas for removal. He suffers from asthma, which got worse in detention. *Declaration of Godswill* at ¶ 11. He struggled to breathe, depending on his inhaler. *Id.* In describing his experience at Jackson Parish, he explained, **"The darker your skin, the harsher the treatment."** *Id.* at ¶ 10.

Godswill and several other Cameroonians were coerced into signing deportation documents, with officers taking their fingerprints by force. *Id.* at ¶¶ 14-15. When the officers came to move him and the others to the Prairieland Detention Center in Texas in preparation for the November deportation flight, "they came in force" and carried "tear gas." *Id.* at ¶ 16.

Godswill and the others were taken to the airport by bus and left on the tarmac in front of the plane. *Id.* Godswill described what happened next as follows:

I was so depressed. I felt so broken. I hadn't eaten and I was weak. When I arrived at the steps taking us to the plane, I tripped and fell. The officers didn't ask me what was

wrong. They didn't ask if I was okay. **They dragged me across the tarmac, they climbed on me, and they stuffed me into a kind of bag. I later learned it is called The WRAP.**

It was in two pieces: one for my two legs, and a jacket or vest that went over my head and around my arms. They started with my legs, rolling me onto The WRAP, which looked like a piece of black fabric laid flat on the ground. They closed it around my legs with buckles and pulled the straps so tight, compressing my legs, already in five-point restraints, so tight I couldn't move. Then they threw the upper-body piece over my head and around my arms and closed it at the back. **They pushed my upper body down over my cuffed hands, and they pressed on my back to the point where my head was almost touching my knees. The whole time they were yelling at me. Then they attached a strap from my chest to my feet, and left me folded up like a mat.**

There was so much pain in my waist and in my back. My lungs were compressed, I couldn't breathe. I couldn't sit up. I was immobilized. My body was in so much stress. I shouted, "You're killing me!" I truly felt I was meeting my death in that moment. Six officers, three on each side, picked me up and carried me onto the plane. They plopped me down, like a load of wood, across a center row of seats.

They left me like that for several hours — more than three, maybe four. They wasted so much time getting us out of there. It took so much time to get everyone loaded. I saw two other guys wrapped. I could hear them crying as well. It was chaos. One of them went quiet and was taken off the plane. The WRAP pressed into the shackles which dug into my body, my skin. **My back was killing me. I couldn't breathe. Someone, I think maybe a doctor, came to check on me. I begged him to take me out of The WRAP but he only reached into my pocket to get my inhaler. He put it to my mouth so I could take a life-saving pull. Then he tossed it onto the seat and walked away.**

I heard others shouting, "You're killing him! What are you doing to him?" But the officers did nothing. I was no cause for concern to them. When I complained, they just pulled The WRAP tighter. They didn't take me out of The WRAP until we were in the air, at cruising altitude, well above the clouds. But they refused to remove the restraints. I was cuffed and chained all the way to Douala — more than 16 hours — we all were. No person had any interest in checking up on me or helping me. I could hear another guy screaming in pain to match my own, but I couldn't see him. I couldn't help him. And I couldn't concentrate on anything else. My head was exploding.

Id. at ¶¶ 20-24 (emphasis added).

The impact of The WRAP on Godswill has been long-lasting. When he was interviewed by writer Sarah Towle after being deported, he "was in hiding in the Cameroonian bush" and "refused to speak to members of his family as he was unable to do so without crying." *Towle Decl.* at ¶ 11. Godswill was "**broken by the experience of being WRAPPED, so humiliated and ashamed. He was also in terrible pain, but unable to see a doctor for fear of being seen and arrested.**" *Id.* (emphasis added).

3. “Ray”

After being physically forced to sign documents by ICE at Adams County Correctional Center in Mississippi, Ray was taken to the La Salle Detention Center in Jena, Louisiana, and then to the Alexandria Staging Facility, where he was told he would be deported. He was forced into The WRAP and remained restrained in that device for an hour, laying on the ground in full display of the other detainees, while ICE loaded a plane heading to Dallas, Texas. He describes the experience as follows in his declaration:

Four big officers came into my shared cell. The men threw me to the ground and rolled me on my belly. **A fifth man put a knee on my neck. I could not breath.** Then they tied me up in something made of stiff black fabric and secured with straps. I was later shown a picture of The WRAP and recognized it as the restraint they used. I could not move. When I protested, I was told, “We are just doing our job.” The cuffs around my ankles were so tight, and the pain in my feet so acute, I started to cry. Then they attached a cord from a buckle at my chest to a buckle at my feet and they pulled my upper body down so my face was in my knees. I could not breathe well. I was completely immobilized.

No one asked me about my medical history before putting me in The WRAP. No one cared that I had been experiencing chest pain or taking medication for anxiety. No one cared about the joint pain in my feet and knees. The WRAP made the pain excruciating.

They carried me outside and left me like that for at least an hour — on display so the others would think twice about protesting their deportations as I did. They left me on the ground, crying in pain, until they loaded everyone onto the plane.

Once everyone had boarded, two ICE officers came and told me, “We want to remove The WRAP, but you must remain calm. If you continue to fight, we will leave it on.” They finally removed it. I was so exhausted, so depressed. **It was so hard to walk, they had to help get me to the plane.** On the way to the plane, I noticed several WRAPs laid out on the ground. I believe they were there to warn the others not to protest.

They flew us to Dallas. They took us to Prairieland Detention Center. **My body was in pain and I also experienced pain in my chest from being restrained for so long in this stressful and uncomfortable position.**

In Cameroon, I had been beaten with a machete until my feet swelled and bled, and I was struck again and again with a metal belt buckle. In the U.S., I was detained for two years and 10 months. **But the day I was put in The WRAP by ICE, I wanted to die. I have never felt such horrible pain. It was torture.**

Declaration of Ray at ¶¶ 27-32 (emphasis added).

Ray's experience, like the experience of other men described above, show that ICE's use of The WRAP inflicted severe and long-lasting pain.

4. **Earnest**

A fourth individual, "Earnest," was placed in The WRAP at the Fort Worth Alliance Airport prior to both the October and November 2020 deportation flights to Cameroon. *Towle Decl.* at ¶ 19. The WRAP was placed on top of five-point shackles in his case, just like in the other cases. Earnest's case is unique, however, because the restraint was modified with a hood. Sarah Towle's declaration notes that he was "**hooded both times, which is not in keeping with the manufacturer's guidelines.**" *Id.* (emphasis added).

Earnest was "pulled off the plane both times, the second time because he **experienced severe chest pain**" due to a heart condition. *Id.* There is no indication that ICE took his medical condition into account before subjecting him to The WRAP or that he was provided proper medical care afterwards. Earnest fears retaliation by ICE and therefore did not wish this complaint to include additional details about his story.

5. **Sam**

In addition to the four accounts discussed above involving individuals placed on the October and November 2020 deportation flights to Cameroon, Sarah Towle's declaration includes an account provided by a fifth individual, a Ugandan citizen who did not want to provide his name due to fear of retaliation. She describes what happened to him before a September 2020 deportation flight to Africa as follows:

. . . He stated that it all began for him on August 30, 2020. A group of ICE agents entered his dorm at the detention center where he had been held, to that point, for about 20 months. They asked him to follow them but confident that his asylum case was still under consideration at the appellate level, he refused to go.

That's when, in front of all his dorm-mates, **agents knocked him down, rolled him onto his front, pushed his face into the floor, and while one person knelt on his neck, "like George Floyd," another cuffed his hands behind his back as still another person cuffed his ankles. Then, as they flipped him over onto his back, he described being "wrapped into a bag and tied like a chicken that is going to be slaughtered."** They constrained his upper body in a similar "bag," slipping it first around his neck from an opening that went over his head, then drawing it around his arms and torso, and clipping it tightly at the back.

When I showed the Ugandan a picture of The WRAP on the Safe Restraints website, pointing out the upper part is an armless vest, he stated, "**I think they have different types,**" **suggesting that ICE may have modified the device.** He described a "strap or cord" that drew his chest toward his legs and clipped to a hook at his ankles, locking his torso at a 45-degree angle to his extended legs. Unlike the others, his hands were cuffed behind him, which is in keeping with Safe Restraints' recommended guidelines. He

states, **“I couldn’t move, couldn’t fight. It was so painful. The more you move, the more pain you feel.”**

Towle Decl. at ¶¶ 21-23 (emphasis added).

Sam was kept in The WRAP “for the entire length of the bus ride to the nearest airport, 2-3 hours away.” *Id.* at ¶ 24 (emphasis added). Some of the straps were loosened so he could sit with his legs at a 90-degree angle to his torso, but his hands remained tied behind his back, “forcing his body to pitch painfully forward.” *Id.* He “had to work physically very hard not to topple over to the left or right each time the car turned a corner or followed a bend in the road.” *Id.*

When he arrived at the airport, ICE removed The WRAP, but he remained shackled, which was very painful. *Id.* at ¶ 25. **“He had lost all feeling in his wrists and recalls that it took months before he could use his hands properly again.”** *Id.* (emphasis added). He was flown to the Alexandria Staging Facility in Louisiana. From his cell there, he witnessed “six Kenyans being WRAPPED before their deportation from the facility.” *Id.* at ¶ 26.

From the Alexandria Staging Facility, Sam was flown to Mesa, Arizona. **“There, he witnessed three more men fall victim to The WRAP, all Ugandans.”** *Id.* at ¶ 28. He recognized one of the other Ugandans and saw that he was **beaten before being placed in The WRAP. It “sent a message to the rest of us to not try to fight unless we wished to go through the same.”** *Id.* (emphasis added).

RIGHTS VIOLATIONS ASSOCIATED WITH ICE’S USE OF “THE WRAP”

The cases discussed above indicate that ICE is using The WRAP as a coercive tool to force detained individuals to immediately submit to orders, to punish detained individuals, and to deter other detained individuals from engaging in any form of resistance. As explained below, ICE’s use of The WRAP violates the Convention Against Torture, constitutional due process, and ICE’s own detention standards on the use of restraints and the use of force.

1. ICE’s Use of The WRAP Constitutes Torture or Cruel, Inhuman, and Degrading Treatment in Violation of the Convention Against Torture.

The United Nations Convention Against Torture, which the United States signed and ratified, defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him ... information or a confession, punishing him for an act he ... has committed or is suspected of having committed, or *intimidating or coercing him* ... when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other

person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.²

ICE's use of The WRAP as a form of coercion and punishment violates the Convention. The way that ICE is utilizing The WRAP inflicts severe pain and suffering in an illegal manner intentionally designed to coerce detainees and does not serve legitimate safety interests. Actual bodily injury is not required for harm to constitute torture, if the victim suffered at least intense physical and mental suffering.³

The U.N. Committee Against Torture recognizes that "positional abuse when handcuffed or bound" is a form of torture.⁴ The Committee has emphasized the need to "strictly regulate the use of physical restraints in . . . detention centres for foreigners,"⁵ and to "keep under constant review the use of instruments of restraint that may cause unnecessary pain and humiliation."⁶ Both the Special Rapporteur on Torture and the Committee against Torture have condemned methods of restraint that are inherently inhuman, degrading, or painful, or have such effects.⁷

The Subcommittee to Prevent Torture has stressed that the use of physical restraints is legitimate only if lawful, necessary, and proportionate.⁸ Restraints should not be applied unless necessary and should be applied for the shortest possible period of time.⁹ Additionally, the manner in which restraints are applied must not be degrading or painful,¹⁰ and the use of a restraints as a form of punishment is strictly prohibited.¹¹

² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987) (emphasis added).

³ See Immigration Judge Benchbook, 9.IV.C.; *Klaas v. Germany*, 18 EUR. H.R. REP. 305 (1994).

⁴ See Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: Mission to Sri Lanka, General Assembly, Human Rights Council, Seventh Session, A/HRC/7/3/, U.N. Doc. A/HRC/7/3/Add.6 (2008); see also *Aksoy v. Turkey*, 23 Eur. H.R. Rep. 553 (1997).

⁵ U.N. Comm. Against Torture, Report of the Committee Against Torture, 47th/48th Sess., U.N. GAOR, 67th Sess., Supp. No. 44, P47, U.N. Doc. A/67/44, para. 16 (2012).

⁶ U.N. Committee Against Torture, *Concluding Observations of the Committee Against Torture: New Zealand*, 42nd Sess., U.N. Doc. CAT/C/NZL/CO/5, para. 9 (2009).

⁷ U.N. Comm. Against Torture, Report of the Committee Against Torture, 23rd/24th session, U.N. Doc. A/55/44, para. 180(c); see also *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*, GAOR, 68th Sess., U.N. Doc. A/68/295, para. 58 (2013).

⁸ Code of Conduct for Law Enforcement Officials, adopted by U.N. General Assembly resolution 34/169 of Dec. 17, 1979, Art. 3.

⁹ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1, Principle 9 (1990); U.N. OFFICE ON DRUGS AND CRIME, HANDBOOK FOR PRISON LEADERS: A BASIC TRAINING TOOL AND CURRICULUM FOR PRISON MANAGERS BASED ON INTERNATIONAL STANDARDS AND NORMS (2010).

¹⁰ Report by the Special Rapporteur on Torture to the UN ECOSOC, E/CN.4/2004/56, para. 45 (Dec. 23, 2003).

¹¹ *Id.*; see also European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2nd General Report on the CPT's Activities Covering the Period 1 January - 31 December 1991, Doc. No. CPT/Inf (92) 3, 13 April 1992, para. 53.

A federal judge in Iowa held that the use of The WRAP (the exact same device at issue here) on juveniles at the State Training School for Boys in Eldora violated the Convention Against Torture. *See C.P.X. v. Garcia*, 450 F. Supp. 3d 854, 911-16 (S.D. Iowa 2020). In that case, The WRAP was used for up to 4.5 hours at a time, which is comparable to the time periods reported here by the complainants. Additionally, in the *C.P.X.* case, the judge condemned the use of The WRAP on individuals with physical and medical conditions, including heart conditions and asthma—conditions that two of the complainants have here. *Id.*

2. ICE’s Use of The WRAP Violates the Fifth Amendment Due Process Clause.

Because individuals in ICE custody are considered civil detainees, not criminal detainees, the Fifth Amendment to the U.S. Constitution applies here, rather than the Eighth Amendment. The right to substantive due process under the Fifth Amendment protects individual liberty against certain government actions regardless of procedures used. Government conduct that “shocks the conscience” may violate due process. Courts have also applied a “deliberate indifference” test to analyze substantive due process claims that government officials failed to protect a detainee from a substantial risk of serious harm. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Here, the accounts set forth above show that ICE is deliberately indifferent to the substantial risk of serious harm caused by The WRAP’s use. Specifically:

- ICE leaves individuals in The WRAP for several hours at a time.
- ICE does not account for any medical conditions before placing a detained individual in The WRAP. Earnest’s heart condition, for example, could have caused the use of the WRAP to be fatal, yet he was restrained in The WRAP on two separate occasions without any concern for his medical condition. Godswill suffers from asthma and could have had an asthma attack or suffered asphyxiation in The WRAP, especially as he was unable to access his inhaler while restrained.
- ICE does not account for psychological conditions before placing a detained individual in the WRAP. The WRAP can trigger feelings of panic, anxiety, and claustrophobia. Asylum seekers can be traumatized and retraumatized by this type of constraint, especially if they have histories of abuse, persecution, or torture. The complete loss of control in The WRAP replicates feelings of powerlessness and fear that they experienced in their home countries and exacerbates symptoms of mental illness.
- The complainants’ accounts do not indicate that ICE attempted to use any alternatives before utilizing The WRAP, even for individuals with serious physical and mental health conditions.
- ICE does not appear to use The WRAP in the manner prescribed by the manufacturer. For example, ICE leaves people unattended in The WRAP, for a longer period of time than required for them to calm down, and cinches them up much tighter than a 90-degree angle. In at least some cases, it also appears that ICE modified The WRAP to make it even more constrictive, for example by placing a hood on Earnest.

- ICE appears to be using The WRAP in a way that is not reasonably related to safety. In the cases discussed above, ICE used The WRAP where there was no immediate risk of harm and applied it *on top of five-point shackles*. The WRAP is used to hasten and coerce compliance.

ICE’s misuse of The WRAP not only demonstrates deliberate indifference, but also satisfies the shocks-the-conscience test for a due process violation, and it additionally violates due process by imposing punishment prior to an adjudication of guilt. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979); *Reed v. Palmer*, 906 F.3d 540, 550 (7th Cir. 2018) (applying *Bell* to claims involving the excessive use of solitary confinement and restraints); *see also Youngberg v. Romeo*, 457 U.S. 307, 320 (1982) (noting that “restrictions on liberty” are permissible so long as they are “reasonably related to legitimate government objectives and not tantamount to punishment”). This prohibition applies to any punishments that rises above “a *de minimis* level.” *Bell*, 441 U.S. at 539 n.21.

In the *C.P.X.* case, the court found that the school superintendent’s approval of The WRAP at a facility for juvenile delinquent boys with mental disabilities was unconscionable and constituted “deliberate indifference.” 450 F. Supp. 3d at 902-09. Similarly, ICE’s use of The WRAP on traumatized asylum seekers fleeing persecution, some of whom also have serious medical conditions, shocks the conscience and constitutes deliberate indifference in violation of the Fifth Amendment Due Process Clause.¹²

3. ICE’s Use of The WRAP Violates the Rehabilitation Act.

Section 504 of the Rehabilitation Act prohibits discrimination based on a disability in any program or activity conducted by a federal agency, including ICE. Specifically, the Rehabilitation Act provides that no otherwise qualified individual with a disability shall be “excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 28 U.S.C. § 794(a). “Program or activity” is broadly defined such that it effectively covers the entirety of the recipient’s operations, rather than the specific function for which federal funding is received. *See* 29 U.S.C. § 794(b).

DHS has adopted binding regulations to ensure that Section 504 is implemented within the agency. *See generally* 6 C.F.R. § 15. Federal regulations also prohibit disability discrimination in detention and correctional facilities. *See* 28 C.F.R. § 35.152(b)(2). Likewise, ICE’s own detention standards prohibit disability discrimination and require reasonable accommodations. *See* 2011 Performance-Based National Detention Standards (PBNDS) 4.8 at 345.

The complainants all have physical or mental health conditions that qualify as a disability under the Rehabilitation Act. ICE was or should have been aware of these disabilities. ICE violated the Rehabilitation Act and federal regulations by failing to accommodate their disabilities in applying The WRAP as a restraint. Additionally, ICE violates the Rehabilitation

¹² Because individuals in ICE custody are considered civil detainees, not criminal detainees, the Fifth Amendment to the U.S. Constitution applies here, rather than the Eighth Amendment.

Act by punishing detainees with The WRAP for behavioral manifestations of mental health disorders.

4. ICE's Use of The WRAP Violates Federal Civil Rights Laws.

18 U.S.C. § 242 makes it a federal crime for any person acting under “color of law, statute, ordinance, regulation, or custom” to willfully deprive any person of the rights, privileges, or immunities secured or protected by the Constitution and laws of the United States. This law further prohibits a person acting under color of law, statute, ordinance, regulation, or custom from willfully subjecting any person to different punishments, pains, or penalties, than those prescribed for punishment of citizens “on account of such person being an alien, or by reason of his color, or race.” 18 U.S.C. § 242.

Acts under “color of any law” include acts not only done by federal, state, or local officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that the unlawful acts were done while the official was purporting to act in the performance of his/her official duties.

Punishment under 18 U.S.C. § 242 includes a fine or imprisonment of up to one year, or both. If bodily injury results or if the acts include the use, attempted use, or threatened use of a dangerous weapon, a fine and imprisonment for up to ten years may be imposed. If death results, a fine and any term of imprisonment, or even the death penalty, may be imposed.

Here, federal ICE ERO officers acting under color of law deprived the complainants of their constitutional rights. The enhanced penalty of ten years may be imposed if it is determined that the complainants suffered bodily injury or if ICE threatened the use of a dangerous weapon. ICE ERO officers also subjected the complainants to punishment, pains, and penalties on account of their status as noncitizens, or by reason of their color, or race.

Additionally, 18 U.S.C. § 249, which penalizes certain hate crimes, makes it unlawful to willfully cause bodily injury—or attempt to do so with a dangerous weapon—when, in relevant part: (1) the crime was committed because of the actual or perceived race, color, or national origin of any person; or (2) the crime was committed because of the actual or perceived national origin of any person and the crime affected interstate or foreign commerce. Here, further investigation is needed to determine whether ICE officers willfully caused bodily injury or attempted to do so with a dangerous weapon, and whether such a crime was committed because of national origin or race. Given that ICE applied The WRAP during transportation across state lines, as well as on international deportation flights, interstate or foreign commerce was affected.

5. ICE's Use of The WRAP Violates State Criminal and Tort Laws.

The incidents described in this report occurred in Texas and Louisiana and also violate state criminal and tort laws that prohibit assault, battery, aggravated assault, unlawful restraint, false imprisonment, intentional infliction of emotional distress, and/or negligence.

For example, in Texas, a person commits assault if the person intentionally, knowingly, or recklessly causes bodily injury to another, or threatens imminent bodily injury, or if the person intentionally or knowingly causes physical contact that the person knows or should reasonably believe will be regarded as offensive. Texas Penal Code § 22.01. Aggravated assault is an assault that results in serious bodily injury or involves the use or exhibition of a deadly weapon. Texas Penal Code § 22.02.

The crime of unlawful restraint in Texas requires “intentionally or knowingly restrain[ing] another person,” which becomes a felony in the third degree when the actor recklessly exposes the victim to a substantial risk of serious bodily injury. Texas Penal Code § 20.02.

The tort of intentional infliction of emotional distress in Texas requires that the defendant acted intentionally or recklessly, that the plaintiff suffered severe emotional distress, that the defendant’s conduct was extreme and outrageous, that the defendant’s conduct proximately caused the plaintiff’s emotional distress, and that no alternative cause of action would provide a remedy. *Kroger Tex., Ltd. P’ship v. Suberu*, 216 S.W.3d 788 (Tex. 2006).

In Louisiana, a person commits battery if there is an intentional use of force or violence upon the person of another. La. R.S. § 14:33. Assault is an attempt to commit a battery, or the intentional placing of another in reasonable apprehension of receiving a battery. La. R.S. 14:36. Aggravated assault is an assault committed with a dangerous weapon. La. R.S. 14:37.

Louisiana also criminalizes false imprisonment, which is the intentional confinement or detention of another, without his consent and without proper legal authority. La. R.S. 14:46. Further, an individual convicted of unlawful intentional confinement or detention of another while the offender is armed with a dangerous weapon may be imprisoned, with or without hard labor, for up to ten years. La. R.S. 14:46.1.

Louisiana courts also recognize the tort of intentional infliction of emotional distress, which requires showing that the conduct of the defendant was extreme and outrageous, that the emotional distress suffered by the plaintiff was severe, and that the defendant desired to inflict severe emotional distress or knew that severe emotional distress would be certain or substantially certain to result from his conduct. *See White v. Monsanto Co.*, 585 So.2d 1205 (La. 1991).

Additionally, in Louisiana, every person is responsible for the damage he occasions not merely by his act, but by his negligence, his imprudence, or his want of skill. La. C.C. Art. 2316. Gross negligence has been defined as the “want of even slight care and diligence.” *Solow v. Heard McElroy & Vestal, LLP*, 7 So.3d 1269 (La. Ct. App. 2009).

ICE’s use of The WRAP violates these state laws, as well as violating the federal laws discussed above.

6. ICE's Use of The WRAP Violates ICE's Detention Standard on the Use of Force and Restraints.

Under its own detention standards, ICE is only allowed to use “necessary and reasonable force after all reasonable efforts to otherwise resolve a situation have failed . . .” *See* 2011 PBNDS 2.15 at 200. “Physical force shall only be used to the minimum extent necessary to restore order, protect safety, and provide security.” *Id.* “Physical force or restraint devices shall not be used as punishment.” *Id.* “Staff shall attempt to gain a detainee’s willing cooperation before using force.” *Id.* at 202. With respect to four/five-point restraints specifically, the PBNDS provides:

Four/five-point restraints shall be applied only in extreme circumstances and only when other types of restraints have proven ineffective. Advance approval is required, as is prompt notification of and examination by the medical staff. Use of these restraints shall be continued only in accordance with required procedures and documentation.

Id.

ICE is violating these requirements by using The WRAP before trying other types of restraints, not obtaining advance approval, and not notifying medical staff, much less obtaining a medical exam. In fact, ICE’s use of The WRAP during deportation makes it impossible for a medical examination to be conducted, even though the PBNDS provides that “[d]etainees subjected to use of force shall be seen by medical staff as soon as possible.” *Id.* at 202.

Additionally, “[f]ollow-up (e.g. medical attention), documentation (e.g. audiovisual recording for calculated use of force), reporting and an after-action are required for each incident involving use of force.” *Id.* at 201. CRCL or OIG should investigate whether ICE is complying with these actions when it utilizes The WRAP.

Insofar as ICE placed a hood over Earnest’s head and face, this violates the prohibition against “us[ing] restraint equipment or devices . . . on a detainee’s neck or face, or in any manner that obstructs blood circulation or obstructs the detainee’s airways (e.g. mouth, nose, neck, esophagus).” *Id.* at 202.

The WRAP further violates the 2011 PBNDS’s prohibition against using restraints or devices “to cause physical pain or extreme discomfort.” *Id.* In fact “hog-tying” and “fetal constraints (i.e. cuffed in front with connecting restraints drawn-up to create the fetal position)” are explicitly prohibited. *Id.*

Critically, when a detainee has special medical or mental health needs, ICE is supposed to consult appropriate medical or mental health staff *prior* to any calculated use of force. *Id.* at 205.

Conclusion

Based on the foregoing, the undersigned respectfully request that your office initiate an investigation into ICE’s use of The WRAP. Specifically, we request that you investigate:

1. Whether ICE is using The WRAP in an authorized manner, including by
 - a. impermissibly modifying the device (e.g. by adding a hood) ;
 - b. restraining people in The WRAP at less than a 90-degree angle;
 - c. leaving people in The WRAP without direct supervision;
 - d. leaving people in the WRAP for longer than necessary;
 - e. utilizing the device on individuals with physical or mental health conditions;
 - f. using the device in locations others than onboard flights;
 - g. applying The WRAP on top of five-point shackles.

2. Whether ICE's use of The WRAP violates the Convention Against Torture, the Fifth Amendment Due Process Clause of the Constitution, the Rehabilitation Act, federal civil rights statutes, and state criminal and tort laws.

3. Whether ICE is complying with its own detention standards on the use of restraints and force (2011 PBNDS 2.15), including:
 - a. Whether ICE is using The WRAP as a last resort after seeking to obtain willing cooperation and utilizing lesser forms of restraint;
 - b. Whether ICE is applying The WRAP for the least amount of time necessary;
 - c. Whether ICE is using The WRAP as a form of punishment;
 - d. Whether ICE's use of The WRAP during deportation flights poses a threat to safety;
 - e. Whether ICE is complying with follow-up, documentation, and reporting requirements after using The WRAP.

In order to properly investigate this complaint, we request that the three complainants be granted humanitarian parole and brought back to the United States so that they may be interviewed in person by your office.

Thank you for your urgent attention to these critical matters. Please do not hesitate to contact us for additional information.

You can contact Fatma Marouf, Professor of Law and Director of the Immigrant Rights Clinic at Texas A&M School of Law at 817-212-4123 (office) or fatma.marouf@law.tamu.edu.

Sincerely,

African Communities Together
Black Alliance for Just Immigration
Cameroon Advocacy Network
Haitian Bridge Alliance
Texas A&M Immigrant Rights Clinic
UndocuBlack Network
Witness at the Border

Cc: DHS Office of the Inspector General, Office of Investigations