

October 27, 2016

Honorable Jeh Johnson, Secretary
U.S. Department of Homeland Security
3801 Nebraska Ave NW
Washington, DC 20016

Dear Secretary Johnson:

The undersigned organizations are writing to you with significant concerns raised by a quote from an anonymous DHS official in an article in Friday's Wall Street Journal (*Record Immigrant Numbers Force Homeland Security to Search for New Jail Space*). The article details an increase in people in Immigration Customs and Enforcement custody and includes this paragraph:

"There are also concerns that some of the new jail spaces may not conform to regulations adopted as a result of the Prison Rape Elimination Act of 2003, officials said. "They're scraping the bottom looking for beds," one official said."

In 2014, you issued *Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities* as a final rule. (6 CFR Part 115) As of May 7, 2014, the following provision from those standards became effective:

§ 115.12 Contracting with non-DHS entities for the confinement of detainees. (a) When contracting for the confinement of detainees in immigration detention facilities operated by non-DHS private or public agencies or other entities, including other government agencies, the agency shall include in any new contracts, contract renewals, or substantive contract modifications the entity's obligation to adopt and comply with these standards.

This provision is applicable to any new contracts ICE may execute, or any expansions in bed space (i.e. substantive contract modifications) that ICE may secure, with new or existing "private or public agencies or other entities, including other government agencies."

If ICE is unable to secure additional bed space in compliance with your rule, it cannot just ignore the PREA rule. To the extent that the detention population exceeds the capacity of ICE's PREA-compliant detention beds, the agency must find alternative means of exercising custody over any immigrant for which it does not have a bed. Advocates, including many signatories on this letter, have long advocated that an immigrant in an alternative to detention program is sufficiently in the custody of ICE to satisfy relevant mandatory custody requirements.

The *Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities* were developed over a significant period of time. Draft standards were opened for public comment and ICE accepted and, in some cases, integrated feedback from stakeholders, advocates, detention agencies, and immigrants. Ignoring these standards now would open up questions about their applicability in any situation that creates inconvenience for ICE or its contractors.

It is important to keep in mind that DHS issued these standards at the direction of President Barack Obama to bring immigration detention facilities into compliance with the Prison Rape Elimination Act of

2003 (PREA). The whole reason that PREA was proposed and passed by Congress and signed by President George W. Bush was a realization that detention facilities had been unable to impose common-sense, comprehensive policies and practices on themselves. National standards were created to overcome the impulse to short cut safety for reasons of expediency or convenience.

The Wall Street Journal article indicates that ICE considers some provisions – and in this case the most important provisions – as optional. We strongly encourage you to send a clear message to ICE that this is not the case. That, instead, it must comply with § 115.12 even when doing so may be difficult or may require the agency to rethink its current practices.

We will monitor this process closely and ask that your office facilitate a meeting between advocates and Director Sarah Saldaña so that we can craft a process for transparency in any new contracts that ICE enters into or any existing contracts that it modifies substantially as a result of its perceived need for new bed space. We also ask that you meet with Director Saldaña and her leadership to determine if additional bed space is necessary or if many more immigrants can be held in custody through existing and expanded alternatives to detention programs.

If you have any questions about these asks or any information in this letter, please feel free to reach out to Michelle Brane at Women’s Refugee Commission (michelle@wrcommission.org, 202-750-8596) or Joanne Lin at the American Civil Liberties Union (jlin@aclu.org, 202-675-2317).

Sincerely,

American Civil Liberties Union
American Immigration Council
Asian Pacific Institute on Gender-Based Violence
Center for American Progress
Human Rights Watch
Immigration Equality
Just Detention International
National Center for Transgender Equality
National Immigrant Justice Center
We Belong Together
Women’s Refugee Commission