

April 2, 2012

Cecilia Muñoz, Director
Domestic Policy Council
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Re: Exclusion of Immigration Detention Facilities from Proposed PREA Standards

Dear Ms. Muñoz:

The undersigned immigration, labor, faith-based, women's rights, community and victim advocacy organizations write to reiterate our grave concerns about the potential exclusion of immigration detention facilities from coverage under the Prison Rape Elimination Act of 2003 (PREA). As you know, the Department of Justice's (DOJ) January 24, 2011 Notice of Proposed Rulemaking clearly stated that the rule would "not encompass facilities that are primarily used for the civil detention of aliens pending removal from the United States."¹ Since that time, the administration has sent mixed signals about inclusion of these facilities in the Department's final rule.

As publication of that rule nears, we are writing to strongly urge full implementation of PREA in all immigration detention facilities through the DOJ's National Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse.

ICE's Internal Standards Are Inadequate and Cannot Replace PREA Protections

Recent announcements by Immigration and Customs Enforcement (ICE) regarding the planned implementation of its own Performance Based National Detention Standards (PBNDS) 2011 do not diminish in any way the need for DOJ PREA regulations to apply to all immigration detention facilities. Secretary Janet Napolitano testified before Congress on several occasions and stated that forthcoming ICE detention standards would surpass the protections required under PREA.²

Despite these pronouncements, the 2011 PBNDS fall far short of DOJ's PREA regulations in a number of areas. The most harmful are:

- The absence of mandated, certified audits of facility compliance with the standards. Without compliance audits, the standards are simply words on paper that may, through malfeasance or institutional dysfunction, never be fully or properly transformed into effective, sustainable practice. Recognizing this problem, the DOJ draft standards require

¹ "National Standards to Prevent, Detect, and Respond to Prison Rape; Notice of Proposed Rulemaking," 76 Fed. Reg. 6248-6302 (February 3, 2011), http://www.ojp.usdoj.gov/programs/pdfs/prea_nprm.pdf (accessed February 15, 2011), p. 6250.

² Most recently the Secretary offered this testimony before the House Appropriations Committee on February 15, 2012. The relevant testimony can be viewed at 1:47:30 at: <http://thomas.loc.gov/video/house-committee/hsap/20462743>

that audits be conducted by independent, certified auditors and be made available to the public after completion.

- Exclusion of facilities that hold detainees for less than 72 hours. Both ICE and Customs and Border Protection (CBP) run short-term facilities that are not covered by PBNDS 2011. Detainees who are particularly vulnerable to sexual assault are often times most at risk for sexual abuse during the first 12 to 24 hours of confinement in any facility. Recognizing this, the DOJ proposed specific standards for police lock-ups that hold suspects for forty-eight hours.
- Finally, PBNDS 2011 is only internal agency policy and does not carry the force of law, whereas PREA will be established in regulations with strict implementation deadlines. It is notable that although PBNDS 2008 have been in use for four years, many facilities housing immigration detainees still follow the far more deficient National Detention Standards from 2000.

The 2011 PBNDS are also dangerously deficient in the areas of: hiring, reporting, protection from retaliation, investigation, training, oversight, and consistency. In short, these internal detention standards fall short of the Secretary's promise and belie the Department of Homeland Security's (DHS) commitment to full implementation of PREA.

Requiring DHS to create its own PREA-compliant standards is also not a viable alternative. It has taken ICE 5 years to develop the PBNDS and during this time it was fully aware of the concurrent development of the PREA regulations. DHS also testified at a 2006 hearing of the PREA Commission. ICE has had ample time to make the PBNDS consistent with PREA but has chosen not to do so. To wait for ICE to undergo a separate process of developing its own PREA-compliant standards would be highly duplicative and inefficient. Moreover, it would severely delay implementation of rigorous rape and sexual assault protections in immigration detention facilities, likely for several years since the PBNDS themselves have been in development for about five years and still are not implemented.

PREA Must Cover Immigration Detention

The exclusion of immigration detention from PREA is unjustifiable. It ignores the history of sexual assault in immigration detention, is inconsistent with the intent of PREA and the administration's own efforts at detention reform, and implicates basic human rights obligations undertaken by the United States. Moreover, it threatens the safety of the hundreds of thousands of men, women, and unaccompanied children in the custody of the Departments of Homeland Security and Health and Human Services.

Immigration detainees, like all persons in custody, are vulnerable to abuse. Language and cultural barriers, histories of state-sanctioned abuse in their home countries, and a fear that reporting abuse will result in deportation all increase the likelihood that non-citizens will not feel safe reporting sexual abuse and that perpetrators will not be held accountable. Unlike criminal defendants, immigration detainees have no right to an attorney, and as a result, may not be aware of their right to be free from sexual abuse, nor of whom to contact if they are sexually assaulted.

The known incidents and allegations of sexual abuse in immigration detention are serious and numerous:

- In its 2009 report to the attorney general, the National Prison Rape Elimination Commission documented widespread reports of sexual abuse in immigration facilities over the last 20 years;³
- In August 2010, Human Rights Watch released a report compiling incidents and allegations of assaults, abuses, and episodes of harassment that have emerged across the rapidly expanding national immigration detention system.⁴ These included the assaults of five women detained at the Port Isabel Service Processing Center in Texas in 2008 when a guard entered each of their rooms in the infirmary, told them that he was operating under physician instructions, ordered them to undress, and touched intimate parts of their bodies;⁵
- In 2009, the Women’s Refugee Commission released a report that documented incidents of sexual and physical abuse of unaccompanied children in immigration custody, including the repeated sexual assaults of children at the Away From Home Texas Sheltered Care Facility in Nixon, Texas;⁶
- In April 2011, Heartland Alliance’s National Immigrant Justice Center (NIJC) filed a civil rights complaint with DHS on behalf of 13 clients, many of whom were victims of egregious sexual violence while in immigration custody;
- In October 2011, FRONTLINE aired its documentary “Lost in Detention,” which detailed the pervasive nature of sexual abuse in immigration detention facilities.⁷ The documentary drew on documents obtained by the American Civil Liberties Union (ACLU) under the Freedom of Information Act, which revealed that individuals in immigration detention have alleged nearly 200 incidents of sexual abuse over the last four years;
- That same month, the ACLU of Texas filed a class-action lawsuit in federal district court on behalf of three immigrant women named plaintiffs and numerous unnamed others who were sexually assaulted while in the custody of Immigration and Customs Enforcement at the T. Don Hutto Family Residential Center in Taylor, Texas—

³ National Prison Rape Elimination Commission, “Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Adult Prisons and Jails: Supplemental Standards for Facilities with Immigration Detainees” (NPREC Report), June 2009, <http://www.ncjrs.gov/pdffiles1/226680.pdf> (accessed February 3, 2011), p. 174-188.

⁴ Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, August 25, 2010, <http://www.hrw.org/en/reports/2010/08/25/detained-and-risk-0>.

⁵ *Ibid.*, p. 8.

⁶ Women’s Refugee Commission, *Halfway Home: Unaccompanied Children in Immigration Custody*, February 2009, <http://womensrefugeecommission.org/programs/detention/unaccompanied-children> (accessed February 9, 2011).

⁷ This documentary is available for viewing at <http://www.pbs.org/wgbh/pages/frontline/lost-in-detention>.

incidents that resulted in the conviction of a guard who exploited the facility's violation of ICE standards for detainee transport to assault asylum-seekers.

Horror at custodial abuses like these drove the Senate and the House of Representatives to unanimously pass the Prison Rape Elimination Act of 2003.⁸ The intent of PREA to include immigration detention in the measure is clear. The statute defines "prison" to mean "any confinement facility of a Federal, State, or local government, whether administered by such government or by a private organization on behalf of such government."⁹ Statements in the House Judiciary Committee report emphasize the application of the statute's protections to both criminal and civil detainees.¹⁰ Senator Edward M. Kennedy, a lead cosponsor of PREA, specifically called attention to immigration detainees in his remarks at the first hearing of the National Prison Rape Elimination Commission.¹¹

In letters to Attorney General Eric Holder and DHS Secretary Janet Napolitano, Representatives Frank Wolf and Bobby Scott, House Cosponsors of PREA, have further clarified the act was inclusive of immigration detention facilities. The exclusion of these facilities from PREA standards would contravene Congressional intent and lead to anomalous and unjustifiable results. It is inconceivable that Congress intended PREA protection for detainees to depend on the facility that confines them.

Indeed, the inclusion of immigration detention has been presumed by the National Prison Rape Elimination Commission and others charged with implementation of the act. The commission held a hearing in 2006 on immigration detention during the research phase of its work and included both a section on immigration detention in its final report and an immigration detention supplement to its recommended standards.¹² DHS testified at these Commission hearings.

At the same time, the Bureau of Justice Statistics has included immigration detention in the collection of statistics on prison rape mandated by PREA. DHS itself has acknowledged the importance of the statute for its facilities. For example, in her 2009 report on the state of the immigration detention system, Dora Schriro, detention expert and then advisor to Secretary Janet Napolitano, stated, "The system must make better use of sound practices such as ... practices that comply with the [Prison] Rape Elimination Act."¹³

⁸ Prison Rape Elimination Act of 2003, Pub. L. 108-79, 117 Stat. 972 (2003), 42 U.S.C.A. §§ 15601-09 (Lexis 2010), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:s1435enr.txt.pdf (accessed February 3, 2011).

⁹ *Ibid.*, sec. 10(7).

¹⁰ U.S. House of Representatives Committee on the Judiciary, *Report on the Prison Rape Reduction Act of 2003*, 108th Cong., 1st sess., 2003, H. Rept. 108-219, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_reports&docid=f:hr219.108.pdf (accessed February 3, 2011), p. 14, 115.

¹¹ Senator Edward M. Kennedy, remarks during National Prison Rape Elimination Commission hearing, "The Cost of Victimization: Why Our Nation Must Confront Prison Rape," June 14, 2005, http://www.cybercemetery.unt.edu/archive/nprec/20090820160727/http://nprec.us/docs/SenatorEdwardKennedyRemarks_Vol_1.pdf (accessed February 3, 2011).

¹² NPREC Report, p. 174-188.

¹³ Dora Schriro, ICE, DHS, "Immigration Detention Overview and Recommendations," October 6, 2009, <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf> (accessed February 3, 2011), p. 22.

Any failure to apply the DOJ's forthcoming final rule to immigration detention facilities undermines the administration's efforts to reform the immigration detention system. In announcing the administration's intention to work toward a "truly civil detention system," Assistant Secretary for ICE John Morton outlined a vision of a system that would demonstrate greater respect for the dignity of individuals held in the agency's custody. Certainly that vision is incompatible with excluding detained immigrants from protections against sexual assault and abuse.

To summarize, we recommend:

- *Instructing DHS and the Department of Health and Human Services that all facilities in which immigration detainees are placed are covered under PREA; and*
- *Directing DOJ to publish a final rule, as mandated by PREA, that applies to all immigration detention facilities under the control or contract with the Departments of Homeland Security and Health and Human Services.*

We would welcome the opportunity to meet to discuss this further. Laura Vazquez of the National Council of La Raza will be in touch with your office to arrange a meeting. In the meantime, please feel free to contact her at lvazquez@nclr.org or call (202) 776-1563.

Sincerely,

Alianza Latina en contra la Agresión Sexual
All of Us or None
American Civil Liberties Union
American Immigration Lawyers Association
Americans for Immigrant Justice
America's Voice Education Fund
Amnesty International USA
Arte Sana
Asian American Justice Center, member of Asian American Center for Advancing Justice
Asian Law Caucus, member of Asian American Center for Advancing Justice
Asian Pacific American Legal Center, member of Asian American Center for Advancing Justice
Ayuda
ASISTA Immigration Assistance
Break the Chain Campaign
Break the Cycle
Campaign for Community Change
Capital Area Immigrants' Rights Coalition
CASA de Maryland
Casa de Esperanza - National Latino Network for Healthy Families and Communities
Colorado Coalition Against Sexual Assault
Connecticut Sexual Assault Crisis Services, Inc.
Council of Peoples Organization
Day One, the Rhode Island Sexual Assault Coalition
Detention Watch Network
Disciples Justice Action Network
Fair Immigration Reform Network

Family Equality Council
Family Values @ Work
Farmworker Justice
Florida Council Against Sexual Violence
The Franciscan Action Network
Heartland Alliance's National Immigrant Justice Center
Hispanic Association of Colleges and Universities
Hispanic Federation
Human Rights Defense Center
Human Rights First
Human Rights Watch
Immigration Equality
Immigrant Rights Clinic, Rutgers School of Law - Newark
Immigrant Law Center of Minnesota
Immigrant Legal Resource Center
Indo-American Center
Interfaith Coalition on Immigration
Iowa Coalition Against Sexual Assault
Jane Doe Inc.
Just Detention International
Kansas Coalition Against Sexual and Domestic Violence
Labor Council for Latin American Advancement
League of United Latin American Citizens
Legal Aid Justice Center -- Immigrant Advocacy Program (Virginia)
Legal Momentum
Legal Services for Prisoners with Children
Louisiana Foundation Against Sexual Assault
Lutheran Immigration and Refugee Service
Maine Coalition Against Sexual Assault
MANA, A National Latina Organization
Massachusetts Immigrant and Refugee Advocacy Coalition
Mennonite Central Committee, U.S. Washington Office
Michigan Coalition Against Domestic and Sexual Violence
Minnesota Coalition Against Sexual Assault
National Advocacy Center of the Sisters of the Good Shepherd
National Alliance to End Sexual Violence
National Asian Pacific American Women's Forum
National Association of Hispanic Federal Executives
National Association of Hispanic Publications
National Center for Transgender Equality
National Center for Victims of Crime
National Coalition Against Domestic Violence
National Coalition for LGBT Health
National Conference of Puerto Rican Women, Inc.
National Council of La Raza
National Gay & Lesbian Task Force
National Immigrant Solidarity Network
National Immigration Forum
National Immigration Law Center
National Institute for Latino Policy
National Latina Institute for Reproductive Health

National Minority AIDS Council
National Organization of Sisters of Color Ending Sexual Assault
National Resource Center on Domestic Violence
New Hampshire Coalition Against Domestic and Sexual Violence
New Mexico Coalition of Sexual Assault Programs
The New York Immigration Coalition
North Carolina Coalition Against Sexual Assault
Northwest Immigrant Rights Project
Ohio Alliance to End Sexual Violence
OneAmerica
PFLAG National (Parents, Families and Friend of Lesbians and Gays)
Physicians for Human Rights
Reformed Church of Highland Park, NJ
Refugee and Immigration Ministries of Disciples Home Missions, Christian Church (Disciples of Christ)
Rights Working Group
Service Employees International Union
Sisters of Mercy of the Americas
South Asian Americans Leading Together
Tahirih Justice Center
Texas Association Against Sexual Assault
Transgender Law Center
United Methodist Church, General Board of Church and Society
United States Hispanic Leadership Institute
University of California, Davis School of Law Immigration Law Clinic
Vermont Network Against Domestic and Sexual Violence
Washington Defender Association's Immigration Project
Who Is My Neighbor? Inc.
Wisconsin Coalition Against Sexual Assault
Women's Refugee Commission

cc: Cass Sunstein, Administrator
Office of Information and Regulatory Affairs