

December 7, 2011

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

RE: Protecting immigration detainees from sexual abuse and assault

Dear President Obama:

In February of this year, several organizations wrote to you to bring attention a troubling misinterpretation of the Prison Rape Elimination Act of 2003 (PREA), which would exclude immigration detention facilities from protection. Even though PREA defines “prison” to mean “any confinement facility of a Federal, State, or local government,” the Department of Justice’s proposed PREA regulations, issued in February 2011, specifically excluded immigration detention facilities from coverage. The proposed regulations are now under review by the Office of Information and Regulatory Affairs, as of November 30th.

Ten months after that letter, the issue of sexual abuse in immigration detention facilities continues to be an urgent problem:

- In April, Heartland Alliance’s National Immigrant Justice Center (NIJC) filed a civil rights complaint with the Department of Homeland Security (DHS) on behalf of 13 clients, many of whom were victims of egregious sexual violence while in immigration custody;
- In October, FRONTLINE aired its documentary “Lost in Detention,” which detailed the pervasive nature of sexual abuse in immigration detention facilities.¹ 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 (ICE) at the T. Don Hutto Family Residential Center in Taylor, Texas—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;
- In November, the New York Review of Books posted a comprehensive online analysis about why PREA must be fully implemented in immigration detention facilities, and the *Washington Post* reiterated its call for these facilities to be covered under final PREA regulations, a position also supported by the *New York Times*;²

¹ This documentary is available for viewing at <http://www.pbs.org/wgbh/pages/frontline/lost-in-detention>.

² David Kaiser and Lovisa Stannow, “Immigrant Detainees: The New Sex Abuse Crisis,” The New York Review of Books Blog, November 23, 2011, <http://www.nybooks.com/blogs/nyrblog/2011/nov/23/immigrant-detainees-new-sex-abuse-crisis> (accessed December 1, 2011); “Reducing rape behind bars,” Editorial, *The Washington Post*, November 27, 2011; see also “The Justice Department has a way to go on ending prison rape,” Editorial,

- On November 30th, former Commissioners of the National Prison Rape Elimination Commission submitted a letter to Secretary Janet Napolitano urging her to work with the Department of Justice (DOJ) to comply with the will of Congress and the recommendations of the Commission by recognizing application of the final PREA regulations to DHS facilities;
- On December 7th, PREA co-sponsors Reps. Frank Wolf and Robert C. “Bobby” Scott will be hosting a Congressional briefing on PREA and the crisis of sexual abuse in immigration detention.

Congress clearly intended that PREA protections apply to immigration detention facilities (please see, for example, the April 4, 2011, letter by Reps. Wolf and Scott stating this intent).³ Therefore, the February letter (attached) urged you to instruct DOJ to rectify this exclusion by covering immigration detention facilities in its final PREA regulations. The letter also asked you to instruct DHS to acknowledge that all immigrants in detention, regardless of where they are detained, should be protected under PREA rules. Uniform PREA protections—developed by a unanimous Congress and informed by the expertise of the National Prison Rape Elimination Commission—rather than a patchwork of unenforceable DHS standards, are indispensable to further the elimination of prison rape.

As the letter stated, “The exclusion of immigration detention from standards on preventing, detecting, and responding to sexual assault in custody is unjustifiable. It ignores the history of sexual assault in immigration detention [and] is inconsistent with the intent of PREA and the administration’s own efforts at detention reform.”

DOJ’s initial decision to exclude immigration detention facilities from PREA coverage has communicated a statement that immigrant detainees are less worthy of protection from rape.

We understand that the final PREA regulations are close to completion. We urge you to immediately instruct DOJ to cover immigration detention facilities in the final regulations and to instruct DHS to acknowledge that PREA applies to its facilities.

We hope to discuss this matter with your staff at their earliest convenience. Please feel free to have your staff contact Antonio Ginatta at Human Rights Watch, at 202.612.4343 or ginatta@hrw.org.

Sincerely,

Human Rights Watch

Advocates for Basic Legal Equality, Inc.

American Civil Liberties Union

The Washington Post, January 31, 2011; “Better Protecting Prisoners,” Editorial, *The New York Times*, April 6, 2011.

³ Letter available at

[http://wolf.house.gov/uploads/Ltr%20to%20AG%20Holder%20Respond%20to%20Prison%20Rape%20Docket%20No%20%20OAG-131%20\(2\).pdf](http://wolf.house.gov/uploads/Ltr%20to%20AG%20Holder%20Respond%20to%20Prison%20Rape%20Docket%20No%20%20OAG-131%20(2).pdf) (accessed December 7, 2011).

American Immigration Lawyers Association
Americans for Immigrant Justice, Inc.
America's Voice Education Fund
ASISTA Immigration Assistance
Ayuda
Detention Watch Network
Disciples Justice Action Network
End Violence Against Women International
Farmworker Justice
Friends Committee on National Legislation
Futures Without Violence
Heartland Alliance's National Immigrant Justice Center
Human Rights Campaign
Human Rights First
Iowa Coalition Against Sexual Assault
Just Detention International
Kansas Coalition Against Sexual and Domestic Violence
Lutheran Immigration and Refugee Service
Mennonite Central Committee, U.S. Washington Office
National Advocacy Center of the Sisters of the Good Shepherd
National Alliance to End Sexual Violence
National Asian Pacific American Women's Forum
National Center for Transgender Equality
National Council of La Raza
National Immigration Forum
National Women's Law Center
North Carolina Coalition Against Sexual Assault
Prison Fellowship
Refugee and Immigration Ministries of Disciples Home Missions, Christian Church (Disciples of Christ)
Service Employees International Union
Tahirih Justice Center
The United Methodist Church, General Board of Church and Society
Urban Justice Center