

June 13, 2012

The Honorable Janet Napolitano
Secretary of Homeland Security
US Department of Homeland Security
Washington, DC 20528

Re: Developing PREA standards for all immigration detainees

Dear Secretary Napolitano:

We write to provide our support for the development of comprehensive standards by the Department of Homeland Security (DHS) to implement the Prison Rape Elimination Act (PREA). As noted in the May 17th White House memorandum to the heads of executive departments and agencies, President Obama directed “all agencies with Federal confinement facilities that are not already subject to the Department of Justice’s final [PREA] rule to work with the Attorney General to propose, within 120 days of the date of this memorandum, any rules or procedures necessary to satisfy the requirements of PREA and to finalize any such rules or procedures within 240 days of their proposal.”

We are encouraged to hear from DHS that it plans to implement PREA through formal rulemaking. No internal policy or procedures would be sufficient to provide the protections detailed in PREA and reflected in the final Department of Justice (DOJ) standards.

We are also encouraged to hear that the regulations being developed by DHS will cover detainees in both Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) custody. ICE’s most recent Performance-Based National Detention Standards (PBNDS) are, of course, limited to ICE facilities and troublingly exempt short-term hold facilities from their sexual abuse prevention standards. This exemption violates the intent of PREA, which explicitly sought to cover lockups (see also the comprehensive final DOJ standards for lockups). ICE’s PBNDS, while an improvement over past ICE standards, fall short of the protections called for in PREA. The fact that the PBNDS are not in effect in all ICE facilities also leaves many ICE detainees without protections required by PREA.

As we recognize the compressed time frame faced by DHS for the development of its proposed standards, we would like to draw attention to some of our major concerns related to the development of these standards.

The comprehensive standards issued on May 17th are a product of almost a decade of work by the National Prison Rape Elimination Commission (NPREC) and the Department of Justice. There is no way that DHS will be able to duplicate the scope of this effort in one year. Because the PBNDS are not comprehensive and vary from the DOJ standards, they should not serve as the model for drafting regulations. **For these reasons, we urge DHS to use the DOJ standards as a template for its own standards.** There is no reason that the proposed DHS standards should not track closely to the DOJ standards, and there should be a strong presumption against varying from them. We also recommend that when DHS determines it is necessary to deviate from the DOJ final standards, it clearly justify the deviations to allow for informed and constructive commentary.

Closely hewing to the final DOJ standards would recognize how extensively NPREC and DOJ worked to develop the standards. It would also emphasize the importance of consistent treatment of

immigration detainees. Detainees are often transferred between facilities—they may be held through an Intergovernmental Service Agreement (IGSA) in a county jail that follows the DOJ PREA standards and then be transferred to dedicated immigration facilities that will soon apply DHS standards. Vastly different standards (for example, different grievance and reporting processes, screening, or staff training) between facilities that detain immigrants will undercut the protections of PREA. Detainees cannot be expected to be aware of shifting rights between facilities. As the National Sheriffs' Association advised Congress, "DHS PREA standards need to be consistent with [the Department of Justice's] PREA standards. This would ensure that there are not differing standards for jails based on where the federal, state, or local detainees are held, as well as help with the swift and successful implementation of final PREA standards."¹

Moreover, DHS holds many detainees in county jails through IGSA's. Yet PREA does not contain noncompliance sanctions for county jails that fail to adopt or implement rape elimination standards. Immigration detainees could therefore be completely excluded from PREA protections depending on the facility where they are held. DHS has the means to avoid this gap in protection. **DHS should propose a regulation stating that it will not contract with any facilities that do not implement DOJ PREA protections. In addition, DHS should include acceptance of its forthcoming PREA regulations as a condition of every contract renegotiation it undertakes, including those that precede issuance of the final rule.**

We would like to meet with you or your staff to discuss these recommendations in further detail, prior to the issuance of the Department's draft standards. Please have your staff contact Antonio Ginatta, US advocacy director at Human Rights Watch, at 202-612-4343.

Sincerely,

Human Rights Watch

American Civil Liberties Union

American Immigration Lawyers Association

Americans for Immigrant Justice, formerly Florida Immigrant Advocacy Center

Amnesty International

Asian American Institute, a member of the Asian American Center for Advancing Justice

Asian American Justice Center, a member of the Asian American Center for Advancing Justice

Blacks in Law Enforcement of America

BreakOUT!

Detention Watch Network

The Episcopal Church

The Fellowship of Affirming Ministries

Florida Coastal Immigration Rights Clinic

Franciscan Action Network

¹ Letter from the National Sheriffs' Association to Senators Patrick Leahy and Mike Crapo, February 1, 2012, <http://www.sheriffs.org/sites/default/files/uploads/documents/vawa%20reauthorization%20letter%20-%20senate.pdf> (accessed June 5, 2012).

Global Justice Institute
Heartland Alliance's National Immigrant Justice Center
Human Rights First
Illinois Coalition for Immigrant and Refugee Rights
Immigration Equality
International CURE
Iowa Coalition Against Sexual Assault
Just Detention International
Kids in Need of Defense
Las Americas Immigrant Advocacy Center
Latin American Association
Lutheran Immigration and Refugee Service
Metropolitan Community Churches
NAACP
National Center for Transgender Equality
National Gay and Lesbian Task Force
National Immigration Forum
National Immigration Law Center
NETWORK, A National Catholic Social Justice Lobby
Northwest Immigrant Rights Project
Peace Over Violence
Physicians for Human Rights
The Reformed Church of Highland Park, NJ
Rights Working Group
Sisters of Mercy Institute Justice Team
South Asian Americans Leading Together
Student Action with Farmworkers
Texas Association Against Sexual Assault
Transgender Law Center
United Methodist Church, General Board of Church and Society
Who Is My Neighbor? Inc.
Women's Refugee Commission

cc: Cecilia Muñoz, Director, White House Domestic Policy Council
Lynn Rosenthal, White House Advisor on Violence Against Women
Tyler Moran, Senior Advisor for Immigration Policy, White House Domestic Policy Council
John Morton, Director, ICE
John Sandweg, Senior Counselor to the Secretary, DHS
Seth Grossman, Chief of Staff, Office of the General Counsel, DHS