**Sexual Abuse and Immigration Detention Facilities**

Sexual abuse is a crisis among our nation’s immigration detainees that is not being adequately addressed. In 2003, Congress mandated that all U.S. confinement facilities implement significant changes to prevent and respond to sexual abuse. However, the risk of abuse faced by the tens of thousands of men, women, and children who are annually housed in immigration detention facilities continues because of inaction by a Department of Homeland Security (DHS) that is ignoring the intent of Congress.

**The Prison Rape Elimination Act (“PREA”) of 2003**

PREA, passed by a unanimous Congress and signed by President George W. Bush, is the first civil law addressing sexual abuse in detention. If fully implemented, PREA represents the best opportunity we have for ending sexual abuse in detention. Congress passed PREA with the clear intent to cover immigration detention facilities. PREA defines “prison” broadly:

The term “prison” means 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, and includes—

**(A)** any local jail or police lockup; and

**(B)** any juvenile facility used for the custody or care of juvenile inmates.[[1]](#footnote-1)

This intent was further evidenced by language in the House Judiciary Committee Report, statements from PREA’s lead co-sponsors (Senator Edward Kennedy, Representative Frank Wolf, and Representative Bobby Scott) and the inclusion of immigration detention facilities in a number or PREA mandated initiatives.[[2]](#footnote-2)

**Systemic Abuse in Immigration Detention Facilities**

Despite significant barriers to reporting sexual abuse, a small percentage of sexual abuse survivors in immigration detention have bravely stepped forward to report abuse.[[3]](#footnote-3) Some recent examples include: a 2010 Human Rights Watch report, *Detained and at Risk,* about sexual abuse in facilities across the nation, a 2011 multi-party complaint filed by the National Immigrant Justice Center which included several instances of sexual abuse, the ACLU of Arizona’s 2011 report, *In Their Own Words,* detailing a number of instances of sexual abuse in that state’s immigration detention facilities, the October 2011 *Frontline* program, *Lost in Detention¸* exposing abuses in immigration detention, and the ACLU of Texas’s recently announced a class-action suit against Immigration and Custody Enforcement (“ICE”) and the Corrections Corporation of America (“CCA”) on behalf of women who were sexually abused at the facility. This announcement included the revelation that the ACLU has uncovered nearly 200 recent reports of sexual abuse from immigration detention centers.

**DHS’s Inadequate Response to Sexual Abuse**

Despite Congress’s clear intent, DHS has yet to recognize that PREA is applicable to its ICE facilities (both those run by, and those under contract to, ICE). This lack of recognition has created confusion which risks preventing the full implementation of PREA. In February 2011, the Department of Justice (“DOJ”) published draft national standards mandated by PREA. Due in large part to confusion about PREA’s applicability to ICE facilities, the draft national standards did not include immigration detention facilities.

When asked about PREA’s applicability to DHS, Secretary Janet Napolitano generally fails to answer the question directly.[[4]](#footnote-4) Instead, she confirms that DHS has a zero-tolerance policy for sexual abuse and points to the Performance Based National Detention Standards (“PBNDS”) as the applicable vehicle enforcing that policy. This response is inadequate for a number of reasons.

**The Significant Deficiencies of the PBNDS**

First, DHS fails to disclose the PBNDS’s significant deficiencies. Currently, ICE facilities, and facilities under contract with ICE, are governed by a mix of the 2000 National Detention Standards, the 2008 PBNDS, and, for a minority of facilities, more current standards. Regrettably, these outdated detention standards include only minimal guidelines about preventing and responding to sexual abuse. Recognizing this, DHS has augmented the sexual abuse section in its proposed 2011 PBNDS. However, even these changes fall far short of PREA’s mandates.

For example, the proposed 2011 PBNDS lack a number of key provisions of DOJ’s draft national PREA standards. Specifically, the 2011 PBNDS fail to mandate that facilities allow for multiple routes for reporting sexual abuse (including reporting by a third party), lack sufficient provisions for confidential reporting and protection from retaliation, ignore the benefit that working with outside agencies provides – particularly when it comes to confidential support services, lack requirements for proper criminal investigations of assaults and specialized post-assault training for investigators and medical staff, ignore abusive use of administrative segregation in response to incidents of sexual abuse, and fail in part to address appropriate use of detainee screening, background checks for employees and applicants, and use of incident reviews, outside audits, and unannounced rounds to ensure proper policy implementation.

Further, these numerous deficiencies are only in comparison to DOJ’s draft national PREA standards. Advocates anticipate that DOJ’s final standards will incorporate a number of important changes. This means that the proposed 2011 PBNDS not only fall short of the draft national standards, but will actually fall even further below the effectiveness of the expected final set of standards published by DOJ.

Second, the PBNDS are inferior because, unlike PREA’s requirement that DOJ publish national standards as binding regulations, the PBNDS are simply agency policy. Therefore they were not adequately reviewed by the public, are not legally enforceable, and are inconsistently implemented at immigration detention facilities across the country. For instance, the Women’s Refugee Commission (WRC) reported violations of the PBNDS at every facility WRC staff have visited. Yet, without an enforcement mechanism, these violations persist without sufficient oversight.

Finally, the Secretary underplays the difficulties that DHS faces in ensuring that the proposed PBNDS are adopted. Originally titled the 2010 PBNDS, these updated standards are soon expected to be titled the 2012 PBNDS. The implementation of the standards and their inclusion in any new contracts with ICE has been delayed for almost two years due to opposition from the ICE union. The resulting delay, which shows no signs of ending, has resulted in great cost to those in immigration detention.

For these reasons, the most efficient means to address the ongoing, systemic sexual abuse of immigration detainees is for DHS to recognize that PREA’s mandates apply to it, as Congress intended, and for the administration to include immigration detention facilities within the scope of the final DOJ national PREA standards.

1. 42 U.S.C. 15609(7) [↑](#footnote-ref-1)
2. For example, the National Prison Rape Elimination Commission held a hearing on immigration detention facilities in 2006 and included documentation of sexual abuse in these facilities and supplemental recommended standards for preventing sexual abuse of immigration detainees. [↑](#footnote-ref-2)
3. Chief among the barriers detainees face is their unique relationship to the U.S. government. They are relying on the government to allow them to enter or stay in the U.S. so that they may escape persecution, remain with their family, and/or secure economic justice. This reliance makes immigration detainees particularly reluctant to report abuse, specifically abuse by facility staff, to authorities. This includes non-custodial government employees such as anonymous survey administrators. [↑](#footnote-ref-3)
4. Secretary Napolitano twice made this assertion recently: first, during the Senate Judiciary Committee DHS oversight hearing on October 19, 2011; second, during the House Judiciary Committee DHS oversight hearing on October 27, 2011. [↑](#footnote-ref-4)