



JUST DETENTION
INTERNATIONAL

RAPE IS NOT PART OF THE PENALTY

*Prepared for the United States Senate Judiciary Committee
Hearing on the Violence Against Women Act (VAWA)*

July 13, 2011

Just Detention International would like to thank Chairman Leahy and members of the Senate Judiciary Committee for holding this hearing, entitled “The Violence Against Women Act: Building on Seventeen Years of Accomplishments.” For your consideration, the following submission explains why it is imperative to apply the Prison Rape Elimination Act (PREA) of 2003 and its associated regulations (to be enacted pursuant to 42 U.S.C. § 15607) to Department of Homeland Security (DHS) detention facilities through the 2011 Violence Against Women Act Reauthorization (2011 VAWA Reauthorization). Specifically, this will protect women and other immigrants from sexual abuse while they are in the custody of Immigration and Customs Enforcement (ICE).

Just Detention International (JDI) is a health and human rights organization that seeks to end sexual abuse in all forms of detention. JDI is the only U.S.-based organization exclusively dedicated to ending this type of violence. Specifically, JDI works to ensure government accountability for prisoner rape; to transform ill-informed public attitudes about sexual violence in detention; and to promote access to resources for those who have survived this form of abuse. All of JDI’s efforts are guided by the expertise of men, women, and children who have endured sexual violence behind bars and who have been brave enough to share their experiences.

I. Introduction

In 2003, the United States Congress unanimously passed PREA and President Bush signed it into law to “establish a zero tolerance standard for the incidence of prison rape in prisons in the United States” and “make the prevention of prison rape a top priority in each prison system.”¹ PREA defines “prison” as “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.”² PREA charges the Attorney General with “adopting national standards for the detection, prevention, reduction, and punishment of prison rape” through the publication of the standards as a final rule.³

In his proposed final rule, the Attorney General has left a regrettable gap in the implementation of PREA by excluding ICE detention facilities from the regulations’ (and therefore, the law’s) scope. Such a narrow reading of PREA’s mandate leaves tens of thousands of women annually held in immigration detention facilities vulnerable to significant and preventable sexual abuse.

Such abuse runs counter not only to PREA but also to VAWA’s mandate to prevent sexual assault and provide resources for victims of this form of assault. Therefore, JDI is calling for the incorporation of specific language (attached at Appendix A) into the 2011 VAWA

¹ 42 U.S.C §15602 (1-2).

² 42 U.S.C. § 15609 (7) (*emphasis added*).

³ 42 U.S.C. § 15607 (a)(1).

Reauthorization process. This language will require the Department of Homeland Security and private operators of immigration detention facilities to comply fully with PREA and the national standards created to implement it.

II. Sexual Abuse in U.S. Immigration Detention

The Department of Justice has determined that sexual abuse in detention is a pervasive problem. The DOJ found that an estimated 200,000 prison and jail inmates and more than 17,000 juvenile detainees were sexually abused in U.S. facilities in 2008 alone.⁴ These shocking numbers only begin to illustrate the problem. Survivors of abuse are often assaulted relentlessly by a perpetrator and marked as fair game for attacks by other detainees and facility staff. In the aftermath of an assault, incarcerated survivors experience the same emotional pain as other victims, which is oftentimes exacerbated by prior trauma and their inability to control their daily surroundings. To compound the problem, few detainees have access to adequate – much less expert – medical and mental health services. In addition to the physical injuries that are often inflicted during an assault, prisoner rape survivors are at grave risk of contracting HIV and other sexually transmitted infections through sexual assault.⁵

Esmeralda Soto's experiences are unfortunately typical of those of sexual abuse survivors in immigration detention:

“On December 19, 2003, a few days after being transferred to the San Pedro detention center, I was taken to see my lawyer. Because she was with another client at the time, I was placed in a locked holding cell. While I waited in the cell an immigration officer came in with his pants unzipped and told me that “I was going to suck him off.” He checked the hall to make sure nobody was around, then re-entered the cell and forced me to perform oral sex. Once he was done, he put his finger to his mouth and ordered me not to tell anyone. He had ejaculated in my mouth, on my red detention uniform, and on the floor.

... To this day, the thought of what that immigration officer did to me makes me nauseous and fills me with fear, disgust and anger. It is difficult to comprehend how a federal employee who was supposed to maintain a secure environment for me while I was detained could abuse his authority in such a flagrant and appalling manner. In the holding room by myself, I had not felt unsafe because I knew my lawyer was in the next

⁴ U.S. Department of Justice, PREA Notice of Proposed Rulemaking, 76 FED. REG. 6249 (Feb. 3, 2011).

⁵ HIV and other sexually transmitted infections are significantly more prevalent in corrections settings than in the general population. *See, e.g.*, Laura Maruschak, Bureau of Justice Statistics, HIV in Prisons, 2007-08 3 (2010). (estimating HIV rate in U.S. prisons to be 2.4 times the rate in society); Scott A. Allen et al., *Hepatitis C Among Offenders—Correctional Challenge and Public Health Opportunity*, 67 Fed. Probation 22 (Sept. 2003) (finding that Hepatitis C rates were 8 to 20 times higher in prisons than on the outside, with 12 to 35 percent of prison cases involving chronic infection); *see also* Centers for Disease Control & Prevention, U.S. Dep't Health & Hum. Svcs., Sexually Transmitted Disease Surveillance 2007 89 (2008), available at <http://www.cdc.gov/std/stats07/Surv2007-SpecialFocusProfiles.pdf> (last accessed July 12, 2011).

room and there was an officer patrolling in the hallway. Little did I know that the person I needed to fear was an officer who was supposed to keep me safe, and that he would feel so confident that he could get away with raping me that he would do it with my legal counsel so close by.

After the assault, I was returned to the cell with the other transgender women. I immediately began to notice an air of hostility from the immigrations officers in the unit. They treated me as if I was a liar and blamed me for the dismissal of their coworker. I repeatedly asked to see a counselor because I needed to vent what I was feeling. I literally felt like I was going to explode. The officers continuously ignored or humiliated me, and looked upon me with what I felt was pure hatred. Meanwhile, the memory of the assault was killing me inside. I lost my appetite and could hardly stomach any food. I quit sleeping altogether and I slipped further and further into depression. Finally when I threatened to commit suicide, one of the other transgender detainees in the cell pleaded with an officer and convinced him that I desperately needed help.

Because there are no mental health providers at the San Pedro facility I was taken to the El Centro Detention Facility near San Diego, CA. Unfortunately, I was still not given counseling, or any lasting relief. The psychologist simply gave me three tranquilizers and sent me back to San Pedro. Eventually, the nurse at San Pedro did manage to prescribe me anti-depressants, and I was given sleeping aids.

Due to the negative attitudes that officials at the facility had taken toward me, my biggest fear at this point was that my application for asylum would be denied and I'd be deported back to Mexico. I felt a constant pressure to retract my complaint against the officer, but I really did not want to give in. I wanted to remain strong and show that I was not going to let myself be taken advantage of. ... I was eventually able to see a judge in my case and she granted me "withholding of removal." Today I live in Santa Ana, CA and am still struggling to let go of the horrible experiences I had at the San Pedro Service Processing Center."⁶

Immigration detainees tend to be among the most vulnerable to sexual abuse. Unlike criminal defendants, immigration detainees are civilly confined and have no right to an attorney. This lack of legal assistance makes it unlikely that survivors of sexual abuse in immigration detention have access to someone who is able to explain their rights and to advocate on their behalf.⁷ In addition, after being traumatized by a sexual assault, non-citizen detainees often have difficulty speaking out due to cultural isolation, past abuse by authority figures, language barriers, and limited literacy.

⁶ Elimination of Prison Rape: Immigration Facilities and Personnel/Staffing/ Labor Relations, Hearing before the National Prison Rape Elimination Commission (Dec. 13, 2006) (testimony of Mayra Soto). Since testifying before the Commission, Ms. Soto has changed her first name.

⁷ Clay McCaslin, "My Jailor is My Judge:" *Kestutis Zadvydas and the Indefinite Imprisonment of Permanent Resident Aliens by the INS*, 75 TUL. L. REV. 193, 224 (2000).

Moreover, immigration detainees are unique in that they are held by the very entity seeking to determine their legal status. Corrections departments that run prisons and jails play no role in prosecuting and sentencing a criminal defendant. ICE, however, has complete control over a detainee's initial determination of legal status, detention, and possible removal from the country. As a result, fearing the possibility of retaliatory removal, immigration detainees tend to be even less likely to challenge the conditions of their confinement than people held in criminal justice facilities.

Immigration detainees generally come from marginalized populations which are at greatest risk for sexual abuse. In particular, lesbian, gay, bisexual, and transgender (LGBT) individuals, youth, and detainees living with mental illness or disabilities are disproportionately targeted for sexual abuse.

The problem of sexual abuse in immigration detention has received increasing attention in recent years. In 2010, a transportation officer at the T. Don Hutto Detention Center in Texas (a Corrections Corporation of America (CCA) facility contracted exclusively with ICE) admitted to sexually assaulting numerous women detainees while transporting them to local airport and bus stations after they had been released on bond.⁸ Moreover, the National Prison Rape Elimination Commission,⁹ Human Rights Watch,¹⁰ and the Women's Refugee Commission¹¹ have all recently documented widespread sexual abuse in immigration detention facilities.

III. The Exclusion of ICE Facilities from the Prison Rape Elimination Act

In excluding immigration detention facilities from the scope of the PREA standards, the Attorney General asserted that the terms "prison" and "jail" do not encompass facilities used primarily for the civil detention of aliens pending removal from the U.S. As made clear in Section I above, this interpretation runs counter to PREA's plain language. Excluding immigration detention from PREA's protections and mandates contradicts the law's explicit intent. In accordance with the law's definition of "prison," the legislative history of PREA recognized the law's application to both criminal and civil detainees.¹² And, Senator Edward Kennedy, a lead co-sponsor of PREA,

⁸ Tricia Rosetty, *Former T. Don Hutto worker sentenced*, TAYLOR DAILY PRESS, Nov. 10, 2010.

⁹ NATIONAL PRISON RAPE ELIMINATION COMMISSION, FINAL REPORT, 174-88 (2009).

¹⁰ HUMAN RIGHTS WATCH, *DETAINED AND AT RISK: SEXUAL ABUSE AND HARASSMENT IN UNITED STATES IMMIGRATION DETENTION* (Aug. 2010), available at <http://www.hrw.org/en/reports/2010/08/25/detained-and-risk>, (last accessed July 12, 2011).

¹¹ WOMEN'S REFUGEE COMMISSION, *HALFWAY HOME: UNACCOMPANIED CHILDREN IN IMMIGRATION CUSTODY* (Feb. 2009), available at <http://www.rcusa.org/uploads/pdfs/Halfway%20Home%20WRC,%202-4-09.pdf> (last accessed July 12, 2011).

¹² U.S. House Committee on the Judiciary, *Report on the Prison Rape Reduction Act of 2003*, 108th Cong., 1st sess., 2003, H. Rept. 108-219, at 14, 115, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_reports&docid=f:hr219.108.pdf (last accessed July 12, 2011).

explicitly noted his satisfaction that the law would protect immigration detainees, in his remarks at the first hearing of the National Prison Rape Elimination Commission.¹³

Consistent with this history, federal entities charged with implementing PREA – in particular the National Prison Rape Elimination Commission and the Bureau of Justice Statistics – have included civil detention in their mandate. The Commission held a public hearing that focused on immigration detention, convened an expert working group on immigration detention, included a section on immigration detention in its final report, and proposed supplemental standards for facilities housing immigration detainees in its recommended adult prison and jail standards.¹⁴ The Bureau of Justice Statistics similarly included facilities run by Immigration and Customs Enforcement (ICE) in its collection of statistics on prisoner rape mandated by PREA. Beyond the urgent need for the standards in immigration detention facilities, where sexual abuse is rife, the DOJ’s problematic assertion that these facilities are beyond the scope of PREA will likely preclude further collection of vital data from these neglected facilities.

IV. Inclusion of PREA in 2011 VAWA Reauthorization Act

The Violence Against Women Act has, from the beginning, had strong, specific provisions addressing the specific needs of immigrant women. Through past reauthorization acts, these provisions have been modified to meet new or pressing needs. Sexual abuse of immigrant women in our nation’s immigration detention facilities is not a new issue but it is certainly a pressing one.

Failure to require ICE facilities and ICE contracted facilities to adhere to PREA and its regulations violates the basic spirit of the law. It also perpetuates the very type of violence that VAWA addresses. Further, the exclusion of immigration detention facilities from PREA’s mandates undermines the Administration’s own efforts to reform the immigration detention system.¹⁵ Notably, in response to sexual abuse perpetrated by the transportation officer at Hutto Detention Center, ICE requested a “PREA audit” of its CCA-contracted facilities. To assess

¹³ *The Cost of Victimization: Why Our Nation Must Confront Prison Rape, Hearing of the National Prison Rape Elimination Commission* (June 14, 2005) (testimony of Senator Edward M. Kennedy), available on-line at http://cybercemetery.unt.edu/archive/nprec/20090820160727/http://nprec.us/docs/SenatorEdwardKennedyRemarks_Vol_1.pdf (last accessed July 12, 2011).

¹⁴ 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, pp. 59-72 (June 2009), available at http://www.wcl.american.edu/nic/documents/NPREC_PrisonJailsStandards.pdf?rd=1 (last accessed July 12, 2011).

¹⁵ See, e.g., Dr. Dora Schriro, Immigration and Customs Enforcement, *Immigration Detention Overview and Recommendations* 22 (2009), available at <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf> (last accessed July 12, 2011) (“The system must make better use of sound practices such as . . . practices that comply with the Prisoner [sic] Rape Elimination Act.”); Nina Bernstein, *U.S. to Reform Policy on Detention for Immigrants*, N.Y. TIMES, Aug. 5, 2009 (quoting Assistant Secretary for ICE John Morton as seeking to work toward a “truly civil detention system” that would demonstrate greater respect for the dignity of individuals held in the agency’s custody).

these facilities' PREA readiness, the recommended standards were a key tool relied upon by the monitor who conducted those audits.¹⁶

If immigration facilities are excluded from the PREA standards, an immigration detainee in a local jail would be protected by PREA but would lose that protection if transferred to an ICE facility. It is inconceivable that Congress intended PREA protection for detainees to be a matter of luck, depending on the facility that happens to confine them.

Inclusion of the attached language in the 2011 VAWA Reauthorization Act will ensure that the promulgation of standards to protect detainees from sexual abuse is consistent with all other aspects of PREA implementation – where the Congressional intent to include immigration detention within the coverage of PREA has been clear throughout. JDI therefore calls upon the Senate Judiciary Committee to amend VAWA to require that the DHS and operators of immigration detention facilities comply fully with PREA in order to ensure that all detainees are protected from sexual abuse – no matter where they are detained.

¹⁶ This audit was conducted in the fall of 2010, and therefore the Department's proposed standards were not yet available. The auditors relied on the Commission's recommendations.