

November 23, 2011

The Honorable Janet Napolitano
Secretary of Homeland Security
3801 Nebraska Avenue, NW
Washington DC 20393

Dear Secretary Napolitano:

The undersigned organizations call on you to maximize efforts to end sexual abuse in immigration detention. We applaud your recent statements emphasizing the Department of Homeland Security's (DHS) zero-tolerance policy for sexual abuse. This policy provides a foundation for ending the sexual abuse and rampant fear of abuse experienced by far too many of the hundreds of thousands of people confined by DHS each year. Zero-tolerance is only meaningful, though, if it is fully and effectively implemented.

As you are well aware, sexual abuse in immigration detention ruins lives, destroys families, and reduces our standing as a safe refuge for persecuted people from around the world. For example, Esmeralda Soto fled persecution in Mexico where, among other abuses, she was raped in jail. Seeking safety in the United States, Ms. Soto was eventually held in a California immigration detention center where she was raped by a staff member. After reporting the sexual abuse, she was subjected to retaliation and pressured to recant her story. Kimberly Doe, a survivor of domestic violence, was being detained in an immigration detention center in Texas. After it was determined that she had a credible fear of persecution in her home country, Ms. Doe was able to post bond. As she was being driven to the airport upon release, she was sexually assaulted by the staff member driving the car. Too terrified to report the incident, she remained silent until another survivor came forward with her story of being assaulted by the same staff member.

As horrific as these reports of abuse are, many more instances of sexual abuse are never reported. In addition to those barriers that all survivors of sexual abuse in detention face, immigration detainees struggle with unique barriers that further reduce the likelihood of reporting. Many immigration detainees fear that reporting will harm their chances of staying in the U.S. Anxiety about being labeled a troublemaker, perceived as lesbian or gay, portrayed as sexually promiscuous, or removed from the country to cover-up the incident are all reasons why many survivors never report their abuse. In addition, immigrant detainees often have limited English proficiency and almost always are without legal counsel (84 percent of detainees lack an attorney). So, while reports of abuse are regularly uncovered, these reports represent only a fraction – likely a small fraction – of the actual number of people who are sexually abused while in DHS custody.

Substantive action must be taken promptly to end this crisis. In 2003, the U.S. Congress unanimously passed the Prison Rape Elimination Act (PREA). 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 in 42 U.S.C. § 15609(7):

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.

This intent is further evidenced by language in the House Judiciary Committee Report to PREA,ⁱ statements from PREA’s lead co-sponsors (Senator Edward Kennedy,ⁱⁱ Representative Frank Wolf,ⁱⁱⁱ and Representative Bobby Scott^{iv}), and the inclusion of immigration detention facilities in a number of PREA- mandated initiatives. To date, DHS has failed to recognize that its confinement facilities are governed by PREA. In order to carry out DHS’s zero-tolerance policy for sexual abuse in immigration detention effectively, you must acknowledge that PREA applies to all immigration detention facilities and take concrete steps to implement the law.

The most efficient way to implement PREA is to encourage the Attorney General to adopt the final rule mandated by PREA in a form that will apply the national standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse to all immigration detention facilities. Rejection of this application in favor of reliance on internal DHS policies will not end sexual abuse in immigration detention. Internal policies created without extensive public input lack the quality, durability, and enforceability of regulations. These policies are simply inadequate to address the systemic problem of sexual abuse in immigration detention

Secretary Napolitano, your commitment to public safety and violence prevention is well known. Your leadership is now needed to end sexual abuse in immigration detention swiftly and effectively. The best way to do that is to recognize PREA’s applicability to immigration detention facilities and to be prepared for swift implementation of the Attorney General’s national standards once they are published.

The undersigned organizations are more than happy to meet with you about the role of PREA in ending sexual abuse in immigration detention. Please contact Christopher Daley of Just Detention International at 202-506-3374 or cdaley@justdetention.org with any questions about this letter or to arrange a meeting.

Sincerely,

Just Detention International
AIDS Foundation of Chicago
American Civil Liberties Union
Concho Valley Rape Crisis Center
Dallas Area Rape Crisis Center
East Texas Crisis Center
Eastland County Crisis Center

Family Crisis Center (Harlingen, TX)
Family Crisis Center of the Big Bend, Inc
Freedom House (Weatherford, TX)
FORGE
Fort Bend County Women's Center
Hays-Caldwell Women's Center
Heartland Alliance's National Immigrant Justice Center
Highland Lakes Family Crisis Center
HIV Law Project
HIV Prevention Justice Alliance
Human Rights Campaign
Human Rights Watch
Immigration Equality Action Fund
International CURE
Juvenile Law Center
MensWork: eliminating violence against women
National Center for Lesbian Rights
National Center for Transgender Equality
National Coalition of Anti-Violence Programs
Partnership for Safety and Justice
Prison Fellowship Ministries
The Rape Crisis Center (San Antonio, TX)
SafePlace (Austin, TX)
SAFE-T (Mt. Pleasant, Texas)
Sexual Trauma and Assault Response Services (El Paso, TX)
Southern Baptist Ethics & Religious Liberty Commission
Transgender Law Center
The Women's Center (Ft. Worth, TX)
Women's Refuge Commission

ⁱ House of Representatives Committee on the Judiciary, Report on the Prison Rape Reduction Act of 2003, 108th Cong., 1st sess. (2003); H.R. Rep. No. 108-219, at 14, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_reports&docid=f:hr219.108.pdf

ⁱⁱ 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.

ⁱⁱⁱ Reps. Frank Wolf and Bobby Scott, Letter to Attorney General Holder (April 4, 2011), 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)

^{iv} Committee Report, *supra*, at 115 (prepared statement).