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December 4, 2011

## **A Broken, Dangerous System**

After reports of chronic abuses — of detainees beaten and sometimes left to die of untreated injuries and illness — the Obama administration in 2009 vowed an overhaul of the nation's immigration detention system, the sprawling patchwork of prisons and prison-like institutions that confines nearly 400,000 people a year as they await deportation or asylum.

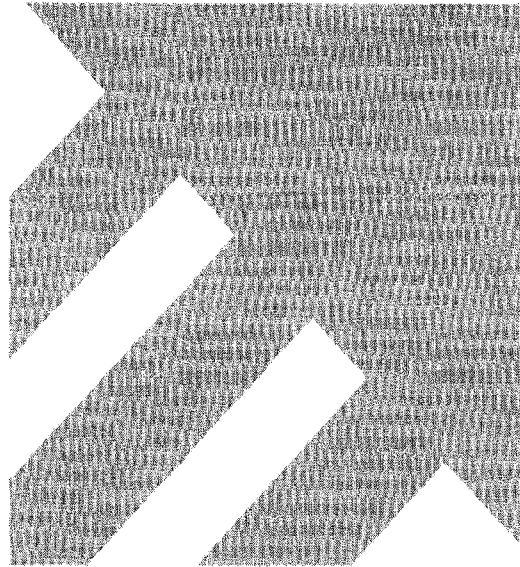
“The paradigm was wrong,” Homeland Security Secretary Janet Napolitano said then, acknowledging that detention centers operated too much like correctional institutions and that the majority of detainees are not being held as criminals and pose no threat. She promised to make the system less penal, with greater freedom and dignity for those in it.

Despite that vow, the last two years have seen only meager progress toward reform. Detainees are not being punished for crimes, but according to a recent report by Human Rights First, half of them are still being held in jails, the same proportion as in 2009. And while Immigration and Customs Enforcement has begun to develop some less-restrictive facilities, those will house fewer than 15 percent of detainees. The rest will remain in a world of prison uniforms and barbed wire. New standards to guide officials in making reforms have not yet been developed.

Many critics have also noted the woeful absence of legal protections and transparency in the system, which railroads detainees through overloaded immigration courts, often without representation.

A recent American Civil Liberties Union report, based on documents obtained through the Freedom of Information Act, uncovered almost 200 accusations of sexual abuse of immigrant detainees. The A.C.L.U. has urged the Department of Justice to abandon a proposed rule that would exempt immigration detention centers from the Prison Rape Elimination Act, a federal law that sets standards for detecting and preventing sexual abuse of people in custody.

The federal government needs to make good on its promises to reform its detention centers and to make far greater use of alternatives for people who pose no danger. Detainees should have more access to the courts to challenge their detention, and rigid laws that demand automatic or mandatory detention should be revised. The paradigm is wrong. The system is dangerously broken.



**JUST DETENTION**  
INTERNATIONAL

RAPE IS NOT PART OF THE PENALTY

Comments Submitted to the Department of Justice  
Notice of Proposed Rulemaking on  
National Standards to Prevent, Detect, and Respond  
to Prison Rape

Docket No. OAG-131; AG Order No. 3244-2011

April 4, 2011

**Appendix C**

***List of Provisions in the Department of Justice's  
Proposed National Standards to Prevent, Detect, and Respond to Prison Rape  
that are Missing from Immigration and Customs Enforcement's  
Proposed 2010 Performance-Based National Detention Standards (PBNDS) Provision 2.11<sup>e</sup>***

1. PBNDS 2.11 does not detail how a detainee can report abuse. As a result, it is unclear whether there are multiple reporting options (§ 115.51) or if any of them accommodate inmates with special needs (§ 115.15). PBNDS 2.11 also does not provide for third party reporting (§ 115.54).
2. PBNDS 2.11 does not provide for agreements with outside public entities and community service providers (§ 115.22), nor do detainees have access to confidential support services (§ 115.53).
3. PBNDS 2.11 does not provide for confidential staff reporting (§ 115.51(d)), nor does it detail staff responsibilities in the aftermath of a report, other than to say staff should follow facility policies (§§ 115.61-115.63).
4. Aside from stating that retaliation will not be tolerated, PBNDS 2.11 does not detail any efforts that must be made to ensure that retaliation does not occur. (§ 115.65)
5. PBNDS 2.11 does not detail who conducts criminal investigations and, if facility officers are not empowered to do so, what the policy is for contacting the appropriate legal authority and ensuring that criminal and administrative investigations are coordinated. (§ 115.23 and § 115.71). The PBNDS also does not provide for detainees to be informed of key actions in an investigation/prosecution (§ 115.73).
6. There is no specialized training for investigative and medical/mental health staff in the PBNDS 2.11 (§ 115.34 and § 115.35).
7. The screening portion of PBNDS 2.11 does not include the risk factors delineated in § 115.41.
8. PBNDS 2.11 does not discuss how screening information would be used (§ 115.42), particularly (a) whether a detainee's own assessment of vulnerability will be given serious consideration and (b) whether there will be a case-by-case assessment for transgender or intersex detainees to consider whether placement in a facility for male or female detainees would best ensure the health and safety of the detainee without imposing undue management or security problems.

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<sup>e</sup> While ICE's 2010 Performance-Based National Detention Standards are not yet publicly available, they were leaked to the Houston Chronicle in October 2010 and temporarily made available on its webpage.

9. PBNDS 2.11 does not provide for incident reviews (§ 115.86) or outside audits (§ 115.93).
10. PBNDS 2.11 does not cover background checks for staff in hiring and promotion decisions (§ 115.16).
11. PBNDS 2.11 does not provide for unannounced rounds conducted by intermediate or higher supervisors in facilities with more than 500 inmates (§ 115.13(d)).
12. While the PBNDS states that there should be a sexual assault coordinator at each facility, it does not provide for an upper-level agency-wide PREA coordinator (§ 115.11(b)).
13. The use of protective custody as a means of protecting detainees (§§ 115.43, 115.66) is not sufficiently addressed in PBNDS 2.11.



# Documents Obtained by ACLU Show Sexual Abuse of Immigration Detainees Is Widespread National Problem

October 19, 2011

**ACLU of Texas Today Files Federal Lawsuit on Behalf of Women Assaulted at T. Don Hutto Detention Center**

FOR IMMEDIATE RELEASE

CONTACT: (212) 549-2666; [media@aclu.org](mailto:media@aclu.org)

NEW YORK – Documents obtained by the American Civil Liberties Union through the Freedom of Information Act provide a first-ever window into the breadth of the national problem of sexual abuse of detainees in immigration detention facilities. The ACLU is making information from the documents public for the first time today, in concert with the filing by the ACLU of Texas of a federal class-action damages lawsuit on behalf of three immigrant women 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 along with numerous others who experienced similar trauma.

Government documents obtained by the ACLU contain nearly 200 allegations of sexual abuse of immigration detainees jailed at detention facilities across the nation since 2007 alone. The documents were obtained from the Department of Homeland Security's Office of Inspector General, Office of Civil Rights and Civil Liberties and ICE. While the information gleaned from the documents likely does not represent the full scope of the problem given that sexual abuse is notoriously underreported, the documents nonetheless make clear that the sexual abuse of immigration detainees is not an isolated problem limited to a few rogue facilities or to a handful of bad-apple government contractors who staff some of the nation's immigration jails. According to the documents, while facilities in Texas are the focus of more allegations by far than any other state, sexual abuse allegations have come from nearly every state in the nation that houses an immigration detention facility.

"It is clear there is an urgent need for the government to recognize just how pervasive a problem the sexual abuse of immigration detainees is and take immediate steps to fix the problem and ensure that everyone in the government's care is protected," said David Shapiro, staff attorney with the ACLU National Prison Project. "The detainees in immigration detention are a particularly vulnerable population. Even one incident of sexual abuse is one too many."

Defendants named in the ACLU of Texas lawsuit include three ICE officials; Williamson County, Texas; Corrections Corporation of America (CCA), the nation's largest private prison company that manages the Hutto facility; the former facility administrator for Hutto; and Donald Dunn, a guard who pleaded guilty in state court to three counts of official oppression and two counts of unlawful restraint based on his assaults of five women. Separately, Dunn has been charged with four additional federal counts of criminal violation of civil rights and is awaiting sentencing on two of them.

The three named plaintiffs are identified in the lawsuit as Sarah Doe, Kimberly Doe and Raquel Doe to protect them from further harm. All three were seeking asylum in the United States, fleeing sexual assault

and extreme violence in their home countries.

“The fact that these women sought sanctuary in the United States – only to find abuse at the hands of officials they thought would protect them – is wholly inconsistent with America’s self-proclaimed reputation as a beacon of human rights and protector of human dignity,” said Lisa Graybill, legal director for the ACLU of Texas.

The assaults occurred when Dunn alone was transporting women from the Hutto facility to the airport or bus station in nearby Austin. Log books and other documents obtained by the ACLU of Texas indicate that in addition to the seven known occasions on which Dunn is believed to have assaulted a total of nine women, at least 20 different male guards transported at least 44 female detainees alone between December 2008 and May 2010. The lawsuit alleges that ICE, Williamson County and CCA were deliberately indifferent and willfully blind to the fact that Dunn and other employees regularly violated the rule that detainees not be transported without another escort officer of the same gender present.

“Unfortunately, we believe these complaints are just the tip of the iceberg,” said Mark Whitburn, senior staff attorney for the ACLU of Texas. “Government records reveal that since 2007, 185 complaints have been made to the Department of Homeland Security about sexual abuse in ICE custody, 56 of which were from facilities in Texas. Immigrants in detention are uniquely vulnerable to abuse, and those holding them in custody know it. Many do not speak English, many – like our plaintiffs – have fled violence in their home countries and are terrified of being returned. They may not be aware of their rights or they may be afraid to exercise them.”

An ACLU website launched today devoted to the problem of sexual abuse in immigration detention, including an interactive map depicting information obtained through the ACLU’s FOIA documents as well as information about the ACLU of Texas lawsuit can be found at: [www.aclu.org/sexual-abuse-immigrant-detention](http://www.aclu.org/sexual-abuse-immigrant-detention)

A special blog series on immigration detention beginning today on the ACLU’s Blog of Rights and running through the month of October can be found at: [www.aclu.org/blog/tag/End%20ICE%20Abuse](http://www.aclu.org/blog/tag/End%20ICE%20Abuse)

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