



UNITED STATES

Detained and at Risk

Sexual Abuse and Harassment in United States
Immigration Detention

HUMAN
RIGHTS
WATCH



Detained and at Risk

Sexual Abuse and Harassment in United States Immigration Detention

Copyright © 2010 Human Rights Watch
All rights reserved.
Printed in the United States of America
ISBN: 1-56432-676-4
Cover design by Rafael Jimenez

Human Rights Watch
350 Fifth Avenue, 34th floor
New York, NY 10118-3299 USA
Tel: +1 212 290 4700, Fax: +1 212 736 1300
hrwnyc@hrw.org

Poststraße 4-5
10178 Berlin, Germany
Tel: +49 30 2593 06-10, Fax: +49 30 2593 0629
berlin@hrw.org

Avenue des Gaulois, 7
1040 Brussels, Belgium
Tel: + 32 (2) 732 2009, Fax: + 32 (2) 732 0471
hrwbe@hrw.org

64-66 Rue de Lausanne
1202 Geneva, Switzerland
Tel: +41 22 738 0481, Fax: +41 22 738 1791
hrwgva@hrw.org

2-12 Pentonville Road, 2nd Floor
London N1 9HF, UK
Tel: +44 20 7713 1995, Fax: +44 20 7713 1800
hrwuk@hrw.org

27 Rue de Lisbonne
75008 Paris, France
Tel: +33 (1)43 59 55 35, Fax: +33 (1) 43 59 55 22
paris@hrw.org

1630 Connecticut Avenue, N.W., Suite 500
Washington, DC 20009 USA
Tel: +1 202 612 4321, Fax: +1 202 612 4333
hrwdc@hrw.org

Web Site Address: <http://www.hrw.org>



Detained and at Risk

Sexual Abuse and Harassment in United States Immigration Detention

Summary	1
Methodology	2
Background.....	3
International and US Law and Standards	5
Known Incidents and Allegations.....	8
Texas.....	8
Florida	10
Washington State	11
Arizona.....	12
New York	12
New Jersey.....	13
Wisconsin.....	13
California.....	13
Challenges in Policy, Implementation, and Oversight	15
An Inadequate Response to Sexual Abuse and Harassment.....	16
Unrestricted Searches	17
Transportation Policy Failures.....	17
Redress	18
Oversight and Accountability.....	19
Recommendations.....	21
To the Department of Homeland Security.....	21
To Immigration and Customs Enforcement.....	21
To the Department of Justice.....	23
To the US Congress.....	23
Acknowledgments.....	24

Summary

In May 2010, reports surfaced that Immigration and Customs Enforcement (ICE) was investigating allegations that a guard at the T. Don Hutto Residential Center, an immigration detention center in Texas, had sexually assaulted several female detainees.¹ The guard, who was arrested on August 19, 2010 on suspicion of official oppression and unlawful restraint, allegedly groped women while transporting them to an airport and a bus station where they were being released.² While largely covered in the media as an isolated incident, this is only the latest in a series of assaults, abuses, and episodes of harassment that have quietly emerged as a pattern across the rapidly expanding national immigration detention system. Due to a shortage of publicly available data and the closed nature of the detention system, the extent to which ICE detainees are subject to sexual abuse nationwide is unclear, but the known incidents and allegations are too serious and too numerous to ignore. They point to an urgent need for investigation and for swift action to correct glaring gaps in detention policy, practice, and oversight.

The allegations of abuse at Hutto are all the more disturbing because of where they occurred. One year ago, in August 2009, the Obama administration announced plans to overhaul the immigration detention system. Hutto was a model for the detention reform plan that followed. Previously a family detention facility,³ Hutto was to become an all-female detention center.⁴ It was to be an example of the enhanced oversight ICE planned, and the “softer”

¹ Suzanne Gamboa, “ICE investigating alleged sexual assault of detainees,” *Associated Press*, May 28, 2010; Julian Aguilar, “A Private-prison Employee Is Accused of Assault,” *Texas Tribune*, June 1, 2010; Seth Fred Wessler, “Sex Assault Charges Back in ICE Detention Centers,” *Colorlines*, June 3, 2010, http://colorlines.com/archives/2010/06/immigration_and_customs_enforcement_announced.html (accessed July 15, 2010).

² Isadora Vail, “Former supervisor charged in sexual assaults of detainees,” *Austin American-Statesman*, August 20, 2010, <http://www.statesman.com/news/local/former-supervisor-charged-in-sexual-assaults-of-detainees-869333.html> (accessed August 20, 2010); “Detention officer admits groping women,” *KXAN.com*, August 19, 2010, <http://www.kxan.com/dpp/news/local/williamson/detention-officer-admits-groping-women> (accessed August 19, 2010);

³ From May 2006 to September 2009, the T. Don Hutto Residential Center was one of two facilities used by Immigration and Customs Enforcement (ICE) as housing for families in the agency’s custody. During that time, Hutto was the subject of litigation over detention conditions and the site of multiple protests by groups objecting to the detention families. When ICE decided to cease using Hutto to hold families, ICE expedited processing of the cases there and families there were deported, released into the US (permanently or pending the outcome of their immigration case), or transferred to the much smaller Berks Family Residential Center in Pennsylvania, now the only facility that ICE uses to hold families. For further background on ICE family detention, see Women’s Refugee Commission, *Locking up Family Values: The Detention of Immigrant Families*, February 2007, http://womensrefugeecommission.org/component/docman/doc_download/150-locking-up-family-values-the-detention-of-immigrant-families-locking-up-family-values-the-detention-of-immigrant-families?q=locking+family+values (accessed August 6, 2010).

⁴ ICE, US Department of Homeland Security (DHS), 2009 Immigration Detention Reforms Factsheet, August 6, 2009, http://www.ice.gov/pi/news/factsheets/2009_immigration_detention_reforms.htm (accessed August 6, 2010).

form of detention that was to reflect the non-criminal nature of immigration custody.⁵ The detention reform announcements also identified the agency's response to sexual abuse as an area for improvement. A report by detention expert Dora Schriro, which formed the basis for the reforms, stated: "The system must make better use of sound practices such as ... practices that comply with the Prisoner Rape Elimination Act."⁶

A year later, the alleged sexual assault of women at Hutto serves as a stark reminder of how far detention reform has yet to progress. While ICE has made significant steps towards reform—including drafting new detention standards with the input of immigrant and detainee rights advocates—further steps, including publication of those standards and improvements in oversight and accountability to see that they are implemented, are still needed to ensure the safety and fair treatment of immigrants in detention.

Methodology

In researching this report, Human Rights Watch gathered reported incidents and allegations of sexual assault, abuse, and harassment in ICE detention from a range of sources, including press reports, governmental and nongovernmental studies, a public hearing, court documents, and Human Rights Watch interviews. The research focused solely on reports and allegations of incidents since 2003, when ICE assumed control of immigration detention functions from the Immigration and Naturalization Service. Secondary accounts were collected primarily through a search of news and legal databases and through consultations with immigrants' rights advocates. Information was also drawn from two interviews that Human Rights Watch conducted in April and May 2008 with individual women detainees about the medical care they received in detention and about their other detention-related concerns. To protect their privacy and alleviate concerns regarding retaliation, Human Rights Watch assured women that their real names and the potentially identifying details of their interview would not appear in our report. For this reason, the names of all women interviewed have been replaced with pseudonyms, and the exact dates and precise locations of the interviews have been withheld. For all of the included incidents and allegations, we have included the country of origin of the detainee or detainees whenever it was publicly available.

⁵ ICE, DHS, T. Don Hutto Residential Center Factsheet, March 24, 2010, <http://www.ice.gov/pi/news/factsheets/huttofactsheet.htm> (accessed August 6, 2010).

⁶ Dora Schriro, ICE, DHS, "Immigration Detention Overview and Recommendations," October 6, 2009, http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf (accessed July 15, 2010), p. 22.

Background

ICE oversees the fastest-growing incarceration system in the United States. In the 2009 fiscal year, 383,524 people were detained for various lengths of time over the course of the year, a 64 percent increase over 2005.⁷ The detention system has an average daily population of over 31,000, of whom women constitute 9 percent.⁸ Detained for alleged civil—not criminal—violations of US immigration law, they include asylum seekers, undocumented immigrants, legal permanent residents convicted of certain crimes, refugees who the US had accepted for resettlement but who did not apply for permanent residency in time, and even US citizens whose citizenship the government disputes. In addition, they may be victims of trafficking,⁹ survivors of sexual assault and domestic violence, pregnant women, and nursing mothers.¹⁰ While in ICE custody, they are held in a detention system that includes service processing centers operated directly by ICE, contract detention facilities managed by private companies, bed space at state and county jails in agreements with ICE, and facilities run by the federal Bureau of Prisons. While the average person is detained 30 days,¹¹ for some, detention can last years.

This report gathers more than 15 separate documented incidents and allegations of sexual assault, abuse, or harassment from across the ICE detention system, involving more than 50 alleged detainee victims. This accumulation of reports indicates that the problem cannot be dismissed as a series of isolated incidents, and that there are systemic failures at issue. At the same time, the number of reported cases almost certainly does not come close to capturing the extent of the problem. Victims of abuse in detention face a range of obstacles and disincentives to reporting, from a lack of information about rules governing staff conduct, to fear of speaking out against the same authority that is seeking their deportation,

⁷ Transactional Records Access Clearinghouse (TRAC), Syracuse University, “Detention of Criminal Aliens: What Has Congress Bought?”, <http://trac.syr.edu/immigration/reports/224/> (accessed July 15, 2010).

⁸ Dora Schriro, “Immigration Detention Overview and Recommendations,” p. 6.

⁹ See Human Rights Watch, “US: Victims of Trafficking Held in ICE Detention,” Letter to the US Department of State on 2010 Trafficking in Persons Report, April 19, 2010, <http://www.hrw.org/en/news/2010/04/19/us-victims-trafficking-held-ice-detention> (accessed August 20, 2010).

¹⁰ In a November 2007 directive, then Assistant Secretary Julie Myers instructed ICE Field Offices to consider paroling all nursing mothers who did not meet the criteria for mandatory detention and who did not present a national security risk. Memorandum from Julie L. Myers, assistant secretary, ICE, to all field office directors and all special agents in charge, ICE, November 7, 2007. Nonetheless, two nursing mothers who spoke with Human Rights Watch in April and May of 2008 had entered detention since the directive despite being eligible for parole under its guidelines. Human Rights Watch, *Detained and Dismissed: Women’s Struggles to Obtain Health Care in United States Immigration Detention*, March 17, 2009, <http://www.hrw.org/en/reports/2009/03/16/detained-and-dismissed-0> (accessed July 15, 2010), pp. 55-56.

¹¹ *Ibid.*

to trauma from the abuse in detention and possibly from violence and other abuse they have previously suffered in their countries of origin.¹² Most immigration detainees do not have legal representation, which may also inhibit their ability to report and seek redress for abuses of their rights in detention.

To date, the government has not published statistics that comprehensively focus on the problem of sexual abuse in immigration detention. The Prison Rape Elimination Act (PREA) mandated the Bureau of Justice Statistics (BJS) to collect data on sexual abuse in custodial settings for each calendar year, following the act's passage in 2003. BJS has included 14 facilities run by or exclusively for ICE in its Survey on Sexual Violence in Correctional Facilities, which collects reports of sexual violence from administrative records. The 2004 survey reported six allegations of sexual violence for the reporting year.¹³ The 2005 survey reported an estimated two substantiated incidents of sexual violence nationally; the 2006 survey estimated a single substantiated incident.¹⁴ BJS also included 957 ICE detainees from five facilities run by or exclusively for ICE in the second National Inmate Survey (NIS-2), which collects information on these issues directly from individuals in custody. The results of the NIS-2 are expected to be published in late August 2010.

However, because both these surveys focus on facilities run by or exclusively for ICE, they do not shed light on the incidence of sexual violence, abuse, and harassment of immigration detainees in the hundreds of jails and contract facilities in which ICE rents a portion of the bed space. This is a notable omission, both because of the number of such facilities used by ICE and because the rates of substantiated sexual violence are four to five times higher in state prisons, local jails, and privately operated jails, than in federal prisons, according to the 2006 BJS survey.¹⁵ The Department of Homeland Security, the agency in charge of immigration detention, is not mandated under law to publish data on sexual violence, and has not done so. In consultations regarding this report, an ICE official said that the agency would consider publishing such information in the future.¹⁶

¹² See National Prison Rape Elimination Commission Report, June 2009, <http://www.ncjrs.gov/pdffiles1/226680.pdf> (accessed August 9, 2010) pp. 176-78.

¹³ Bureau of Justice Statistics, US Department of Justice, "Sexual Violence Reported by Correctional Authorities, 2004," July 2005, <http://bjs.ojp.usdoj.gov/content/pub/pdf/svrcao4.pdf> (accessed July 29, 2010), p.5.

¹⁴ Bureau of Justice Statistics, US Department of Justice, "Sexual Violence Reported by Correctional Authorities, 2006," August 2007, <http://bjs.ojp.usdoj.gov/content/pub/pdf/svrcao6.pdf> (accessed July 29, 2010), p.4.

¹⁵ Ibid.

¹⁶ Human Rights Watch interview with Andrew Lorenzen-Strait, chief public engagement officer, Office of State and Local Coordination, ICE, August 18, 2010.

International and US Law and Standards

International treaties ratified by the United States prohibit the mistreatment of individuals in government custody. Under the International Covenant on Civil and Political Rights (ICCPR), ratified by the US in 1992, “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”¹⁷ The Human Rights Committee, which oversees the implementation of the ICCPR, has explained that detained persons retain all of the rights in the covenant, subject only to “the restrictions that are unavoidable in a closed environment.”¹⁸ This includes the right to freedom from torture and ill-treatment. The Convention against Torture, which the US ratified in 1994, states that governments are responsible for not only acts of torture committed by government officials, but also those committed with their acquiescence.¹⁹ In reviewing US compliance with the treaty, the Committee against Torture has expressed concern about “reliable reports of sexual assault of sentenced detainees, as well as persons in pretrial or immigration detention,” and recommended the government ensure that “allegations of violence in detention centres are investigated promptly and independently, perpetrators are prosecuted and appropriately sentenced and victims can seek redress, including appropriate compensation.”²⁰

In addition to addressing the general prohibition on rape and sexual assault of persons in detention, international human rights authorities have specifically addressed the subject of body searches in custody. The Human Rights Committee has determined that preserving prisoners’ rights to privacy necessitates that body searches by government authorities or

¹⁷ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, art. 10(1).

¹⁸ UN Human Rights Committee (HRC), “Replaces general comment 9 concerning humane treatment of persons deprived of liberty,” General Comment No. 21, U.N. Doc. A/47/40 (1992), [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3327552b9511fb98c12563ed004cbe59?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3327552b9511fb98c12563ed004cbe59?Opendocument) (accessed October 10, 2008), para. 3.

¹⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by the United States on October 21, 1994, art. 1, 16(1).

²⁰ CAT, “Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Conclusions and Recommendations of the Committee against Torture, United States of America,” CAT/C/USA/CO/2, May 18, 2006, <http://www.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.U.SA.CO.2.pdf> (accessed June 16, 2006), para. 32.

medical personnel should only be conducted by persons of the same sex.²¹ Under the UN Standard Minimum Rules for the Treatment of Prisoners, women prisoners are to “be attended and supervised only by women officers.”²²

International law also affirms the right of prisoners to medical care that is at least comparable to the care and services available to those who are at liberty, which includes care after a rape. The principle of equivalence, articulated in the Basic Principles for the Treatment of Prisoners, adopted by the UN General Assembly in 1990, holds that “Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.”²³ Further, the Convention on the Elimination of All Forms of Discrimination against Women,²⁴ which the US has signed but not ratified, has been interpreted by its monitoring committee to require governments to “establish or support services for victims of family violence, rape, sex assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counseling.”²⁵

Like international law, the US Constitution and federal law contain particular protections for individuals in state custody. The Eighth Amendment prohibits cruel and unusual punishment, which has been interpreted to include deliberate indifference by prison officials to the rape and sexual assault of prisoners.²⁶ Immigration detainees, who are in administrative custody, are protected from such treatment under the Fifth Amendment’s restrictions on the handling of individuals in legal procedures.²⁷ In addition, the Fourth Amendment’s privacy protections

²¹ General Comment 16 to Article 17, “Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies,” U.N. Doc. HRI/GEN/Rev.1, July 29, 1994.

²² United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977, Rule 53(3).

²³ Basic Principles for the Treatment of Prisoners, adopted December 14, 1990, G.A. Res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990), art. 9. See also UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted December 18, 1982, G.A. Res. 37/194, principle. 1.

²⁴ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981.

²⁵ UN Committee on the Elimination of Discrimination against Women, “Violence against Women,” General Recommendation No. 19, UN Doc. A/47/38 (1992), <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> (accessed October 10, 2008), para. 24(k).

²⁶ *Farmer v. Brennan*, 511 U.S. 825 (1984).

²⁷ While the standard of treatment in the immigration detention context under the Fifth Amendment continue to be defined, federal case law has largely established that it at least prohibits conduct that would violate the Eighth Amendment in the prison context. *Jones v. Blanas*, 393 F.3d 918, 931-934 (9th Cir. 2004). See also *Hydrick v. Hunter*, 500 F.3d 978, 994 (9th Cir. 2007) (summarily reversed on other grounds in *Hunter v. Hydrick*, 129 S. Ct. 2431, 174 L. Ed. 2d 226 (2009)) (finding that “the

are relevant to practices that may facilitate the sexual harassment of individuals in custody. Federal courts have held that those privacy protections prohibit male guards from strip-searching female prisoners,²⁸ conducting intrusive pat-frisks,²⁹ or engaging in inappropriate visual surveillance.³⁰ Federal law contains specific criminal penalties for both sexual assault of federal prisoners and detainees and any sexual contact with detained persons by guards in federal facilities.³¹

Recognizing an urgent need to proactively combat sexual abuse in custodial settings, Congress passed the Prison Rape Elimination Act in 2003.³² The act establishes a plan for assessing the extent of rape in custodial settings and for scaling up the government's prevention and response efforts. The act created a commission of experts tasked with studying the problem and developing recommended standards for use in prisons, jails, and detention centers. In June 2009, the commission published its findings and recommendations, including sections specific to immigration detention.³³ While PREA mandated that the Department of Justice (DOJ) issue standards within a year of receiving the commission's recommendations, DOJ has yet to do so.

Eighth Amendment provides too *little* protection for those whom the state cannot punish"); *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000) (holding that the same standard applies to immigration detainees as to pre-trial detainees). But see *Medina v. O'Neill*, 838 F.2d 800, 803 (5th Cir. 1988).

²⁸ *Hardin v. Stynchcomb*, 691 F.2d 1364 (11th Cir. 1982), *rehearing denied*, 696 F.2d 1007 (11th Cir. 1983); *Canedy v. Boardman*, 16 F.3d 183 (7th Cir. 1994).

²⁹ *Jordan v. Gardner*, 986 F.2d 1521 (9th Cir. 1993); *Smith v. Fairman*, 678 F.2d 52 (7th Cir. 1982); *Madyun v. Franzen*, 704 F.2d 954 (7th Cir. 1983), *cert. denied*, 464 U.S. 996 (1983).

³⁰ *Fortner v. Thomas*, 983 F.2d 1024 (11th Cir. 1993); *Cookish v. Powell*, 945 F.2d 441 (1st Cir. 1991); *Cumbey v. Meachum*, 684 F.2d 712 (10th Cir. 1982); *Lee v. Downs*, 641 F.2d 1117 (4th Cir. 1981).

³¹ 18 U.S.C.A. § 2243(b) (Lexis 2010).

³² Prison Rape Elimination Act of 2003, Pub. L. 108-79, 117 Stat. 972 (2003), 42 U.S.C.A. §§ 15601-09 (Lexis 2010).

³³ National Prison Rape Elimination Commission Report, June 2009, <http://www.ncjrs.gov/pdffiles1/226680.pdf> (accessed July 19, 2010).

Known Incidents and Allegations

The recent allegations of sexual abuse in detention are far from unprecedented. The summaries below reflect complaints of abuse from detention facilities around the country, including from Texas, Florida, New York, California and Washington State. While most of the reported incidents have involved the abuse of female detainees, including transgender women, men have also reported sexual abuse. The reports highlighted here occurred since the formation of ICE in 2003, however, reports of problems of sexual abuse in detention date back to ICE's predecessor agency, the Immigration and Naturalization Service.³⁴

Texas

Five women detained at the Port Isabel Service Processing Center in Texas were assaulted in 2008 when then-guard Robert Luis Loya entered each of their rooms in the detention center infirmary, where they were patients, told them that he was operating under physician instructions, ordered them to undress, and touched intimate parts of their bodies. In April 2010, just one month prior to the most recent alleged assaults at Hutto, a federal judge sentenced Loya to three years in prison to be followed by community supervision for the assaults against the female immigration detainees.³⁵ According to the Department of Justice, Loya, who had been employed by a private contractor to work at the facility, admitted to sexually touching the five women. He stated in his guilty plea that he sought out duty in the detention center's medical unit in order to gain access to the medical isolation rooms. The known assaults occurred in March and April of 2008, but Loya had worked as a guard for six-and-a-half years before he was dismissed when these assaults came to light.

In May 2007, when Hutto still functioned as a family detention center, a young boy was sleeping in a crib inside his mother's cell when a guard entered and had sexual contact with her. Video surveillance captured the guard, employed by private contractor Corrections Corporation of America (CCA), crawling out of the cell in the middle of the night in an

³⁴ See e.g., Women's Commission for Refugee Women and Children (now Women's Refugee Commission), *Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center* (October 2000); FIAC, *INS Detainees in Florida: A Double Standard of Treatment* (December 2001); FIAC, *INS Detainees in Florida: A Double Standard of Treatment (Supplement)* (January-April 2002); Mark Dow, *American Gulag*, 2004, University of California Press, Berkeley and Los Angeles, CA, pp. 3, 52, 143, 239.

³⁵ Department of Justice, Office of Public Affairs, "Detention Officer Sentenced for Repeated Sexual Abuse of Detainees," April 7, 2010, <http://www.justice.gov/opa/pr/2010/April/10-crt-380.html> (accessed July 15, 2010).

apparent failed attempt to evade security cameras.³⁶ CCA fired the guard, but he never faced criminal prosecution by either state or federal authorities. According to an ICE spokesperson, the police investigation concluded that the sexual contact had been consensual.³⁷ In any Bureau of Prisons facility in the US, the same incident would have constituted a crime because federal law criminalizes sexual contact between guards and those in their custody.³⁸ However, at the time, that particular provision of the federal criminal code applied only to facilities under the authority of the Department of Justice. Immigration facilities had been under the authority of the DOJ until 2003, but then authority passed to the newly created Department of Homeland Security. Consequently, the statutory provision did not cover sexual misconduct in ICE facilities at the time of the incident at Hutto. Later in 2007, a legislative amendment was passed to make the provision cover all federal facilities.³⁹

The South Texas Detention Complex in Pearsall, Texas has also been dogged by reports of sexual abuse of detainees.⁴⁰ In 2008, media outlets reported detainees attesting to frequent sexual abuse. One such report stated that documents obtained through a Freedom of Information Act request described an investigation into an alleged assault of a detainee from Mexico by a private security guard which led to his firing but did not result in prosecution.⁴¹ According to the report, the documents also said that another detainee had reported multiple sexual assaults.⁴²

In the summer of 2009, the Women's Refugee Commission received numerous reports of sexual assault at the Willacy Detention Center in Raymondville.⁴³ In at least one case, a lawsuit was filed by the victim, who was transferred to the Port Isabel center after the allegations were made. The allegations received by the Women's Refugee Commission

³⁶ Tessa Moll, "Crime without punishment: Sexual assault at T. Don Hutto falls through cracks of justice system," *Taylor Daily Press*, January 21, 2008, <http://www.detentionwatchnetwork.org/node/526> (accessed July 15, 2010).

³⁷ Patricia J. Rutland, "WilCo's Latest Snafu," *Austin Chronicle*, November 2, 2007, <http://www.austinchronicle.com/gyrobase/Issue/story?oid=oid%3A556552> (accessed July 15, 2010).

³⁸ 18 U.S.C.A. § 2243(b) (Lexis 2010).

³⁹ Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, Div E, Title V, 121 Stat. 2082, § 554, Dec. 26, 2007.

⁴⁰ Brian Collister, "Claims of Sexual at Immigration Facility," *WOAI.com*, May 6, 2008, <http://detentionwatchnetwork.org/node/862> (accessed July 15, 2010); Brian Collister, "Guards Confirm Sexual Assault Claims at Immigrant Prison," *WOAI.com*, May 16, 2008, <http://www.texascivilrightsproject.org/?p=242> (accessed July 15, 2010); Brian Collister, "More Sex Assault Allegations at Immigrant Detention Center," *WOAI.com*, December 29, 2008, <http://www.woai.com/content/troubleshooters/story/More-Sex-Assault-Allegations-at-Immigrant/ZzejwXKFKoCoNC8ihzKAug.csp> (accessed July 15, 2010).

⁴¹ Brian Collister, "More Sex Assault Allegations at Immigrant Detention Center," *WOAI.com*, December 29, 2008.

⁴² *Ibid.*

⁴³ Email communication from Michelle Brané, detention and asylum program director, Women's Refugee Commission, to Human Rights Watch, August 1, 2010.

included not only assaults by guards on women, but also one alleged incident in which a guard locked a female detainee in a room with a male detainee to whom he “owed a favor,” so that he could rape her. These reports came from various sources, including former staff at the facility who wished to remain anonymous. These alleged incidents were reported to Dora Schriro in August of 2009 and she responded by immediately going to Willacy herself to investigate and conduct interviews.

Children, too, have apparently been subject to alleged abuse in Texas immigration detention facilities, although their care is overseen by the US Department of Health and Human Services (DHHS), rather than ICE. Nine Central American children, one of whom was identified as 16 years old, reported sexual and physical abuse while in the custody of Texas Sheltered Care, a facility in Nixon, Texas, contracted by DHHS.⁴⁴ According to claims submitted in a lawsuit, the children were fondled, groped, and forced to perform oral sex on one guard, and some were beaten by other guards. Although one guard was eventually prosecuted and convicted of sex abuse, the suit claims that the children’s allegations were initially met with retaliation and cover-up attempts by facility officials. Children who complained were reportedly transferred punitively to other facilities, denied food, made to sleep on the ground, and deprived of access to medical care.

Florida

In September 2007, a female detainee was being transported between two Florida detention facilities when the ICE agent transporting her took her to his home and raped her. “I was scared for my life,” the woman said in an interview with *The Miami Herald*. “He had a gun. He’s a big man, and I was in his custody. I expected him to protect me, not to take advantage of me.”⁴⁵ The woman, a mother of two and a 12-year resident of the US originally from Jamaica, told another detainee at the second facility what had happened and that detainee told the authorities. The ICE agent, Wilfredo Vazquez, was fired and brought up on federal charges for the assault. In 2008, Vazquez and the prosecution reached an agreement that dropped the more severe charge of aggravated sexual abuse but in which he was sentenced to more than seven years in prison for sexual abuse.⁴⁶

⁴⁴ Hernán Rozemberg, “Children claim repeated sex abuse,” *San Antonio Express-News*, February 16, 2008.

⁴⁵ Alfonso Chardy and Jay Weaver, “Agent charged with raping woman,” *The Miami Herald*, November 17, 2007.

⁴⁶ Jay Weaver, “Ex-ICE agent: I had sex with immigration detainee,” *The Miami Herald*, April 4, 2008, <http://www.detentionwatchnetwork.org/node/808> (accessed July 15, 2010).

Michelle N.,⁴⁷ a trafficking victim, was sexually assaulted in 2007 in a Florida jail in which ICE had a contract for bed space.⁴⁸ At this facility, immigration detainees were housed in the same dormitory as individuals arrested on criminal charges. Another detainee told her attorney that women held on criminal charges had sexually abused Michelle N. while she was partially incapacitated by sedatives, which had been prescribed by the jail health staff for her mental health concerns. Michelle’s attorney immediately reported the allegations to the jail and to ICE in writing. Although the jail moved Michelle to another dormitory, the authorities did not contact the attorney and, to the attorney’s knowledge, did not take any further action.

Washington State

Two detainees at the Northwest Detention Center in Tacoma, Washington, reported to student, faculty, and nongovernmental organization researchers that they experienced sexual harassment. The harassment included one guard asking about detainees’ sexual activity and referring to their genitals, and another making perceived advances on a detainee and rubbing the detainee’s buttocks “in an effort to ‘wake him up.’”⁴⁹ The incidents were documented in a July 2008 report by the Seattle University School of Law International Human Rights Clinic and OneAmerica based on interviews with detainees between September 2007 and April 2008. The report also discussed complaints from five detainees about strip searches, some of which took place following attorney visits. One female detainee quoted in the report said, “Here we were stripped completely naked, a female officer told me to open my legs wide and she peeped into my vagina and later, she asked me to turn my back-side and expose my anus [by separating the cheeks with her hands], I was told to cough several times while in this position—with the officer looking at my private parts. We were forced to subject ourselves to this dehumanizing treatment. For several days afterward I wept and have continued to have nightmares about this treatment.”⁵⁰

⁴⁷ Michelle N. is a pseudonym used to protect the woman’s privacy.

⁴⁸ Human Rights Watch telephone interview with Florida attorney, June 29, 2010.

⁴⁹ Seattle University School of Law International Human Rights Clinic and OneAmerica, “Voices from Detention: A Report on Human Rights Violations at the Northwest Detention Center in Tacoma, Washington,” July 2008, <http://www.law.seattleu.edu/documents/news/archive/2008/DRFinal.pdf> (accessed July 15, 2010), p.43.

⁵⁰ *Ibid.*, p. 44.

Arizona

In mid-2006, Lydia S.,⁵¹ a 41-year-old domestic violence survivor and mother of two, was being held by ICE in a contracted detention center in Arizona.⁵² Also contracted to other government agencies, the detention center accepted a large transfer of prisoners in criminal custody from California during Lydia's period of detention. The facility transferred the criminal justice prisoners into the same dormitory that housed the ICE detainees. When the prisoners arrived, the guards conducted a search for contraband that still made Lydia shudder when she recounted it in an interview with Human Rights Watch two years later. She said that the guards required everyone in the dorm, including the immigration detainees who had already been in custody in the center, to strip completely naked and walk in a circle in front of the female guards. Lydia resisted but was commanded by one of the guards to remove her clothes. After walking in a circle, the women were instructed to bend over and cough to determine whether they were carrying drugs. The indignity of the search deeply upset Lydia and led her to withdraw from engaging with facility staff. "I didn't file a request for two whole weeks," she said. "All I could do was cry. I was in shock."

Rose L.,⁵³ held by ICE for over 14 months in 2007 and 2008, was called three times for vaginal examinations by a particular male member of the medical staff at a detention facility in Arizona.⁵⁴ On none of the occasions had she complained of a gynecological problem, and on none was a nurse present when the male staff member conducted the exam. She told Human Rights Watch that she and six other detainees who had similar experiences filed a grievance. "I decided I'm going to grieve that man because I felt like he is truly hurting my pride as a woman," she said. The grievance was effective in the immediate term: she reported that two days later, he was fired and escorted from the building. However, nothing further was done to follow up with her about the effect the abuse had on her.

New York

In the course of a confidential assessment by the American Bar Association, two detainees at a Queens detention facility reported that a guard "displayed extremely unprofessional behavior towards detainees over a period of several years, including taking some of his clothes off and simulating sexual acts with detainees, stating jocularly that he wanted to have sex with detainees, and cursing routinely in his speech. When detainees complained,

⁵¹ Lydia S. is a pseudonym used to protect the woman's privacy.

⁵² Human Rights Watch interview with Lydia S. (pseudonym), Arizona, May 2008.

⁵³ Rose L. is a pseudonym used to protect the woman's privacy.

⁵⁴ Human Rights Watch interview with Rose L. (pseudonym), Arizona, May 2008.

the [facility] tour commander and security chief dismissed the concerns, stating that [the officer] was crazy and that they could not help.”⁵⁵ Neither the detainees’ grievance lodged with the facility nor the copy directed to the DOJ received a response. The detainees’ allegations became public in a July 2009 report from the National Immigration Law Center that revealed information from hundreds of documents obtained through discovery in litigation with the government, including the previously confidential ABA assessment from 2004.⁵⁶

New Jersey

Immigration detainees at the Hudson County Correctional Center reported to DHS inspectors that a guard used a camera phone to take pictures of them leaving the shower and the bathroom and when they were sleeping.⁵⁷ After receiving the reports from the detainees in July 2005, the DHS Office of Inspector General interviewed the officer, who denied the allegations, and referred the incident to the ICE Office of Professional Responsibility.

Wisconsin

A Thai woman detained on immigration charges at a Wisconsin jail was sexually assaulted by other detainees but received no help from the jail guards to whom she reported the abuse, according to a 2007 briefing paper prepared by the National Immigrant Justice Center, which provided the woman with legal representation.⁵⁸ The center reports that the woman was unable to tell her attorney of the assaults for three months because the jail did not give her the opportunity to have a private telephone conversation. During that time, the guards did not provide her with help to escape the abuse, even after one incident led to her hospitalization.

California

Before a hearing of the National Prison Rape Elimination Commission in December 2006, Mayra Soto (whose name is now Esmeralda Soto) testified about her experience being

⁵⁵ *Ibid.*, p. 63.

⁵⁶ National Immigration Law Center, et al., “A Broken System: Confidential Reports Reveal Failures in U.S. Immigrant Detention Centers,” July 2009, <http://www.nilc.org/immlawpolicy/arrestdet/A-Broken-System-2009-07.pdf> (accessed July 15, 2010).

⁵⁷ Office of Inspector General, DHS, “Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities,” December 2006, <http://trac.syr.edu/immigration/library/P1598.pdf> (accessed August 13, 2010), p. 29.

⁵⁸ National Immigrant Justice Center, Briefing Paper for the United Nations Special Rapporteur on the Rights of Migrants re: The Situation of Women Detained in the United States, April 16, 2007, http://www.immigrantwomennetwork.org/Resources/Briefing%20Paper_Women%20in%20Detention_UN%20Special%20Rapporteur%202007%2004%2017%20FINAL.pdf (accessed July 15, 2010).

sexually assaulted and otherwise mistreated as a transgender woman in ICE custody.⁵⁹ Soto was detained at the San Pedro Service Processing Center in December 2003. While she waited in a holding cell to speak with her attorney, she said a guard came in and forced her to perform oral sex on him. He left for a short time and then came back and commanded her to do it again.

In her testimony about the assault, Soto emphasized the trauma caused by not just the assault, but by the events that followed her reporting of it. She said she continued to have flashbacks of having to wait overnight to wash out her mouth because of delays in arranging for evidence collection. The distress and depression she experienced following the assault went largely untreated and she had difficulty eating and sleeping. She felt hostility and pressure to retract her accusation from the other guards at the detention center. The guard who assaulted her was fired, but took a plea in the criminal case, resulting in a sentence of just six months, plus probation.

When she was detained again at the same facility in May 2005, following her deportation and subsequent return to the US, she was told that another transgender detainee who had been released had been mistaken for her and murdered in apparent retribution for the rape charges brought against the guard. When Soto was detained this second time, the facility housed her in a unit with the general male population, where she was subject to sexual harassment. After being physically injured in a fight between two detainees who claimed to “own her,” she was placed in protective custody. The protection, however, amounted to solitary confinement.

In another incident, a woman detained at a contract facility run by CCA in San Diego reported being raped by a guard while on work detail.⁶⁰ According to the Office of the Inspector General at DHS, which documented the report in an audit of five facilities published in December 2006, the guard was fired following an investigation, but the Department of Justice declined to pursue criminal charges.⁶¹ The audit also found a complaint from December 2004 alleging that a guard had conducted a “physically abusive ‘pat down’ search that was followed up by a strip search conducted within view of other detainees.”⁶²

⁵⁹ Mayra Soto, Testimony before the National Prison Rape Elimination Commission Testimony, Los Angeles, December 13, 2006, <http://www.justdetention.org/en/NPREC/esmeraldasoto.aspx> (accessed July 15, 2010).

⁶⁰ Office of Inspector General, DHS, “Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities,” December 2006, p. 28.

⁶¹ Ibid.

⁶² Ibid.

Challenges in Policy, Implementation, and Oversight

ICE has made substantial improvements in its response to sexual assault and abuse, particularly in the past three years. In developing the 2008 Performance-Based National Detention Standards for its detention facilities, ICE included for the first time a standard on sexual assault and abuse prevention and intervention.⁶³ The standard required screening detainees to identify those with a history of abuse, providing detainees with an orientation to sexual assault policies, reporting and investigating all allegations of sexual abuse, and providing medical treatment and forensic examinations to victims of abuse. Since drafting this new standard, ICE has worked on revising it, taking into account the recommendations of the National Prison Rape Elimination Commission and of NGOs. ICE has been especially active in soliciting input from the NGO community on this issue since the reports of sexual assault at Hutto came out in May 2010. As a result of these efforts, a much-improved sexual assault standard is expected to be published in the fall of 2010, along with other revised detention standards. ICE anticipates that by winter implementation will have commenced in the top 22 facilities that house the majority of the agency's population.⁶⁴

Among the improvements expected in the new standard are the expectation that facilities show zero tolerance for sexual abuse, more thorough requirements for data collection and reporting, and the addition of emergency contraception (EC) to the guidelines for the facility medical response. This latter issue is also to be addressed in a newly created women's health standard. The creation of a standard on women's health represents a major step forward in ICE's response to the needs of women in the agency's custody. It should be noted, however, that sexual assault victims transported outside the facility for specialized care will only have access to EC "as available," which will restrict access when victims are taken to hospitals that do not provide the intervention. This could arise in the case of certain hospitals that object on religious grounds to providing EC. Human Rights Watch interviewed a woman in 2008 who had been taken to a hospital and then to a separate clinic for emergency contraception after she was apprehended by ICE following an assault crossing the border.⁶⁵ Taking such steps to ensure access to EC for sexual assault victims should be required of all detention centers.

⁶³ ICE/DRO Detention Standard No. 14, "Sexual Abuse and Assault Prevention and Intervention," December 2, 2008, http://www.ice.gov/doclib/PBNDs/pdf/sexual_abuse_and_assault_prevention_and_intervention.pdf (accessed July 15, 2010).

⁶⁴ Human Rights Watch interview with Andrew Lorenzen-Strait, ICE, August 18, 2010.

⁶⁵ Human Rights Watch interview with Suana Michel, Q. (pseudonym), New York, July 2008.

As detailed below, ICE has agreed to revise its search and transportation policies to address concerns regarding safety in those contexts. Although further policy changes are in order, taken together, the changes expected in the new standards have the potential to greatly enhance the prevention of and response to sexual abuse in ICE custody.

However, these improvements will only be effective if and when they are implemented. ICE has not yet published the standards and once they are published, plans to roll them out gradually. This will mean that some facilities could remain without any standard for some time, as some facilities still operate under the 2000 standards, which did not include a standard on sexual assault. Further, in the long term, improved policies will have little impact if detainee safety remains compromised by inadequate opportunities for detainees to seek redress and insufficient oversight of the detention system. Highlighted below are areas in which there is a continuing need for improvement in ICE's response to sexual assault, abuse, and harassment.

An Inadequate Response to Sexual Abuse and Harassment

ICE fails to fully inform detainees about the rules governing sexual misconduct and sexual harassment. Although federal law now criminalizes sexual contact between guards and detainees, the prohibition on such conduct is far from clear at the facility level. Advocates report that detainees sometimes deny knowledge of sexual misconduct at their facility, but will refer to “alliances” between detainees and guards based on sexual relationships. The National Detainee Handbook developed by ICE does not define sexual abuse or sexual harassment. ICE has informed Human Rights Watch that it plans to revise the detainee handbook to state in plain language the agency’s “zero tolerance” for abuse.⁶⁶

Sexual harassment receives sparse and inconsistent treatment in current ICE materials. In some instances, the definition of sexual harassment is limited to actions or communications “aimed at coercing or pressuring a detainee to engage in a sexual act.”⁶⁷ This fails to encompass egregious acts of harassment—humiliating comments of a sexual nature or

⁶⁶ Human Rights Watch interview with Andrew Lorenzen-Strait, ICE, August 18, 2010.

⁶⁷ The 2008 ICE/DRO detention standard on sexual abuse defines detainee-on-detainee sexual abuse or assault as including “the use of threats, intimidation, inappropriate touching, or other actions and or communications by one or more detainees aimed at coercing and or pressuring another detainee to engage in a sexual act.” No mention of communications is made in the definition of staff-on-detainee sexual abuse or assault, which focuses on sexual acts, the touching of intimate parts, or the attempt of either. ICE/DRO Detention Standard No. 14, “Sexual Abuse and Assault Prevention and Intervention,” pp. 4-5. However, in Appendix C to the standard, which is intended for posting in housing units for immigration detainees, “staff sexual misconduct” is defined as including “indecent, profane or abusive language or gestures and inappropriate visual surveillance of detainees.” ICE/DRO Detention Standard No. 14, “Sexual Abuse and Assault Prevention and Intervention,” p. 16.

unnecessary viewing of detainees while they undress—that are not directed towards instigating a sex act. The new detention standard on sexual assault prevention and response will incorporate a definition of sexual harassment that covers indecent, profane or abusive language or gestures and inappropriate visual surveillance of detainees.⁶⁸

Unrestricted Searches

In spite of the non-criminal nature of immigration detention, ICE has adopted a policy that imposes few limitations on guards' authority to search detainees and, consequently, opens up unnecessary opportunities for abuse of that authority. To conduct a pat-down search of a detainee, a guard need not meet any threshold of suspicion of contraband; it is contemplated that these searches will be conducted routinely.⁶⁹ ICE insists this policy is necessary to give facilities flexibility in maintaining security.⁷⁰ Currently, although cross-gender strip searches are only permitted in emergency situations, no restriction is placed on cross-gender pat searches.⁷¹ However, ICE has said that the new detention standards will prohibit cross-gender pat searches and will allow trans-gender detainees to select the gender of the guard searching them.⁷²

Transportation Policy Failures

Sexual assault of detainees in the course of transportation has now been reported on at least two occasions. While ICE attributed the most recent incident during transportation from Hutto to a failure to follow ICE policies, those policies are themselves insufficient. Despite appeals from advocates that the transportation standard be amended to require that a female guard be present during transportation of female detainees, the existing standard has only required that transporting guards call in the time and mileage they spend transporting a female detainee.⁷³ ICE has announced that the new standard will prohibit a single guard from transporting a single detainee of the opposite sex, but will not require the presence of a guard of the same-sex unless it is expected that a search of the detainee will be conducted during the transport.⁷⁴ The agency says that it cannot require a guard of the

⁶⁸ Human Rights Watch interview with Andrew Lorenzen-Strait, ICE, August 18, 2010.

⁶⁹ ICE/DRO Detention Standard No. 13, "Searches of Detainees," December 2, 2008, http://www.ice.gov/doclib/PBND/ pdf/searches_of_detainees.pdf (accessed July 15, 2010), p.4.

⁷⁰ Human Rights Watch interview with Andrew Lorenzen-Strait, ICE, August 18, 2010.

⁷¹ Ibid.

⁷² Human Rights Watch interview with Andrew Lorenzen-Strait, ICE, August 18, 2010.

⁷³ ICE/DRO Detention Standard No. 3, "Transportation (By Land)," December 2, 2008, http://www.ice.gov/doclib/PBND/ pdf/transportation_by_land.pdf (accessed July 15, 2010), p.4.

⁷⁴ Human Rights Watch interview with Andrew Lorenzen-Strait, ICE, August 18, 2010.

same gender be present in all transports because of an Equal Employment Opportunity Commission ruling that found such a policy constitutes gender discrimination.⁷⁵

Redress

The existing and forthcoming ICE standards on sexual assault provide for facility staff to report allegations of sexual abuse to ICE for administrative investigation and to appropriate law enforcement authorities for criminal investigation. However, before allegations can be reported to higher authorities they have to be reported in the first instance by the detainees. Creating safe spaces for detainees to report abuse is critical for assessing the extent of abuse and, most importantly, for ensuring that individual survivors can seek safety and get access to needed medical, psychological, and legal services. ICE informs detainees in its handbook of multiple ways of reporting abuse, including by calling a toll free number for the Office of the Inspector General.⁷⁶ However, certain key avenues for reporting abuse are flawed. For example, detainees at times have to seek out grievance forms from guards overseeing their care, who may be the ones responsible for abuse or may be perceived as posing a threat of retaliation. Detainees who do use facility grievance systems to complain about detention conditions and related issues report that responses are frequently delayed and often unsatisfactory, reducing confidence in the system.⁷⁷ In the fall of 2010, ICE plans to review the grievance system in consultation with an advisory committee composed of nongovernmental organizations.⁷⁸

Moreover, all of the authorities to whom detainees are told they can report are part of, or contracted by the government. ICE has begun to encourage facilities to cooperate with community service providers, such as local rape crisis centers, in sexual assault and abuse prevention and intervention efforts. An ICE internal working group on the agency's victim assistance program will be looking at ways to expand collaboration with providers.⁷⁹ To make these partnerships effective, ICE leadership should require facilities to permit community service providers access to facilities so that they can conduct sexual assault awareness activities and can serve as an additional, independent point of contact for

⁷⁵ Human Rights Watch interview with Andrew Lorenzen-Strait, ICE, August 18, 2010. The Equal Employment Opportunity Commission decision is *Regina Pratt v. Department of Homeland Security*, EEOC Appeal No. 0720050059 (February 23, 2007), request for reconsideration denied, EEOC Request No. 0520070398 (May 3, 2007).

⁷⁶ ICE Office of Detention and Removal Operations, National Detainee Handbook, February 2009, http://www.ice.gov/doclib/pi/dro/nat_det_hndbk.pdf (accessed July 15, 2010), pp. 8-9.

⁷⁷ Human Rights Watch, *Detained and Dismissed*, pp. 40-42.

⁷⁸ Human Rights Watch interview with Andrew Lorenzen-Strait, ICE, August 18, 2010.

⁷⁹ *Ibid.*

detainees who need services or wish to report abuse. They should have opportunities to speak with detainees in private so that they can confidentially ask them about their treatment at the facility. The community service providers can then work with individual detainees on bringing the abuse to the appropriate authorities.

An additional deficiency in ICE's response to sexual abuse is the lack of standardized procedures for ensuring that, once abuse is reported, the victims of the abuse and any witnesses are not deported. In addition to taking measures in the short term to prevent immediate deportation, ICE should make victims aware that they may be eligible to apply for a U-visa, which allows for crime victims to remain in the United States and cooperate with law enforcement authorities. As recently as the May incident at Hutto, advocates have faced difficulties in establishing that affected detainees were informed of and given access to this avenue of relief. ICE indicated that this concern has been noted and that discussions are taking place within the Department of Homeland Security on how to address this in the future.⁸⁰

Oversight and Accountability

An overextended, decentralized system of detention subject to few external controls continues to put the safety of immigration detainees at risk. The numerous different types of facilities used—to which differing detention standards can apply and over which ICE has varying degrees of control—have posed a major obstacle to effective monitoring and oversight of conditions. Further, a detainee may be moved through a succession of facilities with different procedures, heightening the risk that an episode of abuse will go undetected. Human Rights Watch has documented the frequent transfers of immigration detainees across long distances, which undermine access to legal counsel and to family.⁸¹ Removing these support structures can damage not just a detainee's immigration case, but also his or her ability to challenge abuses within detention.

Following extensive criticism of the immigration detention system and the scattered network facilities it includes, ICE has explored options for enhancing its control over conditions at facilities used by the agency. These efforts have included employing contractors to conduct assessments of facility compliance with detention standards, staffing the 40 facilities holding the most ICE detainees with detention monitors (first contracted monitors, then

⁸⁰ Ibid.

⁸¹ Human Rights Watch, *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States*, December 2, 2009, <http://www.hrw.org/node/86789> (accessed July 15, 2010).

federal officials), and concentrating detainees in fewer facilities to allow for closer oversight. It is notable, however, that the recent incident at Hutto took place in spite of these efforts.

ICE's efforts have focused on enhancing its own oversight, but as advocates have noted, the agency has resisted opening up the detention system to external oversight. Most notably, ICE has refused to issue legally binding regulations governing detention conditions, stating that the flexibility of standards allows for meaningful change.⁸² However, regulations would provide stronger protection for detainees and enhance their ability to seek redress for violations in courts of law. Further, the limited access to facilities available to outside community service providers and advocacy groups contributes to making the detention system a place where abuses can be hidden until, often, the victims are shipped away.

⁸² Human Rights Watch interview with Andrew Lorenzen-Strait, ICE, August 18, 2010.

Recommendations

To the Department of Homeland Security

- **Institute legally binding detention standards applicable across all types of immigration detention facilities.** Issue regulations with standards for conditions of detention in ICE custody, so that the standards have the force of law.
- **Appoint a Prison Rape Elimination Act coordinator.** Augment the capacity of the Office of Civil Rights and Civil Liberties by establishing a position dedicated to implementation of the Prison Rape Elimination Act. One function of such a position would be to coordinate trainings for ICE headquarters, field office, and detention facility staff.
- **Publish information on reported incidents of sexual assault.** DHS should also cooperate with the Bureau of Justice Statistics on research into the prevalence of sexual assault and abuse, and make the findings publicly available.

To Immigration and Customs Enforcement

- **Ensure that reports of sexual abuse are thoroughly investigated.** Investigations should include an inquiry into the actions or failures to act by all ICE employees and contractors responsible for that facility. Without compromising victim confidentiality, the results and progress of investigations should be made public. ICE should cooperate with the Department of Justice and law enforcement authorities to ensure that criminal sanctions are pursued where appropriate.
- **Expedite implementation of the detention standard on sexual assault and abuse prevention and intervention across all facilities holding ICE detainees.** Special attention should be given to the swift implementation of the detention standard on sexual assault and abuse prevention and intervention. The standard was first included in the 2008 Performance Based National Detention Standards. However, those standards have not been put into effect across all facilities, meaning that some facilities have no standards at all on this issue. The 2008 standard has since been revised, but the new version has not been released publicly. ICE should expedite the publication and implementation of the new standard.
- **Improve the monitoring of facility compliance with detention standards.** Monitoring should be carried out by multiple independent, nongovernmental organizations that do not contract with ICE for other services. Contracts for monitoring should be non-renewable to eliminate incentives for biased reviews. The monitoring should include

random inspections with unlimited access to the facility and should allow for detainees to speak privately with monitors during inspections. The monitors' findings should be made public.

- **Require detention centers to facilitate on-site access for local community providers of support services for sexual assault survivors.** Wherever a willing, reputable community provider of services to sexual assault survivors is available for partnership, facilities should be required to coordinate with the provider on prevention and response programs, including arranging for the provider to have access to the facility for information sessions and consultations with the detainee population.
- **Standardize procedures for ensuring access to appropriate immigration relief and release from detention for victims and witnesses.** Formal procedures should be developed to ensure detainees are apprised of and given access to avenues of immigration relief, such as the U- and T-visas, which allow victims of crime and of trafficking, respectively, temporary leave to stay and cooperate in the investigation of the crimes, with the potential to later adjust to permanent status. This should happen as a matter of course on taking someone into custody and in particular following allegations of abuse. Formal procedures should also be developed to prevent deportation of potential victims and witnesses, and to explore possibilities for their release. ICE should create a publically available U-visa certification policy that clarifies a process for certification and how an individual would know she or he is eligible.
- **Eliminate cross-gender searches.** Ensure that the recently announced change to prohibit guards from conducting cross-gender body searches is included in the final revised standard.
- **Require reasonable suspicion for pat searches on detainees within detention facilities.** After a detainee has been searched upon admission to a facility, reasonable suspicion should be required to justify additional intrusions on their privacy.
- **Ensure that detainees are fully informed about their rights with respect to sexual assault, abuse, and harassment.** This should include amending the detainee handbook to include definitions of sexual abuse and sexual harassment so that the prohibition on sexual contact between guards and detainees is clear. Handbooks and complaint procedures at all facilities should be translated into multiple languages.

- **Institute procedures for ensuring the safety of detainees at a heightened risk of abuse.** Procedures should address how to determine the safest housing assignments for detainees at heightened risk of abuse, including detainees with mental disabilities and mentally ill detainees, especially those on medication.
- **Ensure access to appropriate medical treatment for survivors of assault.** Whether detainees are treated inside or outside the facility for sexual assault, they should have access to the full range of treatment options, including for sexually transmitted diseases and emergency contraception.

To the Department of Justice

- **Issue regulations based on the National Prison Rape Elimination Commission's recommendations without delay.** PREA called for DOJ to propose regulations on prison rape within one year of receiving the recommended standards from the National Prison Rape Elimination Commission. That year has passed with no regulations.
- **Review the department's experience in prosecuting sexual assault and abuse in immigration detention.** In conjunction with ICE, conduct a review of reported cases of sexual assault and abuse to identify any procedural obstacles that have inhibited the prosecution of perpetrators of abuse.

To the US Congress

- **Demand disclosure of ICE records related to sexual assault, abuse, and harassment in detention.** Require ICE to produce records detailing the number of reports of such misconduct received through multiple possible channels (the ICE Office of Professional Responsibility, the DHS Office of Inspector General, and the Joint Intake Center, among others) and the action taken in response to these reports.
- **Pass legislation setting standards.** Write into law minimum standards for conditions at all types of immigration detention facilities nationwide.

Acknowledgments

Human Rights Watch is grateful to the immigration detainees whose accounts appear in this report and to the immigration advocacy organizations and attorneys who supported the research. The report was researched and written by Meghan Rhoad, researcher in the Women's Rights Division at Human Rights Watch. The report was edited by Janet Walsh, deputy director of the Women's Rights Division, and Alison Parker, director of the US Program. It was reviewed by Clive Baldwin, senior legal advisor, and Robin Shulman, consultant to the Program Office. Additional research and editorial assistance was provided by Daniela Ramirez, coordinator in the Women's Rights Division, and by Kate Welsh, intern. Grace Choi, Ella Moran, and Fitzroy Hepkins provided production and photo assistance.

Detained and at Risk

Sexual Abuse and Harassment in United States Immigration Detention

In May 2010, reports surfaced that the United States Immigration and Customs Enforcement agency (ICE) was investigating allegations that a guard at a Texas immigration detention center had sexually assaulted several female detainees. The guard, who was arrested on August 19, 2010, on suspicion of official oppression and unlawful restraint, allegedly groped women while transporting them to an airport and a bus station where they were being released. While largely covered in the media as an isolated incident, this was only the latest in a series of assaults, abuses, and episodes of harassment that have quietly emerged as a pattern across the rapidly expanding immigration detention system. Due to a shortage of publicly available data and the closed nature of the detention system, the extent to which ICE detainees are subject to sexual abuse nationwide is unclear, but the known incidents are too serious and numerous to ignore.

ICE has recently proposed policy changes to address sexual abuse, and these show promise. They include prohibitions on guards searching detainees of a different gender and restrictions on when guards may transport detainees of a different gender. ICE plans to publish a revised detention standard that includes new requirements for facilities to develop medical and investigation procedures and to collect data on incidents of abuse. However, more changes are needed, as well as greater oversight and accountability.

“Detained and at Risk” is based on the examination of allegations of sexual assault, abuse, and harassment in ICE detention from a range of sources, including press reports, governmental and nongovernmental studies, a public hearing, court documents, and Human Rights Watch interviews. The report shows evidence of a disturbing pattern of abuse, and points to an urgent need for investigation and action to correct glaring gaps in detention policy and practice.

An undocumented Mexican immigrant waits to be deported from the Immigration and Customs Enforcement (ICE) center in Phoenix, Arizona, on April 28, 2010.

© 2008 John Moore/Getty Images

