

June 29, 2010

Secretary Janet Napolitano
Department of Homeland Security
Washington, DC 20528

Dear Secretary Napolitano:

We are writing with serious concerns about the detention policies and practices of Immigration and Customs Enforcement (“ICE”). It has been almost a year since the Administration announced plans to reform the immigration detention system, create “a truly civil detention system,” and improve monitoring at facilities. However, the most recent case of sexual abuse of ICE detainees by Corrections Corporation of America (“CCA”) staff at the T. Don Hutto Detention Center in Taylor, Texas, illustrates, there is still an urgent need for reform. The abuse at Hutto is not isolated or unique but rather indicative of a long-standing issue present throughout the entire ICE detention system. Most sexual abuse goes unreported and undocumented. But enough cases have come to public attention to demonstrate a pervasive and ongoing problem:

- In May 2007, reports surfaced of a guard sexually assaulting an inmate at the T. Don Hutto detention center in Texas.¹
- In April 2008, a former ICE agent pleaded guilty to having sex with a detainee while transferring her from one detention center to another in Florida.²
- In December 2008, widespread allegations surfaced of guards at Pearsall detention center in Texas sexually assaulting detainees.³
- In September 2009, a former guard at the Port Isabel detention center in Texas admitted to forcing female detainees to strip in isolation cells so he could molest them.⁴
- In May 2010, ICE opened an investigation of a guard at the Hutto detention center in Texas who sexually assaulted female detainees before their deportations.⁵

In response to the recent sexual abuse at Hutto, CCA has agreed to implement changes in its detention centers. The Houston Chronicle reported that an ICE email dated May 27, 2010, identified 28 specific changes that CCA will make.⁶ However, according to the Chronicle, these changes will only be instituted in the nine detention facilities operated by CCA. Since these improvements are central to ICE’s overall vision for reforming the detention system, we urge you to make the changes system-wide; they should not be

¹ Carol Lloyd, *Hanky-Panky or Sexual Assault?*, SALON.COM, May 31, 2007.

² *Ex-Fed Agent Pleads Guilty in Sex-Assault Case*, THE MIAMI HERALD, Apr. 3, 2008.

³ Brian Collister, *More Sex Assault Allegations at Immigrant Detention Center*, WOAI.com, Dec. 29, 2008

⁴ Mary Flood, *Ex-Prison Guard Admits to Fondling Immigrant Women*, The Houston Chronicle, Sept. 24, 2009

⁵ Suzanna Gamboa, *ICE Investigating Alleged Officer Sex Assault of Detainees*, ASSOCIATED PRESS, June 1, 2010.

⁶ Susan Carroll, *ICE to Make Detention Centers More Humane*, HOUSTON CHRONICLE, June 8, 2010.

limited to the nine CCA-operated facilities. Administrative civil detainees should not be held in prison-like conditions under any circumstances, in any ICE detention facility, whether run by private contractor, county jail, or ICE. Creating differing levels of detention standards based on the contracting entity undermines ICE's goal of implementing uniform detention standards that govern all detention facilities. As ICE renegotiates its detention contracts, ICE should require that all facilities institute the changes agreed to by CCA.

Beyond instituting these reforms for all ICE detention facilities, we demand that DHS request a full criminal investigation from DOJ into the abuse that occurred in the Hutto facility, including investigation of all ICE employees and supervisors responsible for that detention facility. In the short term, there must be institutional accountability for these wrongs. In honor of the commitment to transparency espoused by the Administration, the results and progress of this investigation should be made public (with due consideration for the privacy of the victims) and must include an investigation of all ICE staff responsible for the Hutto detention facility. Going forward, ICE must institute policy changes to address the systemic and ongoing failure of ICE's internal oversight mechanisms. The proposed changes to CCA facilities do little, if anything, to address the central problems that made possible the sexual abuse of detainees: the lack of an outside oversight mechanism and the absence of binding and enforceable detention standards.

DHS Must Establish Independent External Oversight of ICE's Detention System.

ICE's disciplinary actions in response to the 2010 Hutto sexual abuse incidents, to date, have been limited to CCA only⁷ and have not been extended to ICE employees onsite at the Hutto detention facility including the Detention Services Manager assigned to Hutto. The fact that sexual abuse could take place at one of ICE's "model" detention facilities, with a Detention Services Manager onsite, points to the serious, recurring problem of no meaningful oversight of ICE detention facilities. Senior ICE officials have repeatedly pointed to the Detention Services Managers as a pillar in ICE's detention reform plan. According to the job announcement, Detention Services Managers are:

[R]esponsible for ensuring that the conditions of detention facilities that house Immigration and Customs Enforcement (ICE) detainees are safe, secure and humane. You will serve as a liaison for the agency, evaluating and ensuring that ICE detention facilities are administered and operated according to ICE requirements, expectations and the terms of operating agreements. You will be responsible for oversight of Government and contracted detention services at field sites and conducting on-site detention facility reviews to document compliance and non-compliance, assess performance, identify improvement needs and take appropriate action for change. You will implement and

⁷ ICE's actions in response to the 2010 Hutto reports of sexual abuse include the termination of the CCA guard accused of sexual assault and his supervisor, and a May 28, 2010 letter to CCA notifying that CCA is on "probation," a term that is not recognized in the Federal Acquisitions Regulations and thus lacking any legal consequence.

administer agency policy and procedures related to detention services and requirements. You will coordinate with the Field Office and DRO HQ to identify resources required for the safe, secure and humane operation of detention facilities, including staffing, funding, equipment, facilities and delivery of performance schedules. You will be responsible for ensuring terms of contracts operating agreements are followed in order; advising detention facilities of the required standards as outlined in the contractual and operating agreements; monitoring facility population levels; monitoring and assessing Government and contactor detention service performance; analyzing and evaluating detention service operations and administration to ensure deadlines are met, objectives and tasks are completed and deficiencies are corrected; reviewing and addressing detainee detention services actions regarding, but not limited to, disciplinary actions, classification actions, grievance resolution and other actions. You will conduct briefings and prepare comprehensive reports, investigations and recommendations for internal review (emphases added).

Based on the job description alone, it is evident that the Detention Services Manager assigned to Hutto failed to meet many of the principal job responsibilities and thus failed to ensure that ICE detainees at Hutto were kept safe and secure. The ICE Assistant Secretary had long made clear that ICE has a “zero tolerance” policy for sexual abuse. Hutto had been refurbished in recent years (pursuant to litigation brought against Hutto when it was used to detain families with children) and ICE had assigned a Detention Services Manager to Hutto to ensure *oversight* of daily operations. This raises a troubling question: if sexual abuse of detainees could take place under these ideal circumstances, how then is the detention system today functioning any more securely or humanely than it did under the previous administration? The ICE failure at Hutto ultimately points to a fundamental flaw in ICE’s detention system – ICE cannot regulate itself.

The time has come for ICE to establish an external, independent monitoring process that includes the following:

- Independent, non-governmental inspector organizations with full, unqualified access to ICE detention centers;
- Multiple monitoring organizations contracted to provide inspections across the country to ensure independence;
- Monitoring organizations that do not contract with ICE or DHS for other services to further ensure independence;
- Random inspections at least twice per year of every facility housing ICE detainees;

- Publicly available findings of monitoring groups and compliance, or lack thereof, with binding standards;
- Fixed term contracts with monitoring groups that have no renewal option or clear protections for monitoring groups to ensure that contract renewal is not contingent on findings;
- Free access for detainees and staff who wish to speak with monitors privately during inspections.

DHS Must Promulgate Detention Regulations That Are Legally Binding and Enforceable as Part of the Transition to a Civil Detention System

There are no regulations governing DHS's massive detention system, which holds approximately 442,000 immigration detainees each year. The 2010 draft Performance Based National Detention Standards ("PBNDS") on Sexual Abuse and Assault Prevention and Intervention⁸ are insufficient because they will not be binding even after they are finalized and implemented. Unless promulgated as regulations, the 2010 PBNDS standards will have no teeth and no enforceability. While we do support the promulgation of the PBNDS in the short-term, these standards must be part of a broader transition to a civil detention system.

The PBNDS standards establish a "zero tolerance" policy for sexual abuse but do not make clear what that means in practice in a case like Hutto. Surely the standards do not just imply zero tolerance for the individual perpetrator of sexual abuse, but must involve some level of institutional accountability as well. Is there zero tolerance for the entire detention facility? Is there zero tolerance for the company or county contracting with ICE to detain people? Given that ICE has continued to contract with CCA in nine detention facilities despite the 2010 Hutto sexual abuse incidents, it is difficult to understand how ICE's "zero tolerance" policy can be taken seriously. The details of this zero tolerance policy must be clearly stipulated and enforceable so that detainees know what rights they possess in the face of sexual abuse, and so that employees in detention centers clearly understand the consequences of violations, including failure to report abuse or lack of compliance with standards.

The immigration stakeholders signing this letter have worked with ICE for several years on detention standards. The 2010 PBNDS are long overdue. We therefore request that ICE release the full 2010 PBNDS for comment by September 1, with comments due by October 1. The final 2010 PBNDS should be promulgated as regulations, incorporating comments, by the end of 2010.

The standards should include at least the following provisions:

- Require that all detainees are fully informed of their rights, and receive clear and easy accessible information of who to contact if they suspect or experience abuse;

⁸ PBNDS 2.11.

- Ensure that all detainees receive clear and easily accessible information of outside (third party) hotline or sexual assault assistance organizations;
- Provide for sexual assault and awareness trainings for all staff and managers in ICE or ICE contracted detention facilities conducted by outside experts;
- Include an expanded list of vulnerability triggers in the risk assessment process, particularly with regard to victims of abuse and trafficking or others who would be vulnerable to abuse in detention;
- Prohibit officers from transporting detainees of the opposite gender unless an officer of the detainee's gender is also present;
- Prohibit the housing of women, LGBT and other vulnerable populations from being housed within sight of or proximity to populations serving criminal sentences or known to be sexual offenders.

The 2010 PBNDS should also provide for the development and implementation of an external oversight process. External scrutiny is vitally important to the strength of any public institution. Sound oversight, conducted by a qualified independent entity, can identify systemic problems while offering effective solutions.⁹ Done properly,¹⁰ this outside monitoring would provide a credible, objective assessment of a facility's safety, identifying problems that may be more readily apparent to an independent monitor than to an official working within the agency or facility. It would also help hold systems accountable when they do not meet the requirements of the standards.

The undersigned organizations request a group meeting with representatives of DHS and ICE in July 2010 to discuss these pressing issues. We trust that you share our serious concerns and we look forward to working with you to address the problem of sexual abuse in immigration detention. If you have any questions, please contact Joanne Lin, ACLU Legislative Counsel, at 202/675-2317 or jlin@aclu.org.

⁹ CONFRONTING CONFINEMENT, A REPORT OF THE COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS 79-81 (June 2006). The critical importance of independent audits to establishing accountability in correctional settings is a key finding of the Vera Institute's Commission on Safety & Abuse in America's Prisons. The Commission was co-chaired by former United States Attorney General Nicholas de B. Katzenbach and the Honorable John Gibbons, former Chief Judge of the United States Court of Appeals for the Third Circuit. The 20-member panel included Republicans and Democrats, conservatives and liberals, those who run correctional systems and those who litigate on behalf of prisoners, scholars, and individuals with a long history of public service and deep experience in the administration of justice. A bedrock finding of the Commission was the need for independent oversight and the necessity for every state to have a truly independent agency to monitor prison and jails in order to control violence and abuse.

¹⁰ One possibility would be to establish independent state oversight bodies that would report to a parent national oversight committee housed at DOJ. Another option would be to apply the Prison Rape Elimination Act (PREA) expert review requirement so as to include all ICE detention facilities as well.

Sincerely,

Organizations

American Civil Liberties Union
American Immigration Lawyers Association
Detention Watch Network
Human Rights Watch
Immigration Equality
Just Detention International
Legal Momentum
National Center for Transgender Equality
National Immigrant Justice Center
National Immigration Forum
Physicians for Human Rights, USA

Individuals

Denise Gilman, University of Texas Law School Immigration Clinic¹¹
Barbara Hines, University of Texas Law School Immigration Clinic¹²

CC:

The Honorable John Morton, Assistant Secretary, Immigration and Customs Enforcement
Esther Olavarria, DHS Deputy Assistant Secretary for Policy
David Martin, DHS Principal Deputy General Counsel
Margo Schlanger, DHS Officer for Civil Rights and Civil Liberties

¹¹ For Identification purposes only.

¹² For identification purposes only.