

Congress of the United States
Washington, DC 20515

November 22, 2013

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20502

Dear President Obama:

On May 17, 2012, you issued an important Presidential Memorandum directing all agencies with federal confinement facilities that are not already covered by the Department of Justice's final rule implementing the Prison Rape Elimination Act of 2003 (PREA) to propose and finalize their own PREA rules. On December 19, 2012, the Department of Homeland Security (DHS) issued a notice of proposed rulemaking, *Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities*, 77 Fed. Reg. 75300 (to be codified at 6 C.F.R. pt. 115). The proposed rule, which remains under review by the Office of Management and Budget, will provide critical protections for persons in immigration detention and we write to you today to urge that a final rule be promulgated and implemented without further delay.

The urgent need for final DHS PREA regulations is highlighted by a new report issued by the Government Accountability Office. U.S. Gov't Accountability Office, GAO-14-38SU, *Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse* (2013) (GAO Report). The report makes several key findings that can and must be addressed quickly: (1) Immigration and Customs Enforcement (ICE) headquarters fails to receive a large percentage of sexual abuse and assault allegations lodged in the field; (2) files documenting the quality of investigations into such allegations are often incomplete; and (3) standards designed to protect detainees from sexual assault vary across facilities and ICE maintains inconsistent and unreliable information about which standards apply at which facilities. The GAO report also contains information raising concerns about the dangers faced by detainees housed in segregation.

1. ICE headquarters fails to receive reports of all sexual abuse and assault allegations.

From October 2009 through March 2013, ICE's Joint Integrity Case Management System (JICMS) lodged 215 allegations of sexual abuse and assault filed by persons in ICE custody. But when the GAO reviewed records pertaining to the 10 facilities it visited, it found that 28 of the 70 allegations maintained by ICE Enforcement and Removal Operations field offices were not included in the JICMS records. That is, ICE headquarters was never informed by these field offices of 40% of the sexual abuse allegations filed by immigration detainees at these facilities.

Finalizing the PREA rule will promote a more consistent flow of information regarding such allegations. The proposed rule would require each facility housing immigration detainees to designate a Prevention of Sexual Abuse (PSA) Compliance Manager and would require the agency itself to appoint an upper-level, agency-wide PSA Coordinator responsible for "develop[ing], implement[ing], and oversee[ing] agency efforts to comply with these standards." 77 Fed. Reg. at 75333, 75341.

The proposed rule would further require that “all allegations of detainee sexual abuse [be] promptly reported to the PSA Coordinator, and to the appropriate offices within the agency and within DHS to ensure appropriate oversight of the investigation.” *Id.* at 75335. Establishing a strong working relationship between PSA Compliance Managers in individual facilities and the PSA Coordinator at ICE headquarters should help to improve the flow of information and facilitate necessary oversight.

2. Incomplete documentation of investigations into allegations of sexual abuse and assault.

When GAO reviewed investigative files for all 70 allegations of sexual abuse and assault recorded during the relevant time period at the 10 facilities visited, it found that “the files did not consistently document and track information supporting the investigation of the sexual abuse incidents.” GAO Report at 21. Upon closer inspection of 15 of the files, GAO concluded that nine contained no documentation supporting the investigation and eight contained no information about the outcomes of any such investigations.

Without thorough and consistent investigations, ICE cannot determine whether abuse has occurred, provide evidence to hold any abuser accountable, and assess whether changes are needed to protect other detainees from risk. The absence of documentation evidencing the adequacy of investigations also raises important questions regarding ICE’s conclusion that more than half of the 215 allegations maintained by JICMS (119 allegations) were unsubstantiated (i.e., an investigation could not determine whether or not the alleged incident occurred).

Once finalized and implemented, the Department’s proposed PREA rule would improve the quality and consistency of investigations into allegations of sexual abuse and assault. The rule would require that ICE and each facility create and implement policies to ensure that allegations are properly investigated (77 Fed. Reg. at 75335); that facilities maintain comprehensive investigative files containing, among other things, any DNA and electronic monitoring data, interview notes, and descriptions of physical and testimonial evidence (*Id.* at 75339, 75345); that no evidentiary standard higher than a preponderance of the evidence be imposed to determine whether to deem an allegation substantiated (*Id.*); and that sexual abuse incident reviews be conducted at the conclusion of every investigation and that a written report recommending possible changes in policies or practices be submitted for all allegations not deemed unfounded. (*Id.* at 75340, 75345).

3. Varying sexual abuse and assault standards and inconsistent information about the applicability of such standards.

GAO observed that immigration detention facilities may be required to adhere to any one of four detention standards established by ICE. Of those four standards, only three contain Sexual Abuse and Assault Prevention and Intervention (SAAPI) policies and only the most recent—the 2011 Performance-Based National Detention Standards—contains strengthened language similar to that which is contained in the proposed PREA rule. More troubling is GAO’s conclusion that “ICE does not have reliable information to identify which detention standards and SAAPI provisions apply to individual facilities.” GAO Report at 24.

Finalizing the proposed PREA rule would go a long way toward ensuring that all facilities that house immigration detainees adhere to a single SAAPI policy designed to protect detainees from abuse. One key problem with the proposed rule, however, is that it only requires incorporation into agreements with facilities that operate pursuant to contracts or intergovernmental service agreements when those contracts come up for renewal. Because some agreements remain in effect indefinitely or are not due for renegotiation for many years, the final rule should be modified to require that ICE promptly initiate contract modification negotiations at all facilities that house detainees pursuant to contracts or agreements.

4. Dangers faced by immigration detainees housed in segregation.

Although the GAO report makes no findings pertaining to the use of segregated housing to protect detainees from sexual abuse and assault, it is notable that two of the four substantiated allegations of abuse against detainees by staff occurred when detainees were housed in protective custody. Earlier this year, ICE issued a directive establishing a comprehensive framework for reviewing the use of segregation for immigration detainees. U.S. Immigration and Customs Office, *Review of the Use of Segregation for ICE Detainees*, Sept. 4, 2013 (11065.1). The proposed PREA rule reinforces these important protections and adds protections regarding the use and duration of administrative segregation for the purposes of protective custody (77 Fed. Reg. at 75337). Finalizing the PREA rule and ensuring robust implementation of the segregation directive will help protect all detainees from sexual abuse and assault.

Thank you very much for your attention to this important matter and we look forward to your response.

Sincerely,


Rep. Zoe Lofgren

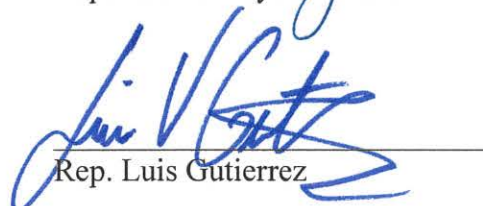

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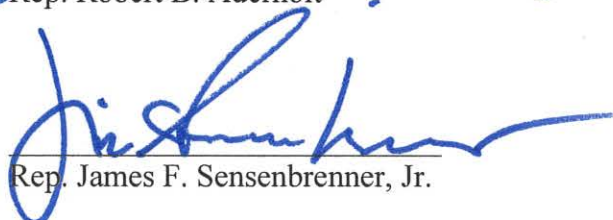

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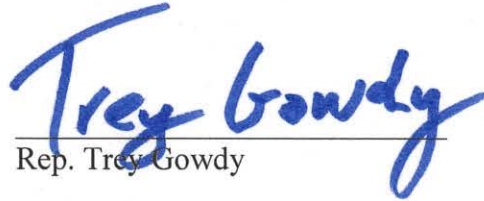

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