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**IMMIGRANTS FOR SALE: CORPORATE AMERICA PUTS
A PRICE TAG ON SEXUAL ABUSE**

BESSIE MUÑOZ*

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I. INTRODUCTION

Having lived in the United States for eighteen years, Mexican native, Audemio Orozco-Ramirez, was detained after being pulled over for speeding in Sydney, Montana.¹ The police officer requested his driver's license.² Audemio provided the officer with a valid Washington license; however, once the officer realized Audemio did not speak English, the police officer held him until Border Patrol arrived at the scene.³ After

1. John S. Adams, *Man Alleges Rape while in Immigration and Customs Enforcement Custody: Detainee Says Fellow Inmates Assaulted Him at Jefferson County Jail*, GREAT FALLS TRIB. (Nov. 13, 2013), <http://archive.greatfallsribune.com/article/20131113/NEWS01/311130003/Man-alleges-rape-while-Immigration-Customs-Enforcement-custody-Detainee-says-fellow-inmates-assaulted-him-Jefferson-County-Jail>.

2. *Id.*

3. *Id.*

determining he was undocumented, Audemio was taken to Jefferson County Jail.⁴ During his first night there, he was placed in a jail pod with nine other male detainees.⁵ He recalls waking up face down with inmates holding him down while one of them raped him.⁶ He was unable to see his attacker because he was being suffocated with a pillow.⁷ He awoke the next morning with abdominal pain and soreness in his rectum.⁸ On his way to the bathroom, he could feel fluid leaking from his rectum, which he thought was semen.⁹

Audemio was later transferred to a facility in Idaho where he reported the assault when he finally found a staff member who spoke Spanish.¹⁰ The officer took his statement, but ripped up the report while instructing Audemio to tell his story to Immigration and Customs Enforcement (ICE) officials.¹¹ Spanish speaking officer, Blanca Chapa, spoke to Audemio and took him to Eastern Idaho Regional Medical Center for a physical examination.¹² The nurse observed rectal inflammation consistent with rectal penetration, but decided not to conduct an internal exam.¹³ The nurse still indicated she could not confirm nor negate the possibility of sexual assault.¹⁴ Despite the physical examination, it is unknown whether an official rape kit was conducted and if the physical evidence was actually submitted for analysis.¹⁵ Audemio's clothing, which contained residues, could reveal DNA and lead the officers to his assailants.¹⁶ It is unknown if Audemio's clothes were preserved or tested for DNA.¹⁷ A month after the incident, authorities still had not interviewed the nine inmates who were in the jail pod with Audemio on the night of the attack.¹⁸ Video footage from the jail pod, recorded the day of the assault, was missing.¹⁹ Jefferson County authorities did not take

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *See id.* (explaining how more than three hours of footage is missing from the video surveillance taken the night Audemio was in custody).

Audemio's rape allegation seriously.²⁰ Audemio had a final deportation order, and ICE officials refused to grant a stay of deportation, which meant he would be deported long before his assailants could be brought to justice.²¹

Audemio's sexual assault is just one of the 215 allegations of sexual abuse and assault reported in immigration detention facilities between October 2009 and March 2013.²² These incidents were discovered after the U.S. Government Accountability Office (GAO) reviewed the Department of Homeland Security's (DHS) efforts to protect detainees housed in their immigration detention facilities.²³ The investigation, conducted in November 2013, illustrates the immediate need for DHS to make sure all immigrant detention centers implement the Prison Rape Elimination Act (PREA).²⁴ The final PREA standards became effective May 6, 2014.²⁵

There are three different types of immigration detention facilities: Service Processing Centers (SPC), which are ICE owned facilities; CDFs, which are owned and run by private companies that have contracted directly with ICE; and Intergovernmental Service Agreement facilities (IGSA), which are provided by state and local governments to ICE through agreements.²⁶ CDFs, owned by private government contractors, do not have to comply with the PREA standards.²⁷ Instead, PREA regulations are only imposed on these private facilities as their contracts are renewed or modified, leaving detainees exposed to sexual assault and abuse.²⁸

20. *See generally id.* (implying that from when Audemio first reported the attack through the ongoing investigation, it is being handled in a manner contrary to how the U.S. Immigration and Custom Enforcement report to handle allegations of sexual assaults—with extreme seriousness).

21. *Id.*

22. U.S. GOV'T. ACCOUNTABILITY OFF. GAO-14-38, IMMIGRATION DETENTION: ADDITIONAL ACTIONS COULD STRENGTHEN DHS EFFORTS TO ADDRESS SEXUAL ABUSE 3 (2013), available at <http://www.gao.gov/assets/660/659145.pdf>.

23. *Id.* at 2.

24. *See id.* (highlighting inconsistent policies amongst the DHS facilities on reporting sexual abuse, unreliable information on which standards to apply at individual facilities, and incomplete inspection reports made by ICE management); *see also ACLU Comment on Release of Sexual Abuse Regulations for Immigration Detention Facilities*, ACLU (Mar. 7, 2014), <https://www.aclu.org/immigrants-rights/aclu-comment-release-sexual-abuse-regulations-immigration-detention-facilities> (quoting Amy Fettig, ACLU senior staff counsel, on DHS's need to "swiftly implement" the PREA standards).

25. 6 C.F.R. § 115 (2014).

26. *Id.*

27. *Id.*

28. *Id.*

The purpose behind PREA is to prevent, detect, and respond to sexual abuse and assault in DHS facilities.²⁹ In following this purpose, PREA implements a zero-tolerance policy for sexual abuse.³⁰ The application of PREA will provide the vulnerable population within DHS facilities a better sense of how to report abuse and assault.³¹ It will shield detainees from having contact with their alleged abusers and prevent retaliation.³²

This comment addresses the privatization of immigration detention centers.³³ The two wealthiest private prison contractors, Corrections Corporation of America (CCA) and GEO Group (GEO), have invested approximately \$31 million on federal lobbying efforts since 2002.³⁴ As a result, DHS created a bed mandate provision requiring an immigration bed capacity of 34,000 beds daily—16,000 of which will be held in private detention centers.³⁵ Part II explains the history of immigration detention center privatization and the legislative history of the bed mandate. Part III discusses the history of the Prison Rape Elimination Act and the implementation procedure in private detention facilities. Part IV examines current law that enables detention and the poor execution of regulations preventing sexual assault and abuse. Case law is included to shed light on the immediate need for the application of the PREA to protect vulnerable immigrants, such as women and children. Part V proposes several recommendations. Immigrants will continue to migrate to the United States and if the immigration policies require detention, the government needs to enforce the compliance of PREA standards, especially in private detention centers where immigrants are more likely to be exposed to the possibility of sexual abuse due to the flexibility with which these centers have been allowed to comply with PREA.

29. Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100 (Mar. 7, 2014) (codified at 6 C.F.R. pt. 115).

30. *ACLU Comment on Release of Sexual Abuse Regulations for Immigration Detention Facilities*, *supra* note 24.

31. Carrie Johnson, *Immigration Detainees Seek Prison-Protection*, NPR (Dec. 13, 2011, 3:15 PM), <http://www.npr.org/2011/12/13/143638236/immigration-detainees-seek-prison-rape-protection> (interviewing civil liberties expert on the need for DHS facilities to be covered under PREA because many detainees do not speak or read English, are unaware of their legal rights in the United States, and may not report sexual assaults to the same governmental authorities who have the “power to rape, detain and deport them”).

32. Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100 (Mar. 7, 2014) (codified at 6 C.F.R. pt. 115).

33. *See Lobbying*, PRISON DIVESTMENT CAMPAIGN, <http://prisondivestment.wordpress.com/private-prison-industry-industria-de-prisiones-privadas/lobbying> (noting the successful lobbying efforts of private prison operators and the profits earned from detaining immigrants at privatized detention centers).

34. *Id.*

35. *Id.*

II. THE HISTORY BEHIND PRIVATIZATION OF IMMIGRATION DETENTION FACILITIES

Immigration detention is the fastest-growing incarceration system in the country.³⁶ The privatization of immigration detention centers began in the early 1980s, when the Immigration and Naturalization Services (INS) signed the first contract with Corrections Corporation of America (CCA).³⁷ The focus of INS was on investigating and preventing illegal entries, deporting immigrants with criminal backgrounds, and cooperating with the Department of Justice in prosecuting violations of immigration law.³⁸ The Illegal Immigration Reform and Responsibility Act of 1996 required mandatory detention for a deportable immigrant alien.³⁹ The Act provided guidelines requiring the immigrant to be taken into custody upon release from incarceration in order to expedite the deportation proceedings.⁴⁰ In addition, it reduced an immigration judge's discretion in administering immigration law,⁴¹ giving the Attorney General the sole and unreviewable discretion on whether the alien was to be deported.⁴²

In 2003, after the 9/11 terrorist attacks against the United States, government agencies such as the INS were eliminated.⁴³ The 9/11 attacks also resulted in an economic recession, which caused state governments to pull back from outsourcing detention to private contractors.⁴⁴ As a result, the two largest private prison contractors, CCA and GEO Group suffered tremendous losses.⁴⁵ The Bush Administration reorganized the

36. Jacob Fenton et al., *Map: Immigration Detention Facilities, 1981–2011*, INVESTIGATIVE REPORTING WORKSHOP (Oct. 17, 2011), <http://investigativereportingworkshop.org/investigations/immigration-detention/htmlmulti/immigration-detention-map>.

37. *Id.*

38. See U.S. CITIZENSHIP AND IMMIGR. SERV., OVERVIEW OF INS HISTORY 7 (2012), available at <http://www.uscis.gov/sites/default/files/USCIS/History%20and%20Genealogy/Our%20History/INS%20History/INSHistory.pdf> (providing a brief history of INS responsibilities during the “Era of Restriction”).

39. 1996 Illegal Immigration Reform & Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009-546.

40. *Id.*

41. Fenton et al., *supra* note 36; Anthony Lewis, *With Exquisite Cruelty*, NY TIMES (Feb. 28, 1997), <http://www.nytimes.com/1997/02/28/opinion/with-exquisite-cruelty.html?ref=anthonylewis>.

42. Lewis, *supra* note 41.

43. U.S. CITIZENSHIP AND IMMIGR. SERV., *supra* note 38 at 11; Fenton et al., *supra* note 36.

44. Chris Kirkham, *Private Prisons Profit from Immigration Crackdown, Federal and Local Law Enforcement Partnerships*, HUFFINGTON POST (June 7, 2012, 3:06 PM), http://www.huffingtonpost.com/2012/06/07/private-prisons-immigration-federal-law-enforcement_n_1569219.html.

45. *Id.*

federal government, shifting immigration law enforcement responsibilities from the INS to the newly created DHS.⁴⁶ ICE, U.S. Citizenship and Immigration Services (USCIS), and Customs and Border Protection (CBP) were all created with the purpose of securing the borders and preventing terrorists from entering the United States.⁴⁷

Upon the creation of DHS, civil enforcement of immigration laws began to intertwine with criminal enforcement.⁴⁸ Prior to 2005, illegal immigrants without criminal records were not detained; instead, they were first given summons to attend an immigration hearing and then released until their hearing date.⁴⁹ This “catch and release” system was terminated in 2005, and a program called “catch and return” was implemented.⁵⁰ Michael Chertoff, the DHS Secretary at the time, revealed that DHS had begun building detention facilities, which would detain immigrants until their deportation hearing.⁵¹ Since 2005, the number of beds available for immigration detention has increased by 85%.⁵²

When the Bush Administration failed to pass an immigration reform bill, which would have given many illegal immigrants the ability to apply for legal status, programs such as the “catch and return” were left in place, significantly increasing immigration detention.⁵³ Under the Obama Administration, Congress required ICE to detain and deport 400,000 illegal immigrants per year,⁵⁴ and over the course of his presidency, approximately one million immigrants have been deported.⁵⁵ DHS Secretary, Janet Napolitano, oversaw the deportation of 1.5 million immigrants from 2009 to 2013.⁵⁶ Because detention is an important element in the “catch and return” program, it is not likely a coincidence that when these anti-immigration laws were passed, CCA and GEO’s profits skyrocket.⁵⁷

46. *Id.*

47. *Id.*

48. Fenton et al., *supra* note 36.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Lobbying*, *supra* note 33 (last visited Sept. 23, 2014).

57. See Kirkham, *supra* note 44 (elucidating the fact that Corrections Corporations of America and GEO Group, Inc. doubled their revenue in 2005 while the immigration detention business boomed, doubling the amount of yearly immigrant detainees to a total of 400,000 a year, nearly half of which were held in private immigration detention facilities).

A. *Lobbying for Anti-Immigration Laws*

Over the last decade, the private prison industry has spent approximately \$45 million on lobbying and campaign contributions.⁵⁸ Since 2005, when “catch and return” began, CCA and GEO doubled their revenue,⁵⁹ generating a combined \$3 billion in 2011 alone due to their influence on the government’s anti-immigration laws.⁶⁰ Their revenues have increased by 137% since 2004.⁶¹

Despite CCA and GEO’s claims of a hands-off approach and insistence that they do not draft, lobby, or contribute to detention enforcement legislation, it is clear that CCA participated in the drafting and passage of Arizona’s SB 1070.⁶² Now known as the “Support Our Law Enforcement and Safe Neighborhood’s Act,” Arizona Governor Jan Brewer signed the bill into law on April 23, 2010.⁶³ Arizona State Senator Russell Pearce introduced the legislation, which would allow local police to arrest anyone who looked like an immigrant.⁶⁴ Prior to its introduction, Senator Pearce met with the American Legislative Exchange Council (ALEC), an organization comprised of state legislators, powerful associations, and wealthy corporations,⁶⁵ including the Corrections Corporation of America (CCA).⁶⁶ In 2009, ALEC distributed model legislation on the issue to all its members, and in April 2010, Senator Pearce introduced the legislation known as SB 1070 in Arizona.⁶⁷

SB 1070’s primary sponsor, Senator Pearce, received campaign contributions from Management & Training Corporation (the third largest pri-

58. Sasha Chavkin, *Immigration Reform and Private Prison Cash*, COLUM. JOURNALISM REV. (Feb. 20, 2013, 2:20 PM), http://www.cjr.org/united_states_project/key_senators_on_immigration_get_campaign_cash_from_prison_companies.php?page=all.

59. *Id.*

60. *Id.*

61. Paul Szoldra, *Private Prisons Will Get Totally Slammed by Immigration Reform*, BUS. INSIDER (Feb. 2, 2013, 8:30 AM), <http://www.businessinsider.com/a-3-billion-industry-is-going-to-be-slammed-by-immigration-reform-2013-1#ixzz2LSyWMc00>.

62. Chavkin, *supra* note 58.

63. Ann Morse, *Arizona’s Immigration Enforcement Laws*, NAT’L CONF. OF ST. LEGISLATURES (July 28, 2011), <http://www.ncsl.org/research/immigration/analysis-of-arizonas-immigration-law.aspx>.

64. Lee Fang, *Prison Industry Funnels Donations to State Lawmakers Introducing SB1070-Like Bills Around the Country*, THINK PROGRESS (Sept. 16, 2010, 5:20 PM), <http://thinkprogress.org/politics/2010/09/16/117661/sb1070-prison-lobby>.

65. Laura Sullivan, *Prison Economics Help Drive Ariz. Immigration Law*, NPR (Oct. 28, 2010, 11:01 AM), <http://www.npr.org/2010/10/28/130833741/prison-economics-help-drive-ariz-immigration-law>.

66. *Id.*

67. Fang, *supra* note 64.

vate prison contractor) and GEO Group.⁶⁸ Laurie Shanblum, a CCA lobbyist, helped Senator Pearce formulate the legislation that called for racial profiling as a means to apprehend illegal immigrants.⁶⁹ Out of SB 1070's thirty-six co-sponsors, thirty of them received campaign contributions from CCA, GEO Group, and Management & Training Corporation.⁷⁰

While most of SB 1070 has been struck down due to constitutional issues, such as a violation of due process, equal protection, and unreasonable search and seizure,⁷¹ SB 1070 has opened doors for similar anti-immigration bills.⁷² For example, in Utah, Governor Gary Herbert signed HB 497 into law in 2011.⁷³ The bill states that officers may not consider race, national origin, or color when determining whether a person is in the United States legally; however, the law gives police officers the authority to investigate and arrest people who, based on racial profiling, are presumed to have violated immigration laws.⁷⁴ Management & Training Corporation also contributed a large amount of money to Governor Gary Herbert.⁷⁵

B. *Legislative History of the Bed Mandate Provision*

Since 2002, the daily population of immigrants detained in private detention facilities has increased by 188%.⁷⁶ In contrast, the daily average of detainees in publicly operated facilities has increased by 26%.⁷⁷ There are approximately 253 facilities housing detainees, with a daily stay ranging from 0 to 1,695 each.⁷⁸ Out of these facilities, forty-five are privately

68. CODY MASON, SENTENCING PROJECT, DOLLARS AND DETAINEES, THE GROWTH OF FOR-PROFIT DETENTION 14 (July 2012), available at http://sentencingproject.org/doc/publications/inc_Dollars_and_Detainees.pdf.

69. *Id.*

70. Seth Freed Wessler, *NPR Investigation: Private Prison Companies Helped Write SB 1070*, COLOR LINES (Oct. 28, 2010, 1:00 PM), http://colorlines.com/archives/2010/10/arizonas_draconian_and_constitutionally_suspect.html.

71. Morse, *supra* note 63 (listing the challenges brought in court against SB 1070, and stating several parts of the bill were enjoined on July 28, 2010).

72. See MASON, *supra* note 68 (asserting similar bills were passed in the states of Utah and Georgia).

73. *Id.*

74. See generally ACLU, PRELIMINARY ANALYSIS OF HB 497 "UTAH ILLEGAL IMMIGRATION ENFORCEMENT ACT," available at http://elpasotimes.typepad.com/files/utah_hb_497_aclu_prelim_analysis.pdf (identifying and analyzing the various provisions of the law, namely the one that allows police to engage in "show me your papers" actions during investigations into small misdemeanors).

75. MASON, *supra* note 68.

76. *Id.*

77. *Id.*

78. *Id.*

owned.⁷⁹ Of the fifty most populated facilities, 62% are privately owned.⁸⁰ Eight of the top ten most populated facilities are privately operated.⁸¹ Private prison contractors will continue to increase revenue as they promote anti-immigration policies.⁸²

Since 2010, every Department of Homeland Security Appropriations Bill includes a numerical quota for detention beds.⁸³ This means that Congress requires immigration authorities to hold a minimum number of immigrants as detainees each day.⁸⁴ The DHS Appropriations Bill requires a minimum of 33,400 detention beds to be occupied on a daily basis and DHS provided \$2,545,180,000 for detention and removal purposes.⁸⁵ DHS's requirement to maintain and fill the numerical quota resulted in a record increase in the number of immigrants that passed through ICE detention.⁸⁶ In 2001, approximately 204,459 immigrants passed through ICE detention, but by 2011, this number had increased to approximately 429,247.⁸⁷

In the 2013 budget, President Obama proposed a reduction in the detention bed quota from 33,400 to 32,800.⁸⁸ The budget clarified ICE's priorities were to detain and remove immigrants with criminal convic-

79. *Id.*

80. *Id.*

81. *Id.*

82. JUST. POL'Y INST., GAMING THE SYSTEM: HOW THE POLITICAL STRATEGIES OF PRIVATE COMPANIES PROMOTE INEFFECTIVE INCARCERATION POLICIES 2 (June 2011), available at http://www.justicepolicy.org/uploads/justicepolicy/documents/gaming_the_system.pdf (explaining that since private prison companies have grown over the years, so has their political power, which can be used to promote policies that lead to higher rates of incarceration).

83. *See, e.g.*, Department of Homeland Security Appropriations Act of 2010, Pub. L. No. 111-83, 123 Stat. 2142, 2149 (providing that funds must be available for no fewer than 33,400 beds).

84. *Id.* The 2010 Appropriation Bill required that funding made available for immigration authorities should maintain no less than 33,400 detainees per day. *Id.*

85. Department of Homeland Security Appropriations Act of 2010, Pub. L. No. 111-83, 123 Stat. 2142, 2149 (2010).

86. *See* NAT'L IMMIGR. FORUM, THE MATH OF IMMIGRATION DETENTION: RUNAWAY COSTS FOR IMMIGRATION DETENTION DO NOT ADD UP TO SENSIBLE POLICIES 2-3 (Aug. 2013), available at <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf> (elaborating that with increasing funds to ICE, more immigrants flow through ICE detention and increase the overall number of inmates by an exponential growth).

87. *Id.* at 3.

88. NAT'L IMMIGR. JUST. CTR., IMMIGRATION DETENTION BED QUOTA TIMELINE 2 (Mar. 2014), available at http://immigrantjustice.org/sites/immigrantjustice.org/files/Immigration_Detention_Bed_Quota_Timeline_2014_03.pdf.

tions and other priority cases.⁸⁹ Those individuals who were low risk would be placed in alternatives to detention, which would result in a lower per-day cost.⁹⁰ However, the DHS Appropriations Bill increased the bed quota to 34,000 beds.⁹¹

President Barack Obama proposed a 6.5% reduction in bed space and promoted the use of the alternatives to detention program for the 2014 budget.⁹² He suggested a bed mandate of 31,800 beds.⁹³ In June 2013, the U.S. House of Representatives voted on the first ever amendment, HR 2217, to eliminate the numerical quota from 2014 DHS Appropriation Bill.⁹⁴ Nevertheless, the Consolidated Appropriations Act of 2014 mandated funding for no less than 34,000 detention beds.⁹⁵

The 2014 DHS Budget-In-Brief explicated the \$1.3 billion fund shall be used for 30,539 detention beds.⁹⁶ It also explains that an additional \$94.1 million shall be used for more cost-effective alternatives to detention programs.⁹⁷ Its goal is to place low-risk aliens, who are not a threat to the community, in programs requiring intensive supervision or electronic monitoring, reducing the bed mandate.⁹⁸ The proposed budget for 2015 did not contain any numerical quota, but it maintained that immigration detention should be reserved for violent criminals who pose a threat to national security.⁹⁹ It promoted alternatives to detention programs in order to decrease expenses.¹⁰⁰

III. THE HISTORY OF THE PRISON RAPE ELIMINATION ACT AND THE IMPLEMENTATION PROCEDURE IN PRIVATE DETENTION FACILITIES

At least 13% of the inmates in the United States have been sexually assaulted while incarcerated.¹⁰¹ As of 2003, the total number of inmates

89. U.S. DEP'T OF HOMELAND SEC., FY 2013 BUDGET IN BRIEF 15 (Feb. 7, 2012), available at <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-budget-in-brief-fy2013.pdf>.

90. *Id.*

91. NAT'L IMMIGR. JUST. CTR., *supra* note 88.

92. *Id.*

93. *Id.*

94. *Id.*

95. Consolidated Appropriations Act of 2014, Pub. L. No. 113-76, 128 Stat. 5, 251.

96. U.S. DEP'T OF HOMELAND SEC., FY 2015 BUDGET IN BRIEF 13 (Mar. 2014), available at <https://www.dhs.gov/sites/default/files/publications/FY-2015-BIB.pdf>.

97. *Id.*

98. *Id.*

99. OFF. OF MGMT. AND BUDGET, FISCAL YEAR 2015 BUDGET OF THE U.S. GOVERNMENT 87, 89 (Mar. 4, 2014), available at <http://www.gpo.gov/fdsys/pkg/BUDGET-2015-BUD/pdf/BUDGET-2015-BUD.pdf>.

100. *Id.*

101. 42 U.S.C. § 15601 (2003).

who had been victims of sexual assault exceeded 1,000,000.¹⁰² These findings highlight the lack of adequate training that resulted in prison staff being unprepared to prevent, report, or treat victims of sexual assaults.¹⁰³ To combat this alarming statistic, President George W. Bush, on September 4, 2003, signed into law PREA.¹⁰⁴

One of the goals in enacting PREA was to gather as much information as possible to analyze the incidents of sexual abuse in America's prisons, and determine the effect on federal, state, and local confinement facilities.¹⁰⁵ By doing so, Congress could create recommendations and gather necessary funding to protect the most vulnerable individuals from prison rape.¹⁰⁶ PREA was passed with unanimous support from both political parties¹⁰⁷ in the House of Representatives and the Senate.¹⁰⁸

A. *The Creation of National Prison Rape Elimination Commission*

PREA created the National Prison Rape Elimination Commission,¹⁰⁹ comprised of lawmakers, advocates, and prison rape survivors,¹¹⁰ to develop national standards for the detection and elimination of prison rape.¹¹¹ In order to develop standards, the Commission had to study the causes and consequences of sexual abuse in correctional facilities.¹¹² In 2007, the Bureau of Justice Statistics surveyed prisoners and found not only that about 60,500 individuals had been sexually assaulted during the twelve months prior to the date the survey was conducted, but that there

102. *Id.*

103. *Id.*

104. Valerie Jenness, *The Passage of the Prison Rape Elimination Act: Discursive Political and the Reconstitution of Prison Rape in a Culture of Control*, at 2 (June 26, 2007), <http://www.prearesourcecenter.org/sites/default/files/library/thepassageofthepersonrapeeliminationact.pdf>.

105. 42 U.S.C. § 15601 (2004).

106. *Id.*

107. *Prison Rape Elimination Act*, NAT'L PREA RES. CTR., <http://www.prearesourcecenter.org/about/prison-rape-elimination-act-prea>.

108. Jenness, *supra* note 104.

109. *Prison Rape Elimination Act*, *supra* note 107.

110. Valerie Jenness & Michael Smyth, *The Passage and Implementation of the Prison Rape Elimination Act: Legal Endogeneity and the Uncertain Road From Symbolic Law to Instrumental Effects*, 22 STAN. L. & POL'Y REV. 489, 490 (2011), available at http://journals.law.stanford.edu/sites/default/files/stanford-law-policy-review/print/2011/06/jenness_smyth_22_stan._l._poly_rev._489.pdf.

111. *Prison Rape Elimination Act*, *supra* note 107.

112. NAT'L PRISON RAPE ELIMINATION COMM'N, NATIONAL PRISON RAPE ELIMINATION COMMISSION REPORT 1 (June 2009), available at <https://www.ncjrs.gov/pdffiles1/226680.pdf>.

was a higher percentage of inmates being sexually abused by staff than by other prisoners.¹¹³

The results also shed light on the inevitability of sexual abuse in confinement.¹¹⁴ The rate of sexual abuse is higher among those who are more vulnerable, such as women, non-heterosexuals, and transgender individuals.¹¹⁵ The prevention of sexual abuse is highly dependent on risk assessment.¹¹⁶ Corrections administrators must identify those individuals who are more vulnerable in order to effectively protect them.¹¹⁷ However, correctional facilities have long depended on a subjective assessment rather than conducting evidence-based screenings and risk assessment.¹¹⁸ The Commission set requirements for when and how correctional facilities screen prisoners for risk of being sexually abused.¹¹⁹ The results influence decisions such as housing regulations.¹²⁰ The Commission has created standards to attack issues such as use of protective and custody segregation to shield individuals from sexual abuse.¹²¹ These forms of protection affect the prisoners' mental health and therefore have been considered a last resort.¹²²

In order to be more effective in the prevention and detection of sexual abuse, correctional facilities must be subjected to internal monitoring and external oversight in order to reveal why sexual abuse occurs and how to avert it.¹²³ This will allow correctional administrators to effectively deploy staff wisely, manage high-risk areas, and develop policies.¹²⁴ Outside review and audits conducted by independent auditors will be an effective internal monitoring tool, by increasing competency and avoiding biased results.¹²⁵

Among the most crucial findings was the fact that, due to reporting procedures, victims are not able to safely and easily report sexual abuse.¹²⁶ The findings demonstrated that the procedures must instill confidence in the victims while ensuring them protections from retaliation

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.* at 8.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.* at 9.

124. *Id.*

125. *Id.* at 9–10.

126. *Id.* at 11.

and isolation.¹²⁷ Policies must ensure that correctional staff and administrators act on every sexual abuse allegation by conducting thorough and competent investigations, regardless of whether the victim is willing to cooperate.¹²⁸ Evidence has shown sexual abuse victims usually do not receive the treatment necessary to minimize trauma.¹²⁹ Correctional administrators must create a protective environment that provides victims with access to medical and mental health care, or, as studies have shown, the victims of these heinous acts will face psychological aftereffects such as post-traumatic stress disorder, serious medical conditions, anxiety disorders, panic attacks, depression, and intense flashbacks.¹³⁰

B. The National Prison Rape Elimination Commission Emphasizes the Importance of Implementing Standards to Decrease and Prevent Sexual Abuse in Immigration Facilities

Even though there was a 400% increase in the number of immigrants in custody between 1994 and 2009,¹³¹ there was very little information collected concerning sexual abuse among immigrant detainees because very few detainees report sexual abuse.¹³² This lack of reporting has several reasons. First, immigration detainees are highly vulnerable because of their unusual circumstances, including the feelings of isolation due to their confinement far away from family members, language barriers, and past traumatic experiences.¹³³ Second, many immigrants fear deportation, which results in victims being coerced into complying with an officer's sexual demands.¹³⁴ Third, immigrant detainees lack knowledge about their rights and not all of them receive legal counseling, giving immigration agencies and correctional officers a high degree of leverage.¹³⁵ Finally, but not exhaustively, in many instances where the victim does report abuse, he or she is transferred to another facility.¹³⁶ In these instances, the complaint process is derailed, preventing the victim from seeking relief.¹³⁷

Based on these findings the Commission's report emphasizes the need for every correctional facility to have a zero-tolerance policy for sexual

127. *Id.*

128. *Id.*

129. *Id.* at 14.

130. *Id.*

131. *Id.* at 21.

132. *Id.* at 21–22.

133. *Id.* at 22.

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

abuse, regardless of whether the facility is operated by the government or by a private company under contract with the government.¹³⁸ When the Commission was created in 2009, ICE was expected to detain around 33,400 immigrants.¹³⁹ The Commission's standards, however, did not include the special measures required to *prevent and detect* sexual abuse of detained immigrants.¹⁴⁰

The number of immigrants in custody increased from 1994 to 2009 by 400%.¹⁴¹ Nevertheless, there was very little information about sexual abuse among immigrants in custody.¹⁴² Sexual abuse among immigrant detainees has not yet received the attention it warrants. Immigration detainees are highly vulnerable because of their unusual circumstances, including the feelings of isolation (due to their confinement far away from family members), language barriers, and past traumatic experiences.¹⁴³ In 2006, the U.S. Department of Homeland Security's Office of the Inspector General conducted an audit that revealed that immigrant detainees usually do not receive the information regarding how to report abuse and other grievances in a language they understand.¹⁴⁴ Furthermore, preventing abuse for immigrant detainees requires special standards beyond those created for other prisoners.¹⁴⁵

Immigrant detainees most often lack knowledge about their rights, and not all of them receive legal counseling. This gives immigration agencies and correctional officers a high degree of leverage.¹⁴⁶ Many immigrants fear deportation, which results in victims being coerced into complying with an officer's sexual demands.¹⁴⁷ Very few detainees report sexual abuse.¹⁴⁸ In many instances where the victim does report abuse, he or she is transferred to another facility.¹⁴⁹ In these instances, the complaint process is derailed, preventing the victim from seeking the appropriate relief—eligibility for special visas, which would allow the individual to remain in the United States.¹⁵⁰ There is very little information regarding sexual abuse that takes place in the fast-growing area of immigration con-

138. *Id.* at 5.

139. *Id.* at 21.

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.* at 22.

144. *Id.* at 23.

145. *Id.* at 22.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

finement.¹⁵¹ It is imperative to focus on immigration confinement due to the especially challenging circumstances detainees face.¹⁵²

C. *Delay in the Implementation of the Prison Rape Elimination Act*

Through the Attorney General, the U.S. Department of Justice was required to develop a formal rule putting into effect the PREA standards within one year.¹⁵³ However, the process of implanting PREA far exceeded the allotted time.¹⁵⁴ Despite the National Prison Rape Elimination Commission's release of final proposed standards, they were not adopted as national standards because the U.S. Attorney General missed the statutory deadline.¹⁵⁵ Consequently, the standards became recommendations rather than legally binding public policy.¹⁵⁶

In February 2010, the Raising the Bar for Justice and Safety Coalition—an alliance comprised of advocacy organizations—pressed the Attorney General to fully implement PREA standards and to require compliance in all correctional facilities, including prisons, juvenile detention centers, community confinements, jails, and immigration detention centers.¹⁵⁷ On January 24, 2011, a final rule was released that included PREA standards for four different types of facilities: community confinement facilities, adult prisons and jails, lockups, and juvenile facilities.¹⁵⁸ It did not include immigration detention centers.¹⁵⁹

Two years after the statutory deadline, on May 17, 2012, the Justice Department released the final PREA standards.¹⁶⁰ On that day, President Obama stated the Department of Justice's final rule should be implemented in all federal confinement facilities, including immigration detention centers.¹⁶¹ Once the final rule was published in the Federal Register on August 20, 2012, it became effective and was immediately binding on all federal prisons.¹⁶² However, private contractors were

151. *Id.* at 23.

152. *Id.* at 23.

153. Alex Friedmann, *Prison Rape Elimination Act Standards Finally in Effect, but Will They be Effective?*, PRISON LEGAL NEWS 3 (Sept. 2013), <https://www.prisonlegalnews.org/media/issues/09pln13.pdf>.

154. *Id.*

155. Jenness & Smyth, *supra* note 110, at 490.

156. *Id.*

157. Friedmann, *supra* note 153.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

given one year to start training their staff members on how to implement and comply with the standards.¹⁶³

D. *Department of Homeland Security's Sexual Abuse Prevention Standards*

In order to meet the standards set in the Prison Rape Elimination Act and comply with President Obama's directive that it must be implemented in all federal and state facilities, the Department of Homeland Security adopted the overall standards set forth in PREA while simultaneously tailoring it to maximize effectiveness and efficiency in immigration detention facilities.¹⁶⁴ Each standard is consistent with the categories already established in PREA: prevention and responsive planning, training and educating the staff, assessment of risk in order to establish those individuals who are at a higher-risk of sexual victimization and abusiveness, efficient reporting procedures, providing an official response to detainee reports, full investigation, offering medical and mental care for victims, data collection and review, and allowing audits to conclude whether the facility has complied with the standards.¹⁶⁵

The DHS standards focus on the prevention of staff-on-detainee sexual abuse, which consists of any sexual contact between a detainee and any staff member, volunteer or contractor.¹⁶⁶ Improper medical searches and the attempts to coerce a detainee into engaging in sexual contact are considered sexual abuse.¹⁶⁷ The standards also focus on preventing detainee-on-detainee sexual abuse, which consists of sexual contact accomplished through coercion, intimidation, or force.¹⁶⁸ PREA standards include attempted sexual abuse only for staff-on-detainee offenses, but DHS standards emphasize the need to protect individuals from attempted sexual abuse in both staff-on-detainee and detainee-on-detainee incidents.¹⁶⁹

DHS's definition of sexual abuse includes sexual harassment, which covers unwelcome sexual advances, threats, intimidation, and requests for sexual favors; derogatory and offensive verbal comments and gestures; and repeated communication aimed at coercing a detainee into engaging in sexual activity.¹⁷⁰ In order to effectively prevent staff-on-detainee

163. *Id.* at 3–4.

164. U.S. DEP'T OF HOMELAND SEC., STANDARDS TO PREVENT, DETECT, AND RESPOND TO SEXUAL ABUSE AND ASSAULT IN CONFINEMENT FACILITIES 27 (2012), available at <http://www.dhs.gov/sites/default/files/publications/prea-nprm-final-120612.pdf>.

165. *Id.* at 28.

166. *Id.* at 32.

167. *Id.* at 32–33.

168. *Id.* at 33.

169. *Id.*

170. *Id.*

abuse, DHS incorporated inappropriate surveillance of detainees as sexual harassment, which includes leering, as well as improper photography and videotaping of detainees where detainees are performing bodily functions under duress.¹⁷¹

The standards vary depending on the type of facility: family residential units, holding facilities, and immigration detention facilities.¹⁷² A family unity holds non-criminal residents in a family-shelter environment and is composed of one or more non-U.S. citizen children accompanied by a parent or a legal guardian.¹⁷³ None of the individuals placed in these facilities can have a criminal history or have engaged in delinquent activity, such as physical violence, or sexual or substance abuse.¹⁷⁴ A holding facility is primarily used for short-term confinement of individuals who have recently been detained.¹⁷⁵ Immigration detention facilities hold individuals for over twenty-four hours, usually while their immigration proceedings are pending through the completion of their immigration removal.¹⁷⁶ All facilities have a zero-tolerance policy and must outline their standards to accomplish prevention, detection, and response to sexual abuse.¹⁷⁷

E. *Implementing the Prison Rape Elimination Act in the Department of Homeland Security Facilities*

Despite President Obama's statement that PREA regulations would apply to all federal correctional facilities, including immigration detention centers,¹⁷⁸ PREA standards do not apply to CDFs,¹⁷⁹ for private facilities, DHS intends to implement PREA standards by phasing them in through contract modifications, contract renewals, and creation of new contracts.¹⁸⁰ In order to create, modify, or renew a contract, private facilities will have to agree to adopt and comply with PREA standards.¹⁸¹ While it is good that PREA standards will seemingly be implemented into private facilities, it should be noted that this change will only fully

171. *Id.* at 34.

172. *Id.* at 30–32.

173. *Id.* at 31.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.* at 35.

178. Friedmann, *supra* note 153.

179. Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100 (Mar. 7, 2014) (codified at 6 C.F.R. pt. 115).

180. 6 C.F.R. § 115 (2014); Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100, 13127 (Mar. 7, 2014) (codified at 6 C.F.R. pt. 115).

181. *Id.*

come to fruition when every individual contract is successfully modified.¹⁸²

There is concern for the lack of a specified timeframe for which contract facilities will be required to adopt the standards.¹⁸³ With no clear deadline, contract facilities could potentially delay implementation and compliance.¹⁸⁴ ICE has concluded it could take a year or more to renegotiate a contract for one single facility.¹⁸⁵ Commentators suggested compliance within ninety days or one year after the date the standard became effective, May 6, 2014.¹⁸⁶ In response to these commentators, ICE explained that it would not be operationally feasible to conduct contract negotiations within such a short period of time, considering the amount of contract facilities.¹⁸⁷ Once operational and budgetary constraints allow it, ICE plans to include the PREA standards in all contract modifications.¹⁸⁸

Despite the fact that ICE is attempting to have all facilities adopt and comply with the standards as quickly as possible, contract renegotiation can persist for long periods of time.¹⁸⁹ The renegotiation process can take years, resulting in detainees being held in facilities where PREA regulations have not been incorporated.¹⁹⁰

F. *The Prison Rape Elimination Act Enforcement Provisions*

Currently, compliance with PREA standards is voluntary for correctional agencies.¹⁹¹ Instead of requiring full compliance, or enacting a mechanism to enforce compliance, the Department of Justice incentivizes compliance only for state facilities.¹⁹² A state facility's yearly federal grant amount is reduced by 5% if the facility fails to adopt and comply with PREA standards.¹⁹³ The fact that state facilities are only at risk of losing 5% of federal funding for non-compliance demonstrates the low

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100 (Mar. 7, 2014) (codified at 6 C.F.R. pt. 115).

188. *Id.*

189. Mary McCarthy, NAT'L IMMIGR. JUST. CTR., *U.S. Department of Homeland Security's Sexual Assault Regulations Take Effect Today* (May 6, 2014), http://www.immigrantjustice.org/press_releases/us-department-homeland-security's-sexual-assault-regulations-take-effect-today#.VFK0oFZhNuY.

190. *Id.*

191. Friedmann, *supra* note 153, at 5.

192. *Id.*

193. *Id.*

priority Congress has placed on the prevention of sexual abuse in correctional facilities.¹⁹⁴ A higher percentage of funding loss would be a more effective deterrent for those facilities failing to adopt and comply with the standards.¹⁹⁵ Another disincentive would be to publish a list of all facilities that fail to comply with the standards.¹⁹⁶ Inclusion on this list could serve to shame non-complaint facilities into full compliance.¹⁹⁷

DHS has disagreed with the clear need to establish punitive measures for facilities that do not comply with the standards.¹⁹⁸ DHS asserts that, through ICE, they have an effective procedure for sanctioning facilities that violate the detention standards: non-compliant facilities can have the number of detainees being held by the facility reduced.¹⁹⁹ ICE can also impose a corrective plan on the detention facility.²⁰⁰ If ICE concludes the facility has yet to comply with the standards, ICE can decide to terminate the contract and transfer all detainees to other facilities.²⁰¹

IV. PREA'S INEFFECTIVE IMPLEMENTATION AND LACK OF COMPLIANCE HAS RESULTED IN NUMEROUS SEXUAL ASSAULTS

Since PREA was signed into law, hundreds of thousands of detainees have become victims of rape and sexual abuse.²⁰² Approximately 209,400 detainees, including prisoners held in jails, prisons, and juvenile detention facilities, suffered sexual abuse in 2008 alone.²⁰³ About 1.49 million to 2 million detainees in various correctional facilities were sexually victimized.²⁰⁴

A. Family Detention

Family detention takes place when ICE holds immigrant families in detention centers.²⁰⁵ In 2009, the Obama Administration announced ICE would no longer detain families at the T. Don Hutto immigration deten-

194. *Id.*

195. *Id.* at 5–6.

196. *Id.* at 5.

197. *Id.* at 6.

198. 45 C.F.R. § 13112 (2014).

199. *Id.*

200. *Id.*

201. *Id.*

202. Friedmann, *supra* note 153, at 15.

203. *Id.*

204. *Id.*

205. *The facts about family detention*, GRASSROOTS LEADERSHIP (Dec. 19, 2014), <http://grassrootsleadership.org/facts-about-family-detention>.

tion center or in any other immigration detention facility.²⁰⁶ The Obama Administration announced that no new family immigration detention centers would be opened.²⁰⁷ After the closing of the T. Don Hutto immigration detention center, only one other family detention center remained open in Berks County, Pennsylvania.²⁰⁸ The center housed 100 immigrants.²⁰⁹ In 2014, the Administration announced the opening of a new family detention center, which was located in Artesia, New Mexico.²¹⁰ Not long after this, the Administration started detaining immigrant families at a GEO contracted facility in Karnes City, Texas.²¹¹ In response to Congress's request, the Administration asked to have a total of 6,300 beds available for immigrant families.²¹²

Regardless of the family's vulnerabilities, ICE instituted a de facto policy, resulting in mandatory detention and a reduced possibility of release.²¹³ The Administration now argues that mandatory detention is necessary in order to deter migration from Central American countries.²¹⁴ The detention of immigrant families grew by approximately 1200% between the months of June and August in 2014.²¹⁵

B. Before Family Detention, Willacy County Detention Center Represented the Cruel and Unusual Punishment of Immigrants in Contracted Facilities

Willacy County Detention Center is located in Raymondville, Texas.²¹⁶ It is situated forty miles from the Mexican border, in an impoverished and secluded south Texas town.²¹⁷ Management & Training Corporation (MTC) runs the facility as a result of the \$65 million no-bid contract.²¹⁸ The facility contained 2,000 beds.²¹⁹ It became known as "Tent City" due

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

213. DET. WATCH NETWORK, EXPOSE & CLOSE, ARTESIA FAMILY RESIDENTIAL CENTER, NEW MEXICO 1 (Sept. 2014) http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/expose_close_-_artesia_family_residential_center_nm_2014.pdf.

214. *Id.*

215. *Id.*

216. Priscilla Mosqueda & Forrest Wilder, *Migrants in Texas's federal prisons subjected to 'shocking abuse,'* THE GUARDIAN (June 10, 2014), <http://www.theguardian.com/world/2014/jun/10/texas-federal-prisons-immigrants-aclu>.

217. *Id.*

218. *Id.*

219. *Id.*

to its architecture: ten tents housing 200 men in bunk beds placed three feet apart from one another.²²⁰ After reports of the inhumane and cruel conditions surfaced following sexual assaults, beatings by the guards, and lack of medical care, President Obama announced that all detainees would be removed from the facility in 2011.²²¹ Not long after his announcement, the center was contracted by MTC to house both undocumented migrants and some legal residents convicted of immigration crimes.²²² The \$532 million contract is set to last for ten years.²²³ The following sections explain the dynamics of sexual assault in this center and others like it.

i. The Silent Victim

In 2009, a Canadian immigrant, who resided in Florida, was pulled over.²²⁴ When the officer ran her name in his computer, a ten-year-old warrant popped up.²²⁵ The outstanding warrant was for a \$230 bounced check that she had used at Wal-Mart.²²⁶ The outstanding warrant and her illegal status resulted in her detention.²²⁷

Leaving four young U.S.-citizen children behind, “Mary” was driven to jail, where authorities notified ICE.²²⁸ She was sent to Willacy detention center, where she spent the majority of her time at the library working on her appeal for her deportation case.²²⁹ It was there that a male guard approached her and constantly made comments about her looks.²³⁰ On the third encounter, the officer touched her and held her hands while he kissed her, ignoring her pleas to stop.²³¹ He told her he could help her

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. Catherine Rentz, *New Documents Detail sex Abuse of Detained Immigrants*, INVESTIGATIVE REPORTING WORKSHOP (Oct. 19, 2011), <http://investigativereportingworkshop.org/investigations/immigration-detention/story/new-documents-detail-sex-abuse-detained-immigrants>.

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.* See generally Ilona Bray, *The Immigration Hold Process After Jail*, ALLLAW, <http://www.alllaw.com/articles/nolo/us-immigration/hold-process-jail.html> (providing a general overview of agency and detention communication in dealing with detained foreign nationals). The immigrant’s name has been changed to protect her identity. Rentz, *supra* note 224.

229. Rentz, *supra* note 224.

230. *Id.*

231. *Id.* See generally Vivian Kuo & Jason Hanna, *Women allege sexual abuse at Texas immigrant detention center*, CNN (Oct. 4, 2014, 4:14 PM), <http://www.cnn.com/2014/10/03/justice/texas-immigrant-detention-allegations> (arguing “numerous” female immi-

get out of Willacy.²³² When she threatened to report him, he told her nobody would believe her.²³³ Not long after that incident, the guard sexually assaulted her.²³⁴ The guard placed his hands inside her pants and penetrated her with his fingers, regardless of her attempts to push him away.²³⁵ He threatened her that if she told anyone, she would not leave Willacy alive.²³⁶ She reported him to a female guard, who instead of aiding her, advised her it was useless to complain.²³⁷ In order to avoid further abuse, she consented to her deportation back to Canada, where she currently resides.²³⁸

ii. The Punished Guard

In 2011, a prison guard was indicted in a sexual abuse case that occurred at Willacy County Detention Center.²³⁹ He was charged with one-count federal felony on June 23, 2011.²⁴⁰ The prison guard, Edwin Rodriguez, was a contracted security officer at the facility.²⁴¹ He pled guilty to sexually assaulting a female detainee on October 26, 2008.²⁴² The guard had dragged the victim into the guard's bathroom and engaged in intercourse with her.²⁴³ The victim reported the abuse immediately after the incident occurred; however, the guard continued to work at Willacy for eight more months.²⁴⁴ It took two years for the guard to be indicted.²⁴⁵

grants alleging similar sexual abuse from workers while detained at the GEO Group Inc. run facility in Karnes County Texas when workers kissed, fondled, and groped detainees).

232. Rentz, *supra* note 224. See generally Kuo & Hanna, (restating the Mexican American Legal Defense and Educational Fund's (MALDEF) accusations that facility workers at the Karnes County Residential Center referred to detainees as "their 'novias' or 'girlfriends'" and requested sexual favors in exchange for money, promises of assistance in their immigration case, and shelter when and if the women were released).

233. Rentz, *supra* note 224.

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *US: Protect Against Rape in Immigration Detention, Indictment Alleging Sexual Abuse in Texas Facility is Latest Case*, HUM. RTS. WATCH (June 24, 2011), <http://www.hrw.org/news/2011/06/24/us-protect-against-rape-immigration-detention>.

240. *Id.*

241. *Id.*

242. Rentz, *supra* note 224.

243. *Id.*

244. *Id.*

245. *Id.*

This incident occurred before DHS proposed its own Prison Rape Elimination Act.²⁴⁶ Nevertheless, the Justice Department had already proposed their regulation, which attempted to prevent and respond to sexual abuse in prisons nationwide.²⁴⁷ The Proposed Rulemaking on January 24, 2011 would not affect facilities used for the civil detention of migrants pending removal from the United States.²⁴⁸ This occurred regardless of the National Prison Rape Elimination Commission's recommendation that the standards should have included special protection for aliens due to their vulnerabilities and the lack of accountability for those who abuse immigrants.²⁴⁹

iii. Pervasive Sexual Abuse Cover-ups

A former transportation guard at the Willacy facility, Sigrid Adameit, explained that cover-ups for sexual abuse and physical assault allegations were pervasive.²⁵⁰ Sigrid recounted the time a manager requested her to transport a female detainee.²⁵¹ When Sigrid picked her up at the facility, the detainee was receiving a rape kit.²⁵² The manager instructed Sigrid to find a flight for the detainee to her native country.²⁵³ Amongst the instructions, Sigrid was advised not to say anything about the alleged sexual assault.²⁵⁴ Sigrid was to transport the detainee to the airport, where she would meet U.S. Marshals.²⁵⁵

246. *US: Protect Against Rape in Immigration Detention, Indictment Alleging Sexual Abuse in Texas Facility is Latest Case*, HUM. RTS. WATCH (June 24, 2011), <http://www.hrw.org/news/2011/06/24/us-protect-against-rape-immigration-detention>. This highlights the PREA commission is a statutorily created group of experts studying prison rape and proposing national standards to the Justice Department. *Id.*

247. *Id.*

248. *US: Protect Against Rape in Immigration Detention, Indictment Alleging Sexual Abuse in Texas Facility is Latest Case*, HUM. RTS. WATCH (June 24, 2011), <http://www.hrw.org/news/2011/06/24/us-protect-against-rape-immigration-detention>, see *Stop Sexual Abuse of Detained Immigrants*, NAT'L IMMIGR. JUST. CTR., <http://www.immigrantjustice.org/PREA> (detailing the May 2012 executive instruction to DHS to promulgate PREA standards and regulations within a year in immigration detention facilities).

249. *US: Protect Against Rape in Immigration Detention, Indictment Alleging Sexual Abuse in Texas Facility is Latest Case*, HUM. RTS. WATCH (June 24, 2011), <http://www.hrw.org/news/2011/06/24/us-protect-against-rape-immigration-detention>.

250. Rentz, *supra* note 224. See generally Christopher Michael Vaughn, *Creators of the Undocumented*, SUPPORT THE DREAM ACT (Jan. 2014), <https://thevaughnuk.wordpress.com/2014/01> (describing a cover up incident Sigrid Adameit was ordered by ICE to "clean-up" that involved a physical assault of a detainee).

251. Rentz, *supra* note 224.

252. *Id.*

253. *Id.*

254. *Id.*

255. *Id.*

FRONTLINE, a television flagship that conducts films and supports investigative reporting,²⁵⁶ requested ICE provide them with all positive rape kit results that had been obtained at the Willacy medical unit, but ICE did not respond to the request.²⁵⁷ Additionally, MTC declined the request to comment about the cruel conditions at Willacy.²⁵⁸

In April 2009, Dora Schriro, former senior adviser to DHS Secretary Janet Napolitano, visited Willacy to evaluate the conditions at the center and make recommendation for the detention system.²⁵⁹ Schriro started by investigating the female detainees who had come forth with sexual allegations, and conducted surveys of all the immigrants detained at Willacy.²⁶⁰ Twana Cooks-Allen, the mental health coordinator who was in charge of coordinating the surveys, listened to several female and male detainees speak out about sexual assault.²⁶¹ Amongst the allegations was a male detainee who was repeatedly raped by another male detainee, and was subsequently diagnosed with HIV.²⁶² The guards simply turned the other way while each incident took place.²⁶³ Another female detainee recounted how a guard had touched her in places she did not want to be touched.²⁶⁴

Upon receiving the survey results, local ICE officials requested information on which detainees had alleged sexual assaulted.²⁶⁵ A day after releasing the results, Cooks-Allen was bombarded by detainees who were being harassed by ICE officials regarding their statement and even threatened with the possibility of deportation.²⁶⁶ Despite the Willacy surveys being discontinued, serious allegations continued to surface.²⁶⁷

C. *Sexual Assault Occurs in Family Detention Center After Willacy*

The numbers of reported sexual assaults in these detention centers is astounding. To fully understand the grave scope of this problem, however, it is important to acknowledge that approximate 60% of sexual abuse victims do not report their abuse.²⁶⁸ Furthermore, this trend is

256. *About Us*, FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/about-us> (last visited Feb. 16, 2015).

257. Rentz, *supra* note 224.

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.*

even greater in immigration detention centers.²⁶⁹ Immigrants are amongst the most vulnerable of populations; not only are they almost always unable to exert their rights in this context, but these remote immigration detention centers often deprive them of access to legal counsel.²⁷⁰ Willacy Detention Center received approximately 900 grievances through its internal grievance process.²⁷¹ The center had more sexual assault complaints than any other facility.²⁷² Despite the vast amount of cases, only four grievances were resolved.²⁷³ The cases below demonstrate that, tragically, nothing has changed after Willacy.²⁷⁴

i. T. Don Hutto Immigration Facility

When the T. Don Hutto facility first opened in May 2006, the facility was lauded as the end of the separation of immigrant families in detention.²⁷⁵ In theory, the facility was specially equipped to meet the needs of families; in reality, however, families were being detained for indefinite periods of time, in prison-like conditions not conducive to family welfare.²⁷⁶ In 2007, the ACLU sued the federal government due to the facility's harsh conditions, which resulted in the release of dozens of families.²⁷⁷ Despite the 2007 scandal, the facility was once again in the spotlight when a prison guard was charged with sexually abusing several detainees.²⁷⁸

The several sexually abused plaintiffs brought action against federal officers, George Robertson and Jose Rosado, alleging they had violated their Fifth Amendment due process right to freedom of deliberate indifference to a risk of harm.²⁷⁹ The immigrant plaintiffs alleged the facility's logbooks and reports demonstrated the officer's indifference to transportation regulation.²⁸⁰ The documents demonstrated the transportation of

269. *Id.*

270. *Id.*

271. *Id.*

272. *Id.*

273. *Id.*

274. *Id.*

275. Ada Williams Prince, *Shut Down Hutto; Rethink the Detention of Families*, WOMEN'S REFUGEE COMMISSION (Apr. 18, 2007), <http://womensrefugeecommission.org/news/57-news-media-a-press/press-releases/490-shut-down-hutto-rethink-the-detention-of-families>.

276. *Id.*

277. Ted Hesson, *Undeterred by sex abuse scandal, feds push for more family detention centers*, FUSION (Nov. 17, 2014, 2:51 PM), <http://fusion.net/story/20761/sex-abuse-allegations-at-family-detention-center-bring-back-bad-memories>.

278. *Id.*

279. *Doe v. Robertson*, 751 F.3d 383 (5th Cir. 2014).

280. *Id.* at 386.

female detainees by male officers, without the presence of female officers.²⁸¹ The documents indicated seventy-seven incidents.²⁸² The Fifth Circuit, nevertheless, ruled:

[N]o clearly established law provides that an official's knowledge of contractual breaches and of the breached provision's aim to prevent sexual assault of detainees, standing alone, amounts to deliberate indifference in violation of a detainee's Fifth Amendment rights, because no controlling authority provides that such breaches are "facts from which the inference could be drawn that a substantial risk of serious harm exists."²⁸³

Accordingly, both officers were deemed entitled to qualified immunity.²⁸⁴

Hutto's resident supervisor, Donald Charles Dunn, was also accused of abusing several female detainees, while he transported them to the airport once they had been released on bond.²⁸⁵ During their transportation, Dunn told them he needed to frisk them, before he touched their breasts and genital areas.²⁸⁶ On September 8, 2010, Dunn pled guilty to three counts of official oppression and two counts of unlawful restraint.²⁸⁷ He was sentenced to one year of jail for each of the five charges.²⁸⁸ Three of the five sentences will run concurrently, however, and two of the official oppressions were probated, which means Dunn will serve them as a two-year probation once he is released from prison.²⁸⁹

ii. Artesia Family Residential Center

The Artesia Family Residential Center started detaining families on June 27, 2014.²⁹⁰ The center was located in the middle of the desert in New Mexico, far away from legal counsel.²⁹¹ It was located approxi-

281. *Id.*

282. *Id.*

283. *Id.* at 392 (quoting *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)).

284. *Id.* at 394.

285. *Sexual Abuse of Female Detainees at Hutto Highlights Ongoing Failure of Immigration Detention System*, ACLU (Aug. 20, 2010), <https://www.aclu.org/immigrants-rights-prisoners-rights-prisoners-rights/sexual-abuse-female-detainees-hutto-highlights>.

286. *Id.*

287. Miguel Liscano, *Man gets jail for groping detention center residents*, STATESMAN (Nov. 9, 2010, 10:52 PM), http://www.statesman.com/news/news/local/man-gets-jail-for-groping-detention-center-residen/nRStz/#__federated=1.

288. *Id.*

289. *Id.*

290. DET. WATCH NETWORK, *supra* note 213, at 2.

291. *Id.*

mately 200 miles from the closest major city.²⁹² The immigrant families detained at the center were hours away from social services.²⁹³ The location impaired their ability to seek legal counsel and made PREA accountability nearly impossible.²⁹⁴ Non-governmental organizations (NGOs) were not allowed to enter the detention center to assess the detention conditions until a month after the center first opened.²⁹⁵ By the time NGOs were allowed to enter the facility, three planes filled with immigrant families had been sent back to the home countries—the countries they once fled in fear for their lives.²⁹⁶

Allegations of sexual abuse started surfacing, and among those cases was an eight-year-old boy from El Salvador who was raped and sexually abused.²⁹⁷ Bryan Johnson, the immigration attorney representing the boy, explained how ICE officials did very little to stop the abuse.²⁹⁸ He came from his home country with his mother and younger brother.²⁹⁹ After arriving in the United States, the family was placed in the detention facility.³⁰⁰ Days after their arrival, the eight-year-old boy was raped by an older boy.³⁰¹ The abuse occurred in the facility's game room and bathroom, areas not supervised by officials.³⁰² The child's mother reported the incident to ICE officials; however, the officials told her there was nothing they could do.³⁰³ The same older boy abused the child a second time and this time, witnesses came forth and reported the incident to the officials.³⁰⁴ ICE officials called the local police, who never spoke with the boy or his mother regarding the incident.³⁰⁵ Besides the lack of compliance with PREA in seeking to prevent the sexual abuse of the young boy, ICE also failed to allow the boy and his mother to be released, on humanitarian parole, to their relatives residing in the United States.³⁰⁶

292. *Id.*

293. *Id.*

294. *Id.*

295. *Id.*

296. *Id.*

297. Melissa del Bosque, *As Feds Lock Up More Immigrant Families, Abuse Allegations Grow*, TEX. OBSERVER (Nov. 4, 2014), <http://www.texasobserver.org/growing-number-abuse-cases-immigrant-family-detention-facilities>.

298. *Id.*

299. *Id.*

300. *Id.*

301. *Id.*

302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.*

The Artesia family detention center closed in December 2015.³⁰⁷ The families in Artesia were sent to the South Texas Family Residential Center, Karnes County Residential Center and the Berks County, Pennsylvania detention center.³⁰⁸

iii. Karnes City Family Residential Center

The Karnes County Residential Center opened in early August 2014, located fifty-four miles outside of San Antonio, Texas.³⁰⁹ The Center is run by the GEO Group.³¹⁰ In Texas alone, the GEO Group has settled lawsuits for approximately eleven deaths and dozens of sexual assault complaints.³¹¹ Immigration authorities and the GEO Group have not learned from past experiences, as the lack of transparency and accountability³¹² continues to result in numerous sexual assault complaints.³¹³

In September 2014,³¹⁴ the Mexican American Legal Defense and Educational Fund (MALDEF) filed a complaint with the Homeland Security Department, after several women detained at the facility alleged staff members there sexually assaulted them.³¹⁵ The complaint stated that the ongoing sexual abuse allegations were in violation of PREA.³¹⁶ It requested federal officials investigate the allegations and implement the necessary protective measures to ensure compliance with PREA.³¹⁷

The allegations included:

1. Karnes Center Guards and/or personnel removing female detainees from their cells late in the evening and during early morning hours for the purpose of engaging in sexual acts in various parts of

307. Julia Preston, *Hope and Despair as Families Languish in Texas Immigration Centers*, N.Y. TIMES (June 14, 2015), http://www.nytimes.com/2015/06/15/us/texas-detention-center-takes-toll-on-immigrants-languishing-there.html?_r=0.

308. *Id.*

309. Joy Diaz, *A Private Prison Group Runs Texas' New Immigration Detention Center*, KWBU (Aug. 6, 2014), <http://kwbu.org/post/private-prison-group-runs-texas-new-immigrant-detention-center>.

310. *Id.*

311. *Id.*

312. *Id.*

313. Letter from Marisa Bono et al., Staff Att'y, Mex. Am. Legal Def. and Educ. Fund, to Jeh Johnson et al., Sec'y, Homeland Sec., at 1 (Sept. 30, 2014) (on file with author), available at http://www.maldef.org/assets/pdf/2014-09-30_Karnes_PREA_Letter_Complaint.pdf.

314. *Id.*

315. Guillermo Contreras, *Complaint: Women at Karnes immigration facility are preyed upon by guards*, MY SAN ANTONIO (Oct. 2, 2014, 10:10 am), <http://www.mysanantonio.com/news/local/article/Complaint-Women-at-Karnes-immigration-facility-5797039.php>.

316. Letter from Marisa Bono et al., *supra* note 313.

317. *Id.* at 2.

the facility; 2. Karnes Center guards/or personnel calling detainees their “novias,” or “girlfriends,” and using their respective position and power over the highly vulnerable detained women within the detention facility by requesting sexual favors from female detainees in exchange for money, promises of assistance with their pending immigration cases, and shelter when and if the women are released; and 3. Karnes Center guards kissing, fondling and/or groping female detainees in front of other detainees, including children.³¹⁸

The complaint stated at least three employees had been suspected of engaging in these incidents.³¹⁹ By September 2014, despite the complaint, the facility had not taken action to attempt to stop and prevent any future abuse.³²⁰ The investigation revealed the facility’s environment did the opposite—it provided guards an environment that facilitated sexual abuse, where male guards had free access to the cells where women and children resided, any time during the day and night.³²¹ In some instances, children who were over thirteen years of age were separated from their mothers and were living in different cells without any explanation.³²²

The conditions stated in the complaint, violated the zero-tolerance policy established by PREA.³²³ PREA specifically states that sexual abuse is any incident when a staff member is involved in sexual contact with a detainee or resident.³²⁴ It is considered sexual abuse regardless of whether or not the sexual intercourse is consensual.³²⁵ Sexual abuse also includes any attempt, threat, or request by a facility staff member with the purpose of engaging in sexual intercourse.³²⁶

The complaint specifies that contracted ICE facilities must have a zero-tolerance policy in an attempt to detect and prevent sexual abuse and sexual harassment.³²⁷ All facilities should have protocols for responding to sexual abuse allegations.³²⁸ The protocols must ensure proper follow

318. *Id.*

319. *Id.*

320. *Id.*

321. *Id.*

322. *Id.* at 3.

323. *Id.* See generally Prison Rape Elimination Act (PREA) of 2003, 42 USC § 15602 (2003) (stating one of the purposes of the Prison Rape Elimination Act is to establish a zero-tolerance standard for the incidence of prison rape in U.S. prisons).

324. Letter from Marisa Bono et al., *supra* note 313.

325. *Id.*

326. *Id.*

327. *Id.*

328. *Id.*

up, which should result in the persecution of assailants.³²⁹ The allegations demonstrated a failure to respond to the accusations, shedding light on the reality that Karnes City Residential Center does not have a prevention plan in place and has not implemented or enforced PREA.³³⁰

MALDEF demanded ICE bring the facility into compliance with PREA, as well as ensure the compliance with the Family Residential Standards.³³¹ The Family Residential Standards include developing, supervising, and enforcing a policy deemed to prevent, detect, and respond to sexual abuse allegations.³³² The facility would be required to have a transparent grievance process and proper training for all personnel and management.³³³ Family members should receive the necessary medical and counseling evaluation, and treatment.³³⁴

In response to the complaint and the requests, Adelina Pruneda, spokesperson for ICE, stated: ICE and DHS are committed to ensuring all detainees are treated in a humane manner, ICE advocates a zero-tolerance policy for sexual abuse, and all of their facilities' policies are in accordance with the law.³³⁵ She reiterated that sexual abuse allegations are taken seriously and are investigated thoroughly.³³⁶ Despite her response, an American Immigration Council report conducted in 2014 analyzed approximately 800 complaints alleging Border Patrol misconduct.³³⁷ The report indicated that between January 2009 and Janu-

329. 6 C.F.R. § 115.22; *see also* Letter from Marisa Bono et al., *supra* note 313 (requiring prompt response to allegations and notifying proper law enforcement agency to conduct criminal investigations).

330. Letter from Marisa Bono et al., *supra* note 313.

331. *Id.*

332. *Id.*

333. *Id.* at 4.

334. *See* 6 C.F.R. § 115.81(a) (instructing facility staff to refer detainees to a qualified medical or mental health practitioner for medical and/or mental health follow-up immediately if detainee has experienced prior sexual victimization or perpetrated sexual abuse); Family Residential Standards § 2.7 (2008), *available at* http://www.ice.gov/doclib/dro/family-residential/pdf/rs_sexual_assault_prevention-intervention.pdf (requiring residents at risk for sexual victimization to receive counseling as well as those who make a report of sexual abuse or assault to be seen by a mental health clinician within 24 hours of initial report); *see also* Letter from Marisa Bono et al., *supra* note 313 (emphasizing Karnes County Residential Center's need to maintain files of medical and counseling evaluations in accordance with the Family Residential Standards).

335. Jake Dean, *Allegation of sexual abuse at south Texas immigrant detention facility*, WORLD SOCIALIST WEB SITE (Oct. 6, 2014), <http://www.wsws.org/en/articles/2014/10/06/kcrc-o06.html>.

336. *Id.*

337. DANIEL MARTINEZ ET AL., AM. IMMIGRATION COUNCIL, NO ACTION TAKEN: LACK OF CBP ACCOUNTABILITY IN RESPONDING TO COMPLAINTS OF ABUSE 1 (May 2014), *available at* http://www.americanimmigrationcouncil.org/sites/default/files/No%20Action%20Taken_Final.pdf; Dean, *supra* note 335.

ary 2012, roughly 97% of the grievances that were inspected by internal investigators were deemed to have “No Action Taken.”³³⁸ The personnel involved in those incidents were not disciplined and no action was taken against them.³³⁹ According to Gillian Christensen, ICE spokesperson in Washington D.C., similar claims had been made previously and were reviewed by U.S. Attorneys who had declined further prosecution.³⁴⁰

iv. South Texas Family Residential Center

The South Texas Family Residential Center in Dilley, Texas is the largest immigration detention center in the country.³⁴¹ The 50-acre camp can house up to 2,400 migrants.³⁴² More than half of the migrants housed at Dilley are children, around nine years of age.³⁴³ The women and children live in bunk rooms, which hold twelve people each.³⁴⁴ The detention center has a formal courtroom where immigration judges sitting in Miami hear the bond and asylum claims.³⁴⁵ In 2015, 88% of the women and children have passed the first step towards their asylum claim, which is the credible fear interview in which they describe their fears of returning to their home country.³⁴⁶ The women and children who had help from attorneys are often successful at being released on bond and even winning an asylum claim.³⁴⁷ Nevertheless, attorneys argue that Corrections Corporation of America, the private contractor running the family detention center, has placed obstacles preventing attorneys for completing their work.³⁴⁸ With more than forty migrants arriving at the center each day, most women and children have to present themselves in court without any legal assistance.³⁴⁹

338. MARTINEZ ET AL, *supra* note 337; Dean, *supra* note 335. This percentage is based only on the cases that had issued a formal decision. MARTINEZ ET AL, *supra* note 337, at 1.

339. DANIEL MARTINEZ ET AL, *supra* note 337; Dean, *supra* note 335.

340. Will Weissert, *Complaint alleges sex abuse at immigration lockup*, THE WASH. TIMES (Oct. 2, 2014), <http://www.washingtontimes.com/news/2014/oct/2/complaints-allege-sex-abuse-at-immigration-lockup>.

341. Preston, *supra* note 307.

342. *Id.*

343. *Id.*

344. *Id.*

345. *Id.*

346. *Id.*

347. *Id.*

348. *Id.*

349. *Id.*

V. RECOMMENDATIONS

The sexual abuse narrations explained above highlight the critical and urgent need to re-examine immigration law and immigration detention, in particular family detention.³⁵⁰ The same problems that occurred before the T. Don Hutto facility closed down³⁵¹ are currently occurring right now in the family detention centers in Texas and Pennsylvania.

Vanita Gupta, Deputy Legal Director of ACLU, elucidated that this sexual abuse is a plague running throughout the broken immigration detention system in place.³⁵² A once “flagship facility emblematic of its commitment to reform,” the T. Don Hutto facility sheds light on numerous sexual abuse cases involving immigration detainees specifically.³⁵³ Vanita Gupta explains,

ICE has ignored repeated calls for increased and independent oversight and accountability of its immigration detention facilities and the private contractors like CCA who run them, and tragedies like this are the unfortunate result. It is time for ICE officials to live up to their promise of creating a “truly civil” immigration detention system that does not tolerate the abuse and degradation of its detainees.³⁵⁴

Lisa Graybill, Legal Director of the ACLU of Texas asserts,

It is long past time to close the book on ICE’s relationship with CCA. If this administration is serious about reform, it cannot continue to spend millions of taxpayer dollars every month on a private contractor that has proven over and over again it is demonstrably incapable of running a safe and humane facility. Immigrant women, many of whom have fled to the United States seeking refuge from sexual violence, should not fear more of the same in the hands of ICE and its contractors. Zero tolerance starts at the top. The only way for ICE to restore integrity to its system is to immediately sever its con-

350. Prince, *supra* note 275.

351. See *generally id.* (“[Families] lived in cells, complete with open-air toilets, had no privacy, had highly restricted mobility and only an hour of recreation per day, had poor medical care and no prenatal care, and were subject to questionable disciplinary tactics, including threats of separation of children from their parents Children had no soft toys and inappropriately received [7] hours of education a day, but the quality [was] still unclear.”).

352. *Sexual Abuse of Female Detainees at Hutto Highlights Ongoing Failure of Immigration Detention System*, *supra* note 285.

353. *Id.*

354. *Id.* The Corrections Corporation of America (CCA) was the contractor. *Id.*

tract with CCA and begin a new era of transparency and accountability.³⁵⁵

A. *Already Established Recommendations*

The following two recommendations have already been established; implementation of these recommendations will go a long way in eliminating the scourge of sexual violence within these detention centers.

i. Shut Down Family Immigration Detention Centers

Shutting down privately-run immigration detention centers is the first and most important recommendation, but unfortunately, it is a far-fetched one.³⁵⁶ Both GEO and CCA have long-term contracts to house immigrants due to their close relationship to federal agencies.³⁵⁷ Since the surge of undocumented immigrants crossing the border this summer, CCA's shares climbed 8.5% and GEO's shares spiked 7%.³⁵⁸ With President Obama's urge in passing an emergency supplemental bill of \$3.7 billion, investors are embracing for-profit detention as an opportunity for financial gain.³⁵⁹ This is clearly supported by the growth of the most recent Karnes City Residential Center, which has now expanded to house hundreds of immigrants.³⁶⁰

ii. Reducing the Bed Mandate and Using Alternatives to Detention Programs

Regardless of the fact that DHS has requested the quota be lowered to 30,539 beds, the detention bed-mandate appears in the 2015 appropriation bill requiring 34,000 filled beds.³⁶¹ The bill passed the House of Representatives in January 2015.³⁶² The author agrees with Homeland

355. *Id.*

356. See Matt Egan, *Wall Street Bets on Prison Growth from Border Crisis*, CNN MONEY (Aug. 29, 2014, 3:42 PM), <http://money.cnn.com/2014/08/29/investing/border-crisis-prison-stocks/index.html> (inferring that the government will continue to turn to the private sector for facilities because the government is unwilling to put up the capital to build new facilities to fulfill its need to house incoming immigrants, while publicly traded companies have the equity to expand; investors continue to invest in for-profit detention centers because they are a mechanism to generate more cash flow and obtain strong dividend yields).

357. *Id.*

358. *Id.*

359. *Id.*

360. *Id.* The U.S. border control entered into a contract with Geo Group to give the detention center a "makeover." *Id.*

361. Robert M. Morgenthau, *The US Keeps 34,000 Immigrants in Detention Each Day Simply to Meet a Quota*, THE NATION (Aug. 13, 2014), <http://www.thenation.com/article/180972/us-keeps-34000-immigrants-detention-each-day-simply-meet-quota#>.

362. H.R. 240, 114th Cong. (as passed by House, Jan. 14, 2015).

Security Secretary, Janet Napolitano, who argues the mandate is an arbitrary bed number.³⁶³ The mandate is excessive and other measures should be implemented instead.³⁶⁴ Detainees that appear to be a flight risk can be given an electronic ankle bracelet, which still ensures their appearance at the hearings.³⁶⁵ Mandatory detention should only be reserved for those posing a public or national security threat.³⁶⁶

B. *PREA's Implementation Should Not Wait Until Contract Renewal*

As of now, PREA regulations state the standards shall be implemented in DHS facilities when there is a contract modification or whenever there is a new contract.³⁶⁷

[B]ased on ICE's past experience with the contract negotiation process, it can take one year or more to complete a contract negotiation for a single detention facility. ICE cannot reasonably conduct such large numbers of contract negotiations simultaneously in such a short period of time. Given that there are 132 covered immigration detention facilities that would need to adopt the standards, without some additional appropriation address these staffing and logistical challenges, bringing contract negotiations to conclusion within one year is not operationally feasible.³⁶⁸

This procedure needs to change. PREA regulations should not be phased in through contract modification, renewals, or new contracts. Before the opening of any privately run detention center, PREA regulations must already be implemented, complied with, and enforced.

C. *ICE Officials Working at Immigration Detention Centers Should Not Receive Immunity*

In *Doe v. Roberston*, the case against the ICE officers at the Willacy Detention Center, the court found that the officer's knowledge they had breached their contract, and its provisions aimed at preventing sexual abuse, did not amount to a deliberate indifference to the victim's rights.³⁶⁹ The court ruled the ICE officers qualified for immunity, regardless of the clear violation of both the contract aimed at protecting the victim and the victim's rights.³⁷⁰ ICE officers should not qualify for im-

363. Morgenthau, *supra* note 361.

364. *Id.*

365. *Id.*

366. *Id.*

367. 28 C.F.R. § 115.112 (2013); 6 C.F.R. § 115.12 (2014).

368. 79 Fed. Reg. 13100-01 (Mar. 7, 2014).

369. *Doe v. Robertson*, 751 F.3d 383, 392 (5th Cir. 2014).

370. *Id.*

munity if they are not enforcing and complying with PREA standards. They should be held equally accountable as the other detention center's personnel.

D. Increase the Penalty for Noncompliance and Creation of a New PREA Enforcement Mechanism

As mentioned above, instead of requiring full compliance with the standards or enacting a mechanism to enforce compliance, the Department of Justice incentivizes compliance only for State facilities.³⁷¹ This is done by reduction in federal grant money if the facility fails to comply.³⁷² State facilities' fiscal year federal grant money, however, is only reduced by 5% if the facilities fail to adopt and comply with the PREA standards.³⁷³ This percentage is obviously way too low and should be raised to a level that truly punishes those facilities that violate compliance.

There is also a need for an enforcement mechanism similar to the executive order that President Obama signed on July 30, 2014 in regard to labor law violations.³⁷⁴ The mechanism calls for contractors to disclose violations before they can obtain a contract and depending on such violations, agencies would reconsider awarding contracts.³⁷⁵ If this was implemented, DHS would be able to reconsider and if necessary, terminate already existing contracts when PREA violations arise.³⁷⁶

E. Implement a Cause of Action for Victims of Sexual Abuse When A Correctional Facility Fails to Implement or Comply with PREA Standards

As it stands now, if a correctional facilities fail to implement and comply with the PREA standards, a rape victim cannot file suit against the agency.³⁷⁷ This is because there is no cause of action solely aimed at an agency's failure to comply with PREA standards.³⁷⁸ While it has been

371. Friedmann, *supra* note 153, at 5.

372. *Id.*

373. *Id.*

374. See Andy Medici, *Presidential order cracking down on labor law violations is flawed, contractor groups say*, FED. TIMES (Nov. 7, 2014, 1:23 PM), <http://www.federaltimes.com/article/20141107/ACQ02/311070010/Presidential-order-cracking-down-labor-law-violations-flawed-contractor-groups-say> (examining how the executive order requires "federal contractors to disclose any labor law violations and for agencies to take that into account when awarding contracts").

375. *See id.*

376. *See id.* (explaining that before a contractor can obtain a contract, they would be required to disclose labor law violations from the past three years).

377. Friedmann, *supra* note 153, at 6.

378. *Id.* There are however, causes of action under the Eighth or Fourteenth Amendments. *Id.*

suggested that victims may have a remedy in arguing that noncompliance violates the facilities constitutional obligation,³⁷⁹ case law shows that even with this looming threat, facilities have been deliberately indifferent to harm resulting from a lack of compliance with PREA standards; in many cases, no reasonable action takes place upon filing a complaint to stop and prevent the sexual abuse.³⁸⁰ It stands to reason that the only true way to get the attention and compliance of the facilities in violation is to allow individual victims to file suit directly for these violations.

VI. CONCLUSION

Current immigration law and the privatization of immigration detention centers have made it highly likely that immigrants will be detained. This likelihood has turned the American Dream into a nightmare for many immigrants that have and will cross the border, often fleeing horrendous violence and crime within their countries of origin. Illegal immigration is not to be condoned, but immigrants still retain the human right to be treated with dignity, free from sexual violence. If immigration laws do not change any time soon, the bed mandate continues to require 34,000 beds be filled, and the existence of privately-run immigration detention centers does not cease, then immigrants deserve at least full compliance of existing PREA regulations. DHS created its own PREA standards and they should be implemented throughout all immigration facilities. While in detention, immigrants should be protected from further abuse similar to the abuse that they fled in their home countries. Their abusers should be held accountable, even if that means a reduction of the privatization of immigration detention centers. Corporate America should not be allowed to profit from abusing the most vulnerable within our borders.

379. ACLU, END THE ABUSE, PROTECTING LGBTI PRISONERS FROM SEXUAL ASSAULT 2 (2014), available at <https://www.aclu.org/files/assets/prea/012014-ACLU-PREA-Guide.pdf>.

380. See e.g., MEXICAN AM. LEGAL DEF. AND EDUC. FUND, *MALDEF and other groups file complaint detailing sexual abuse, extortion, and harassment of women at ICE family detention center in Karnes City*, http://www.maldef.org/news/releases/maldef_other_groups_file_complaint_ice_family_detention_center_karnes_city (last visited Feb. 14, 2015) (discussing how MALDEF filed a complaint regarding the exploitation of the women being detained at Karnes City Residential Center, which includes the officers removing female detainees from their cells at night with the purpose of coercing them into engaging in sexual conduct, but no actions have been taken in the attempt to stop and prevent sexual abuse). Instead, the Department of Homeland Security is currently building a new private immigration facility to contain 2,500 beds. *Id.*