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## Disposable Immigrants: The Reality of Sexual Assault in Immigration Detention Centers

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## COMMENT

### DISPOSABLE IMMIGRANTS: THE REALITY OF SEXUAL ASSAULT IN IMMIGRATION DETENTION CENTERS

VALERIE GISEL ZARATE\*

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## I. INTRODUCTION

Breaking the silence can be one of the most difficult tasks a victim of sexual abuse can overcome.<sup>1</sup> However, even when victims speak up about their traumatic experience, the criminal justice system often fails to prosecute the perpetrators.<sup>2</sup> Sexual assault does not discriminate and can affect every gender and race.<sup>3</sup> Recently in America, at least one in every six women and one in every thirty-three men are raped each year,<sup>4</sup> with approximately more than one complaint a day arising in immigration detention centers.<sup>5</sup> The effects of sexual assault, such as post-traumatic

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1. See generally Sydney Karlos, *Opinion: A Lesson on Why Victims of Sexual Assault Stay Silent*, DAILY AZTEC (May 8, 2019), <https://thedailyaztec.com/94723/el-alma/opinion-a-lesson-on-why-victims-of-sexual-assault-stay-silent/> [https://perma.cc/55KU-AHMZ] (explaining why survivors of sexual assault do not speak up because of the traumatic experience).

2. See Simon McCarthy-Jones, *Survivors of Sexual Violence are Let Down by the Criminal Justice System—Here's What Should Happen Next*, CONVERSATION (Mar. 29, 2018, 5:28 AM), <https://theconversation.com/survivors-of-sexual-violence-are-let-down-by-the-criminal-justice-system-heres-what-should-happen-next-94138> [https://perma.cc/WL82-22YT] (discussing the problems victims face when reporting and addressing the need for reform in the legal system); see also *The Criminal Justice System: Statistics*, RAINN, <https://www.rainn.org/statistics/criminal-justice-system> [https://perma.cc/B9KU-LL4K] (reporting perpetrators of sexual violence are less likely to go to jail or prison than other criminals”).

3. See *Victims of Sexual Violence: Statistics*, RAINN, <https://www.rainn.org/statistics/victims-sexual-violence> [https://perma.cc/YF2K-KK6H] (conveying the statistics of sexual violence by gender and other categories).

4. See Branka Vuleta, *32 Disheartening Sexual Assault Statistics for 2020*, LEGAL JOB SITE BLOG (Feb. 16, 2020), <https://legaljobsite.net/sexual-assault-statistics/> [https://perma.cc/2A8M-BMY6] (showing statistics in the U.S. on annual rapes and percentages reported).

5. See *Widespread Sexual Assault*, FREEDOM FOR IMMIGRANTS, <https://www.freedomforimmigrants.org/sexual-assault> [https://perma.cc/V5J8-ZCQ4] (demonstrating results found between the years of 2014 and 2016 indicating the Office of the Inspector General “received at least 1,016 reports of sexual abuse filed by people in detention . . .”).

stress, anxiety, and shame can have a detrimental impact on any survivor's life.<sup>6</sup> Despite these effects, every year many immigrant families attempt to gain a better life by crossing borders only to end up facing the harsh realities of United States immigration detention facilities.<sup>7</sup> Even after numerous complaints,<sup>8</sup> the United States Government's need for accountability measures seems to be of little concern.<sup>9</sup>

United States Immigration and Customs Enforcement (ICE) recognizes the need to address sexual assault occurring within its detention centers.<sup>10</sup> While ICE may have several policies in place to prevent sexual assault,<sup>11</sup> the latest allegations against immigration officials indicate sexual assault is still prevalent among these detention facilities, specifically in Texas.<sup>12</sup> On May 27, 2020, Plaintiff Jane Doe brought suit against CoreCivic<sup>13</sup> alleging that in 2018, while under the control of ICE in a Houston processing center, she and two other women were placed in an isolated area

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6. See *Sexual Assault/Abuse*, GOOD THERAPY (Nov. 4, 2019), <https://www.goodtherapy.org/learn-about-therapy/issues/sexual-abuse> [<https://perma.cc/97LY-XMWU>] (illustrating the mental health issues associated with sexual assault).

7. See *Southwest Border Migration*, U.S. DEP'T HOMELAND SEC.: U.S. CUSTOMS & BORDER PROT. (Nov. 19, 2020), <https://www.cbp.gov/newsroom/stats/sw-border-migration> [<https://perma.cc/Q7AW-R9XG>] (demonstrating the number of unaccompanied children, families, and single adults attempting to cross the southern border every year); see also Maria Mendoza, *A System in Need of Repair: The Inhumane Treatment of Detainees in the U.S. Immigration Detention System*, 41 N.C.J. INT'L L. 405, 425 (2016) ("There are many significant barriers that immigrants face while in detention, including a lack of access to legal counsel, inadequate medical care, and exposure to mistreatment and abuse.").

8. See *Widespread Sexual Assault*, *supra* note 5 (demonstrating "between January 2010 and July 2016, the OIG received over 33,000 complaints of sexual assault or physical abuse against component agencies in DHS").

9. See Tara Tidwell Cullen, *ICE Released Its Most Comprehensive Immigration Detention Data Yet. It's Alarming*, NAT'L IMMIGRANT JUST. CTR. (Mar. 13, 2018), <https://immigrantjustice.org/staff/blog/ice-released-its-most-comprehensive-immigration-detention-data-yet> [<https://perma.cc/N7GW-TFM2>] (detailing lack of accountability and transparency among ICE facilities).

10. See *PREA*, U.S. IMMIGR. AND CUSTOMS ENF'T. (Sept. 3, 2020), <https://www.ice.gov/prea> [<https://perma.cc/N62V-EJV7>] (indicating ICE has developed standards to safeguard against sexual assault in detention facilities).

11. *Performance-Based National Detention Standards 2011*, U.S. IMMIG. AND CUSTOMS ENF'T. 127, 128, 135, 144 (2011), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf> [<https://perma.cc/3RHJ-3SG2>].

12. See Lomi Kriel, *ICE Guards 'Systematically' Sexually Assault Detainees in an El Paso Detention Center, Lawyers Say*, TEX. TRIB. (Aug. 14, 2020, 12:00 PM), <https://www.texastribune.org/2020/08/14/texas-immigrant-detention-ice-el-paso-sexual-abuse/> [<https://perma.cc/HCX9-F4PB>] (highlighting one recent complaint filed with the Office of Inspector General stating guards in the El Paso detention center attacked victims in nonvisible areas).

13. Plaintiff's Original Complaint & Jury Demand, *Doe v. CoreCivic, Inc.*, No. 4:20-cv-01828 (S.D. Tex. May 27, 2020).

where three men “brutally attacked and sexually assaulted” them hours before being deported.<sup>14</sup> Consequently, upon returning to her hometown in Mexico, Doe realized she was impregnated from her attacker and not only suffered a complicated birth but went through severe emotional distress to the point she no longer wanted to continue living.<sup>15</sup> Doe’s attorney argued ICE has a history of continuous sexual abuse within their detention facilities, and since the privatization of these detention centers, ICE has known of the high risks of sexual assault that detainees face.<sup>16</sup> Additionally, despite ICE’s implementation of the Prison Rape Elimination Act,<sup>17</sup> in the previous years, ICE received over 30,000 complaints of sexual abuse with less than 3% investigated.<sup>18</sup> As for CoreCivic’s Houston Processing Center, its detention facility is continuously ranked at the top among reports of sexual assault all while ICE continues to contract with them.<sup>19</sup> Doe’s case sheds light on the reality immigrants face while held behind walls controlled by ICE. The numbers of complaints likely do not compare to the actual amount of sexual abuse that occurs, however, immigrants such as Doe should not have to fear for their lives when they hesitantly break their silence, nor should they be denied protection while under the jurisdiction of the United States.

This Comment will discuss the need to reform current immigration policies in place within detention centers in responding to sexual assault complaints against immigration officials. This Comment begins with the overall history of detention centers, demonstrating how immigrant confinement has developed through the decades. Additionally, because immigration policy has gone through several stages at different levels of leadership, it is particularly important to discuss the effects the two previous presidential administrations have had on immigration detention. Further, examining ICE’s lack of investigation measures may likely lead to a better

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14. *See id.* at 2–3 (arguing “CoreCivic has a long and well-documented history of abusing, mistreating, and endangering its detainees across the country.”).

15. *See id.* at 3, 31 (describing Doe’s medical complications along with her feelings of hopelessness and discomfort).

16. *Id.* at 12–13.

17. 34 U.S.C. § 30302; *PREA*, *supra* note 10.

18. *See* Plaintiff’s Original Complaint & Jury Demand, *supra* note 13, at 16–17 (“[T]he Office of the Attorney General investigated just 24 (or 2.4%) of those complaints.”).

19. *See* Elizabeth Trovall, *Federal Suit Accuses Houston Immigration Officers of Raping 3 Women Before Deportation*, HOUS. PUB. MEDIA (May 28, 2020, 12:49 PM), <https://www.houstonpublicmedia.org/articles/news/politics/immigration/2020/05/28/370649/in-federal-suit-mexican-woman-says-she-and-two-others-were-raped-by-houston-immigration-officers-before-deportation/> [https://perma.cc/7AQZ-PR4K] (showing the Houston Processing Center has consecutively been second with the highest number of sexual allegations).

understanding as to why officer accountability may not be very common. Focusing on sexual assault can be a difficult topic to discuss; however, noting the effects of sexual assault on immigrants' lives demonstrates the additional hurdles these victims must endure. Lastly, this Comment highlights how the federal Courts often refuse to enforce available remedies, causing ICE's continued use of notorious tactics against detained immigrants.

## II. OVERVIEW OF DETENTION CENTERS

### A. *Historical Background*

Over the last few decades, the United States' immigration detention has grown into one of the largest detention systems in existence throughout the world.<sup>20</sup> While the United States has continued detaining immigrants since the late nineteenth century,<sup>21</sup> in 1952, after the passage of the Immigration and Nationality Act (INA),<sup>22</sup> the United States steadily moved away from detaining all immigrants and allowed the Attorney General to release immigrants on bond while pending removal.<sup>23</sup> During this period, immigration detention remained stable until the early 1980s when a massive wave of Cubans began fleeing Fidel Castro's authoritarian regime,<sup>24</sup> and

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20. See *A Short History of Immigration Detention*, FREEDOM FOR IMMIGRANTS, <https://www.freedomforimmigrants.org/detention-timeline> [<https://perma.cc/MLR9-EPZD>] (providing a timeline of immigration detention in the United States); see also *ICE Detainee Statistics*, U.S. IMMIGR. AND CUSTOMS ENFT. (2022), <https://www.ice.gov/coronavirus#detStat> [<https://perma.cc/53NH-RKF3>] (indicating the average daily detainee population of over 21,000 with a decrease pertaining to Covid-19).

21. See Act of Mar. 3, 1893, Pub. L. No. 19-145, 146, 27 Stat. 569, 52 Cong. Ch. 206 (providing when Congress first passed the law stating, "That it shall be the duty of every inspector of arriving alien immigrants to detain for a special inquiry . . . every person who may not appear to him to be clearly and beyond doubt entitled to admission . . .").

22. Immigration and Nationality Act, Pub. L. No. 82-414, § 101, 66 Stat. 163, 163 (1952) (codified as amended at 8 U.S.C. § 1101).

23. See Philip L. Torrey, *Rethinking Immigration's Mandatory Detention Regime: Politics, Profit, and the Meaning of "Custody"*, 48 U. MICH. J. L. REFORM 879, 889 (2015) (discussing the implementation of the Immigration and Nationality Act).

24. Andrew Glass, *Castro Launches Mariel Boatlift, April 20, 1980*, POLITICO (Apr. 20, 2018, 12:12 AM), <https://www.politico.com/story/2018/04/20/castro-launches-mariel-boatlift-april-20-1980-528819> [<https://perma.cc/86F3-Q9FF>]; see Jessica Leal, *Stateless with Nowhere To Go: A Proposal for Revision of the Right of Return According to the International Covenant on Civil and Political Rights*, 46 GEO. WASH. INT'L L. REV. 677, 677 (2014) (describing the migration of Cubans on the Mariel Boat Lift).

thousands of Haitians followed on rafts migrating to the United States.<sup>25</sup> With Cuban President Fidel Castro's creation of the Mariel Boat Lift,<sup>26</sup> thousands of immigrants entered the Port of Florida, overwhelming immigration authorities and creating political issues.<sup>27</sup> In response to the insurmountable problem of immigrants, President Carter began deporting Cubans back to their country, but Cuba refused to allow reentry, causing Carter to develop camps to detain immigrants indefinitely.<sup>28</sup> While Cubans and Haitians continued fleeing their countries, the United States simultaneously experienced an increase in drug use and trafficking, linking this problem, among others, with all the incoming immigrants.<sup>29</sup>

In 1982, after President Ronald Reagan took office, his main focus was expanding immigration detention by effectively ordering mandatory detention to deter immigrants from continuing to overflow the borders.<sup>30</sup> The Reagan Administration took a historical turn once Reagan revived the War on Drugs and began a widespread incarceration scheme.<sup>31</sup> Despite the

25. Cesar Cuauhtemoc Garcia Hernandez, *Immigration Detention as Punishment*, 61 UCLA L. REV. 1346, 1360 (2014); see Stephanie J. Silverman, *Immigration Detention in America: A History of its Expansion and a Study of its Significance* 8–9 (Univ. of Oxford, Working Paper No. 80, 2010) (“The immigration detention system had remained minimal and mostly out of public sight throughout the post-war period; however, a large-scale migration of Cubans and Haitians led to its expansion and return to popular attention in the early 1980s.”).

26. See Leal, *supra* note 24, at 677 (highlighting how Fidel Castro's announcement of Cubans “allowed to exit through the Mariel Harbor” later “became known as the Mariel Boat Lift”).

27. Glass, *supra* note 24.

28. See Leal, *supra* note 24, at 678–79 (stating Cuba's refusal to accept its nationals due to a number of them being criminals, forcing the United States to detain them further); see also Glass, *supra* note 24 (indicating “that some of the exiles had been released from Cuban jails and mental health facilities. Some of them were shunted to refugee camps, while others, facing deportation hearings, were held in federal prisons”).

29. See Garcia Hernandez, *supra* note 25, at 1360 (“[T]he concerns that led Congress to prosecute the nascent ‘war on drugs’ were intertwined with concerns that immigrants were bringing the scourge of drug use and drug trafficking into cities across the country.”).

30. See *id.* at 1361 (“[I]n 1982, President Ronald Reagan ordered the mandatory detention of all arriving Haitians suspected of violating immigration laws.”); see also Smita Ghosh, *How Migrant Detention Became American Policy*, WASH. POST. (July 19, 2019, 5:00 AM), <https://www.washingtonpost.com/outlook/2019/07/19/how-migrant-detention-became-american-policy/> [https://perma.cc/6HNQ-594S] (explaining how mass incarceration of immigrants developed through the Ronald Reagan Administration).

31. See Kristina Shull, *‘A Recession-Proof Industry’: Reagan’s Immigration Crisis and the Birth of the Neoliberal Security State*, UNIV. OXFORD (Apr. 30, 2015), <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2015/04/%E2%80%98recession-proof> [https://perma.cc/E9SG-CH3Y] (focusing on Reagan's new immigration enforcement policies “As the implementation of these policies called for more detention space, temporary facilities established on an emergency basis became permanent and detention itself became increasingly punitive”).

War on Drugs in America permeating across the borders long before Reagan's presidency, Reagan viewed the use of illegal drugs as a path to shift cultural attitudes by associating people of color as the main source of criminal activity.<sup>32</sup> Primarily, Reagan's anti-drug strategies were purposely served for political gain.<sup>33</sup> Additionally, with the increase of incarceration and immigration detention in the subsequent years, the United States eventually faced an overcrowding problem and turned to the privatization of detention facilities.<sup>34</sup>

### 1. Shifting to Private Detention

While the immigration detention system quickly transitioned to private for-profit prisons, the focus turned to economic power rather than addressing issues detention facilities already faced.<sup>35</sup> With ICE influenced by wealthy powerful corporations in the expansion of immigration detention, ICE began contracting with a variety of private corporations that ultimately provided correctional facilities rather than facilities for administrative purposes as was initially intended for immigration.<sup>36</sup> Due to the increase of private contractors operating immigration detention facilities, a majority of perpetrators responsible for victimizing detainees are staff employed directly through these contractors.<sup>37</sup> As a result of privatization, accountability measures for staff members became limited which is overwhelmingly problematic.

Further, the first private detention, CoreCivic, opened in Texas, followed by different private companies who sought to gain profit off detaining immigrants by entering into contracts with the federal government.<sup>38</sup> Fast forward to the enactment of the Illegal Immigration Reform and Immigrant

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32. See Kenneth B. Nunn, *Race, Crime and the Pool of Surplus Criminality: Or Why the "War on Drugs" was a "War on Blacks,"* 6 J. GENDER RACE & JUST. 381, 390 (2002) (explaining how Reagan's Administration viewed people of color, primarily African Americans and Hispanics as the enemies).

33. See *id.* ("Fueled by political considerations, the drug war took on a life of its own.")

34. See Priscilla Mendoza, *Calentando Las Hieleras ("Warming Up the Ice Boxes"): Holding For-Profit, Private Detention Centers Accountable for Immigrant Detainees' Due Process Rights,* 44 T. MARSHALL L. REV. 163, 166 (2020) (discussing the privatization of immigrant detention facilities).

35. See Denise Gilman & Luis A. Romero, *Immigration Detention, Inc.,* 6 J. MIGRATION & HUM. SEC. 145, 145 (2019) (explaining the high prison rates as attributable to private contracts' mandating a percentage of inmate beds to be full).

36. *Id.* at 150.

37. See *id.* (discussing employees' ability to evade accountability due to the prison's for-profit status).

38. *A Short History of Immigration Detention, supra* note 20.



Responsibility Act of 1996,<sup>39</sup> the United States immigration detention system shifted to complete mandatory detention for certain individuals awaiting expedited removal proceedings, marking the greatest expansion on detention.<sup>40</sup> Unbeknownst to the United States at the time, the privatization of detention would quickly turn into a daunting nightmare for all incoming immigrants, facing challenges beyond their control in pursuit of achieving a better life.

B. *Considering the Administrations of Former President Obama and President Trump*

In comparing the previous Administrations, it is important to note the major impact and effect on immigration detention. Before President Obama took office, the United States witnessed the devastating results of the terrorist attacks on September 11, 2001 (9/11). As a result of 9/11, the Federal Government focused on stricter immigration enforcement policies, and the Department of Homeland Security (DHS)<sup>41</sup> emerged causing an increase in family detention.<sup>42</sup> Once Obama became President, his Administration aimed to reform the immigration detention system, with DHS assessing detention policies in place for the purpose of restructuring ICE's efficiency.<sup>43</sup> The Obama Administration, along with DHS's support, recognized the need to shift from punitive measures to

39. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104–208, 110 Stat. 3009 (1996).

40. See Elenor Acer & Olga Byrne, *How the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Has Undermined US Refugee Protection Obligations and Wasted Government Resources*, 5 J. MIGRATION HUM. SEC. 356, 364 (2017) (expanding on the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and how “[f]rom 1994 to 2013, the immigrant detention system grew more than five-fold, as the daily detention population grew from 6,785 to more than 34,000 . . .”).

41. See Homeland Security Act of 2002, Pub. L. No. 107–296, 116 Stat. 2135 (2002) (creating the Department of Homeland Security).

42. See Dora Schriro, *Weeping in the Playtime of Others: The Obama Administration's Failed Reform of ICE Family Detention Practices*, 5 J. ON MIGRATION HUM. SEC. 452, 455–56 (2017) (describing DHS's family detention expansion and these facilities' unpreparedness in detaining families simply to treat them more like prisoners).

43. See *id.* at 458 (“In short, the report urged ICE to put in place an informed plan of action to improve decision making, activities, and outcomes. Adoption would commit the agency to full transparency, to increase its accountability to others and most fundamentally, to comply with the law.”); Sarah Gryll, Comment, *Immigration Detention Reform: No Band-Aid Desired*, 60 EMORY L.J. 1211, 1234 (2011) (“In President Obama's first year in office, his team at DHS announced three waves of reform meant to address growing concerns about oversight of the immigration detention system and human rights violations therein.”).

more civilized measures in response to the influx of migration.<sup>44</sup> Although the government was well aware of the growing issue of detaining families for long periods of time, with the *Flores* Settlement Agreement<sup>45</sup> in place, the government focused on improving detention facilities but was not entirely sure how to approach the situation.<sup>46</sup> In 2014, President Obama faced one of the most challenging tasks of his term.<sup>47</sup> Many children and families began flowing through the border from Central America in hopes of protecting their family from the violence unfolding in their home country.<sup>48</sup> For President Obama, this issue presented him with the opportunity to uphold the promises of reform he stood by from the beginning of his presidency; however, under pressure and the overwhelming amount of families, President Obama instead expanded family detention and increased detention duration.<sup>49</sup> Unfortunately for the United States, the Obama Administration's measures did not help control the immigration detention issue, and left immigrants with further worries as to their future in the United States.

Furthermore, in 2015, since President Trump's presidential campaign announcement, President Trump has expressed his contemptuousness toward immigrant people, referring to Mexicans and people of color as a major problem for the United States.<sup>50</sup> Soon after President Trump's inauguration, his Administration's main goals centered around building a wall in the Southern border and increasing immigration enforcement under

44. Schriro, *supra* note 42, at 458.

45. Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK(Px), at 6 (C.D. Cal. 1997) (setting out the provisions for detaining and releasing minors). The *Flores* Settlement Agreement further applied to the detention of families and set out the standards INS—now known as ICE—had to follow when detaining and housing immigrants.

46. *See* Schriro, *supra* note 42, at 459 (“[T]he government’s repeated failure to make good faith and sustained efforts to comply with that agreement, ultimately limited its options to successfully manage the humanitarian crisis . . .”).

47. *Id.* at 461.

48. *Id.* at 460.

49. *Id.* at 461; *see* Joanne Lin, *33 Senators Join Chorus of Voices Condemning Obama’s Family Detention Policies*, ACLU (June 3, 2015, 10:00 AM), <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/33-senators-join-chorus-voices-condemning?redirect=blog/washington-markup/33-senators-join-chorus-voices-condemning-obamas-family-detention-policies> [https://perma.cc/P7X4-PR2M] (describing senators’ frustration with Obama’s detention use to deter families from entering the U.S.).

50. PBS NewsHour, *Watch Donald Trump Announce His Candidacy for U.S. President*, YOUTUBE (June 16, 2015), <https://www.youtube.com/watch?v=SpMJx0-HyOM> [https://perma.cc/CZ9K-Q5LW].

the new “zero tolerance” policy.<sup>51</sup> Unlike President Obama, President Trump’s zero tolerance policy sadly led to family separation.<sup>52</sup> Undocumented adults entering the United States were prosecuted for illegal entry, requiring them to be separated from their minor children.<sup>53</sup> Though initially claiming that separating children was simply an unintentional consequence, it was revealed to be a specific tactic designed to deter migrant families from entering the U.S.<sup>54</sup> In the face of mounting opposition to family separation, the Trump Administration looked towards detaining families together while awaiting removal proceedings.<sup>55</sup> While the Obama Administration’s detention policies sought to deter migration, President Trump’s Administration used mandatory detention and also enforced family separation as a deterrence measure.<sup>56</sup> Ultimately, President Trump signed the Executive Order ending family separation altogether, but sought to amend the *Flores* Settlement Agreement in order to detain families until the completion of criminal proceedings,<sup>57</sup> and eventually announced new rules affecting family detention that were ultimately challenged.<sup>58</sup> It is difficult to assess the future impact President Trump’s policies will have in the long run, considering the

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51. See Rose Cuison Villazor & Kevin R. Johnson, *The Trump Administration and the War on Immigration Diversity*, 54 WAKE FOREST L. REV. 575, 601 (2019) (“[Trump’s] fervent support for building a wall along the U.S.-Mexico border exemplifies his dedication—which has led to repeated friction between the President and Congress—to immigration enforcement.”).

52. *Id.* at 602.

53. See *id.* at 602–03 (“The Administration was compelled to abandon the family-separation policy after a firestorm of criticism of its harsh consequences.”).

54. See *id.* at 612 (identifying the true intentions of the zero tolerance policy enacted by the Trump Administration).

55. See *id.* (explaining how political pressure led the Trump Administration to move towards detaining families together).

56. See *id.* at 613 (“[T]he White House announced that the Administration would seek to replace the family-separation policy with a policy allowing for the detention of entire families.”); see also Dara Lind, *What Obama Did with Migrant Families vs. What Trump Is Doing*, VOX (June 21, 2018, 2:45 PM), <https://www.vox.com/2018/6/21/17488458/obama-immigration-policy-family-separation-border> [<https://perma.cc/445J-2K4T>] (discussing Trump’s attempt at continuing Obama’s estopped detention policy).

57. See Exec. Order No. 13,841, 83 Fed. Reg. 29,435 (June 25, 2018) (stating “[T]he Secretary of Homeland Security (Security), shall, . . . maintain custody of alien families during the pendency of any criminal improper entry or immigration proceedings involving their members”).

58. See Gus Bova, *The Consequence of Trump’s New Family Detention Rules*, OBSERVER (Aug. 21, 2019, 5:03 PM), <https://www.texasobserver.org/the-consequence-of-trumps-new-family-detention-rules/> [<https://perma.cc/6T5T-93J9>] (“Trump Administration officials announced a final rule that will allow the government to detain migrant children indefinitely in family detention centers while they and their parents await resolution of their asylum cases.”).

deterioration of detention under his control.<sup>59</sup> In essence, the Obama Administration may not have had a positive impact on immigration detention, but the Trump Administration went above and beyond in exemplifying the need to “Make America Great Again”<sup>60</sup> by punishing all outsiders.

### III. IMMIGRATION AND CUSTOMS ENFORCEMENT’S FAILURE TO HOLD OFFICIALS ACCOUNTABLE

#### A. *Investigating Sexual Assault*

More often news stories and reports arise of women, children, and men alleging they were raped while detained by immigration enforcement. Despite this fact, rarely does the media portray justice served for these victims against immigration officials.<sup>61</sup> The Department of Homeland Security (DHS) currently has a zero tolerance standard in place stating how each facility must comply with a written policy indicating the measures of responding to and preventing sexual abuse.<sup>62</sup> DHS is primarily responsible for directing all allegations of sexual abuse and/or assault reported to them to their Office of Inspector General (OIG)<sup>63</sup> for complete investigation.<sup>64</sup> Nonetheless, by the time the OIG receives a complaint, it may be too late for their office to conduct a thorough investigation.

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59. See Eunice H. Cho, Tara T. Cullen & Clara Long, *Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration*, ACLU RSCH. REP. 19–20 (Apr. 30, 2020), [https://www.hrw.org/sites/default/files/supporting\\_resources/justice\\_free\\_zones\\_immigrant\\_detention.pdf](https://www.hrw.org/sites/default/files/supporting_resources/justice_free_zones_immigrant_detention.pdf) [<https://perma.cc/ZSJ9-5AUD>] (reporting Trump’s continued expansion of immigration detention centers with little to no legal representation available and unsafe conditions).

60. See PBS NewsHour, *supra* note 50 (announcing his presidential campaign slogan as “Make America Great Again”).

61. See Julie Goldscheid, *Sexual Assault by Federal Actors, #MeToo, and Civil Rights*, 94 WASH. L. REV. 1639, 1641 (2019) (indicating little attention is placed on holding government officials accountable for sexual assault as compared to other higher position individuals).

62. See Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100, 13100 (Mar. 7, 2014) (codified at 6 C.F.R. pt. 115) (setting forth the zero tolerance of sexual abuse in detention facilities).

63. U.S. DEP’T HOMELAND SEC’Y: OFF. INSPECTOR GEN., <https://www.oig.dhs.gov/> [<https://perma.cc/5CEM-EVD8>].

64. See *Investigative Protocols for Allegations of Sexual Abuse and/or Assault*, U.S. DEP’T HOMELAND SEC’Y: U.S. CUSTOMS & BORDER PROT. (Feb. 28, 2020), <https://www.cbp.gov/about/care-in-custody/investigative-protocols-allegations-sexual-abuse-and-assault> [<https://perma.cc/BPQ3-TD JG>] (indicating “all allegations of sexual abuse and/or assault in a CBP holding facility are documented and referred to the Department of Homeland Security (DHS), Office of Inspector General (OIG), for independent review and assessment”).

### 1. The Process

Several years ago, the Inspector General at the time, John Roth, made a statement detailing the steps the OIG takes when investigating misconduct by federal law enforcement.<sup>65</sup> Essentially, DHS has internal affairs offices that report to OIG.<sup>66</sup> When OIG receives a complaint, they have the following options: investigate or refer it to the appropriate component, if sent back to an internal affairs office, they will have the discretion whether to take action or not, or for criminal matters refer the complaint to the Department of Justice (DOJ) where they determine whether to pursue the case.<sup>67</sup> This investigative process can present several challenges for victims detained for a definite period of time. First, the OIG has the final decision of completing an investigation, and often out of the thousands of complaints they receive, they will investigate only a small percentage of those complaints.<sup>68</sup> This means that most detainees' cases will either not be investigated or will be referred to ICE—the DHS component in charge of detention centers—to handle. Even after ICE obtains the complaint, they will ultimately decide whether to investigate or do nothing.<sup>69</sup> Secondly, after ICE receives the allegation from OIG, if ICE decides to investigate, it may not have the proper resources to conduct a complete investigation report.<sup>70</sup> According to the previous OIG report, after inspecting several ICE family detention facilities, the results demonstrated ICE employees were well trained in procedures to follow for reporting sexual assault or abuse. However, when it came to security camera perimeters, not all facilities contained adequate camera views, leaving blind spots where detainees are more likely to be harmed.<sup>71</sup> If security cameras do not cover

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65. *Analyzing Misconduct in Federal Law Enforcement: Before the Judiciary Subcomm. on Crime, Terrorism and Homeland Sec'y*, 114th Cong. 1 (2015) (statement of John Roth, Inspector General, Department of Homeland Security) [hereinafter *Analyzing Misconduct in Federal Law Enforcement*].

66. *Id.* at 2.

67. *See id.* at 2–3 (outlining the investigative process).

68. *See Widespread Sexual Assault*, *supra* note 5 (finding the OIG receives more complaints every day and investigates less than three percent of them).

69. *See Analyzing Misconduct in Federal Law Enforcement*, *supra* note 65, at 2 (“[I]f referred, the component can decide to investigate the allegation or take no action.”).

70. *See Lomi Kriel, ICE Deported a Key Witness in Investigation of Sexual Assault and Harassment at El Paso Detention Center*, TEX. TRIB. (Sept. 15, 2020, 1:00 PM), <https://www.texastribune.org/2020/09/15/ice-deport-witness-sexual-assault/> [https://perma.cc/2YTD-EXLP] (demonstrating how ICE easily deports key witnesses during investigations, likely affecting its overall final report).

71. John Roth, *Results of Office of Inspector General FY 2016 Spot Inspections of U.S. Immigration and Customs Enforcement Family Detention Facilities*, U.S. DEP'T HOMELAND SEC'Y: OFF. INSPECTOR GEN.

all areas of a facility this can likely affect a detainee's case, where upon investigating, security footage may be unreliable in obtaining concrete evidence if the incident occurred in a blind spot area. Additionally, ICE does not always comply with standards in place for investigating sexual assault, thus leaving an incomplete report.<sup>72</sup> With incomplete reports missing documentation and only containing a detainee's story, their case is likely insufficient to establish credibility, further delaying compensation.<sup>73</sup> The fact that a majority of the problem stems from employees hired by contractors due to the privatization of detention, as previously mentioned, does little to help with the investigation process as well because the process focuses on federal employees' involvement. Lastly, not all victims of sexual assault will report the abuse; and the few that report have either already been deported or are deported while pending investigation, thereby limiting necessary contact with the detainee.<sup>74</sup> Detained immigrants already face a substantial number of obstacles, and undependable investigative standards will continuously delay accountability.

The OIG should implement detailed investigation standards, requiring all facilities to comply with the same set of standards. Most importantly, the investigative measures should not only apply to the federal employees within these detention facilities, but also the staff members employed by the contractors running the facilities. With more allegations arising daily, the OIG should note the continued allegations and determine what the core

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5–6 (June 2, 2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-65-Jun17.pdf> [<https://perma.cc/7XLC-EFA5>].

72. See *Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse*, U.S. GOV'T ACCOUNTABILITY OFF. 25 (2013), <http://www.gao.gov/assets/660/659145.pdf> [<https://perma.cc/2AGK-BGQ3>] (reporting ICE must follow Performance-Based National Detention Standards specifying “that facilities are to maintain investigative files for sexual abuse allegations to include information such as incident and investigative reports, medical forms, and supporting memorandums, among other things”).

73. See Tina Vasquez, *In Search of Safety: An Investigation of Abuse at an Immigration Facility*, REWIRE NEWS GRP. (Mar. 8, 2019, 6:08 AM) [hereinafter *In Search of Safety*], <https://rewirenewsgroup.com/article/2019/03/08/search-safety-investigation-abuse-immigration-facility/> [<https://perma.cc/9B32-XGV2>] (unfolding how a victim's sexual assault investigation was “launched, conducted, and concluded in [nineteen] days” with only taking the victim's story and conducting a medical assessment).

74. In Doe's recent case, she suffered sexual assault while in the custody of ICE and was deported hours after her assault, disallowing her the opportunity to come forward right away. Plaintiff's Original Complaint & Jury Demand, *supra* note 13, at 30; see Kriel, *supra* note 70 (describing a recent incident where a rape victim was deported while the OIG had a pending investigation); Jessica Mindlin et al., *Dynamics of Sexual Assault and the Implications for Immigrant Women*, in EMPOWERING SURVIVORS: LEGAL RIGHTS OF IMMIGRANT VICTIMS OF SEXUAL ASSAULT 3 (Leslye Orloff ed., 2013).

issue is to begin changing procedures. After determining the main problem, the OIG should then advise on how a facility should make changes and follow up within a month to see whether the proper changes were made. If the current investigation process continues and both the OIG and ICE have the decision to investigate or do nothing, a detailed report should still be completed determining the specific reasons explaining why investigation was not necessary. This process may provide a better understanding as to why such a small percentage of cases are investigated.

B. *Effects of Sexual Assault on Immigrant Families*

Sexual assault can harm anyone at any time.<sup>75</sup> One of the first difficult steps to overcome is breaking the barrier of remaining silent and speaking up about the harm.<sup>76</sup> Generally, in America, victims of sexual violence not only endure long-term emotional distress, but the physical and psychological impact on a victim's body can detrimentally affect a person's well-being and future relationships.<sup>77</sup> Much of the trauma victims face gradually develops into serious mental health conditions such as depression, anxiety, and severe post-traumatic stress disorders.<sup>78</sup> Far worse, these mental health issues may result in death through suicide.<sup>79</sup> The heartbreaking reality is many sexual assault cases are unreported, thus probably affecting the severity of harm victims suffer.<sup>80</sup>

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75. *Victims of Sexual Violence: Statistics*, *supra* note 3.

76. See Sydney Karlos, *Opinion: A Lesson on Why Victims of Sexual Assault Stay Silent*, DAILY AZTEC (May 8, 2019), <https://thedailyaztec.com/94723/el-alma/opinion-a-lesson-on-why-victims-of-sexual-assault-stay-silent/> [<https://perma.cc/55KU-AHMZ>] (showing how sexual assault victims have a difficult time speaking up due to feelings of shame, dehumanization, and simply thinking they will not be believed).

77. See Mary Graw Leary, *Affirmatively Replacing Rape Culture with Consent Culture*, 49 TEX. TECH L. REV. 1, 21 (2016) (discussing qualitative harm of sexual assault).

78. See *Sexual Assault/Abuse*, *supra* note 6 (illustrating the mental health issues associated with sexual assault); see also Leary, *supra* note 77, at 21–22 (focusing on the large percentage of victims who suffer from post-traumatic stress disorder with a small group suffering seventeen years after the assault).

79. See Leary, *supra* note 77, at 22 (“[R]ape victims are thirteen times more likely to attempt suicide than victims of other crimes.”).

80. See Victoria Brown et al., *Rape & Sexual Assault*, 21 GEO. J. GENDER & L. 367, 375 (2020) (“Survivors often do not report rape for various reasons, including the fear of not being believed, guilt, shame, humiliation, lack of trust in the justice system, and fear of retribution.”).

### 1. Additional Barriers

Immigrants are not only confronted with these traumatic experiences, but additionally face “legal, economic, community, and other significant pressures that are related to or arise from their status as non-citizen victims.”<sup>81</sup> For these victims speaking up about their assault is more difficult than their counterpart U.S. citizen victims, as reporting an incident causes fears of the possibility of deportation.<sup>82</sup> Historically “[b]eing an immigrant confers significant increased vulnerability to recurring sexual assault” with immigrants, especially women, being more susceptible to experience multiple sexual assault incidents compared to non-immigrants.<sup>83</sup>

### 2. Detention Effect

Further, detention centers likely do not alleviate the risks of sexual assault, especially when immigrant families are already significantly prone to post-traumatic stress disorders with the lengthy immigration process, or worse, the separation of families.<sup>84</sup> Many immigrants, such as Doe, arrive to the United States with hopes of obtaining a better future for themselves and their families, only to be placed under ICE’s inhumane prison-like detention facilities.<sup>85</sup> Despite the challenges immigrants face upon arriving, sexual assault in detention becomes an added barrier not only for the potential victim but their families as well. In Doe’s case, the effects of sexual assault implicate the dangers an immigrant woman may face after leaving a detention center.<sup>86</sup> As a result of sexual assault, Doe became impregnated

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81. Mindlin et al., *supra* note 74, at 1–2.

82. *See id.* at 3 (demonstrating how undocumented individuals, particularly women, are afraid of informing officials of a sexual assault incident due to fears of being deported); *see also Three Ways Sexual Violence Impacts Immigrants in the United States*, SEXUAL ASSAULT VICTIM ADVOC. (July 31, 2018), <http://savacenter.org/three-ways-sexual-violence-impacts-immigrants-united-states/> [<https://perma.cc/EDQ2-WPGV>] (indicating “[m]any survivors experience guilt and shame regardless of where the assault took place, but the fear of retaliation from other detainees or staff may also hinder survivors from reporting”).

83. Mindlin et al., *supra* note 74, at 3.

84. *See* Devin Miller, *Pediatricians speak out: Detention is not the answer to family separation*, AM. ACAD. OF PEDIATRICS (July 24, 2018), <https://www.aapublications.org/news/aapnewsmag/2018/07/24/washington072418.full.pdf> [<https://perma.cc/7RCK-7EHW>] (reporting on how “[s]tudies of detained immigrants have shown that children and parents may suffer negative physical and emotional symptoms from detention . . .”).

85. *See* Priscilla Mendoza, *supra* note 34, at 175 (referring to immigration detention as “jail-like facilities”).

86. Plaintiff’s Original Complaint & Jury Demand, *supra* note 13, at 31.



and suffered severe trauma and depression.<sup>87</sup> Many women such as Doe often are unable to afford terminating the pregnancy<sup>88</sup> and give birth to their assailant's child, which birth in itself can cause complications upon delivery.<sup>89</sup> The unfortunate events that led to this outcome will possibly only continue to cause physical and psychological pain on Doe and her family<sup>90</sup> unless recourse is adopted in preventing and addressing sexual assault in these facilities. Not to mention the difficulties a child born out of rape may face with their identity and immediate family.<sup>91</sup>

ICE continuously states to have a zero-tolerance policy for all sexual abuse and/or assault,<sup>92</sup> however time after time, ICE has demonstrated that their contractual relationship with detention facilities is far more important than holding employees accountable for any violation of the "zero-tolerance policy."<sup>93</sup> Setting aside all policies in place and focusing on the people hired to monitor these detention facilities can be a start to reforming the abominable conditions detainees have to live through. Most, if not all, allegations of sexual assault are against guards that intentionally abuse detainees.<sup>94</sup> In contracting with private corporations to run detention facilities, ICE should not only focus on requiring bare minimum qualifications on the company's hiring process but should also include provisions for providing adequate training of new hires and having a high job application standard to improve the quality of the applicants. Since ICE

87. *See id.* at 31. ("[Doe] felt very depressed and alone as a result of the trauma of the attack and subsequent pregnancy.").

88. Either because abortion is illegal in their countries or it is against the woman's culture to abort a child.

89. *See* Plaintiff's Original Complaint & Jury Demand, *supra* note 13, at 31 (demonstrating Doe giving birth to her child through cesarean section causing medical complications and hospitalization of eight days).

90. *Id.* at 31–32.

91. *See* Robert T. Muller, *Children Born of Rape Face a Painful Legacy*, TRAUMA & MENTAL HEALTH REP. (Jan. 22, 2016), <https://trauma.blog.yorku.ca/2016/01/children-born-of-rape-face-a-painful-legacy/> [<https://perma.cc/6B7Q-KYM4>] ("[C]hildren often develop poor parent-child relationships, as violent rape can affect maternal capacity to care for the child and to form a loving bond.").

92. *PREA*, *supra* note 10.

93. *See generally* Plaintiff's Original Complaint & Jury Demand, *supra* note 13 (supporting the theory in which ICE does not follow up with complaints and continues to harm immigrant detainees); *See* Kriel, *supra* note 12 (detailing the issues surrounding sexual assault complaints and how such reasons are supported by the inappropriate nature of the ICE officials guarding them).

94. *See* Kriel, *supra* note 12 (demonstrating thousands of sexual assault complaints against ICE are due to guards); *see also* *In Search of Safety*, *supra* note 73 (focusing on a victim's investigation process in Hutto, Texas where "inappropriate relationships" between detainees and guards have been ongoing for years yet the detention facility has only terminated two guards between the years of 2015 and 2018).

is ultimately the face of detention facilities, importance should be placed on measures exercised by private corporations through their contract.

Additionally, addressing sexual assault and providing helpful resources to detained victims may likely alleviate physical and psychological trauma caused before worsening the trauma. With a high number of sexual assault complaints annually, if detention facilities fail to protect detainees, ICE should refer victims to outside support or provide helpful information for the victims to seek help.<sup>95</sup> Not only in Texas, but all over the nation rape crisis centers are available to anyone at any time. For instance, Just Detention International is an organization committed to advocating for sexual abuse victims in all forms of detention in the U.S. and connects victims to the closest rape crisis center in their state.<sup>96</sup> Such organizations assist immigrant detainees with either the program's hotline services or in-person services, as long as contact information is made available to detainees.<sup>97</sup> Unfortunately, there is a growing concern in detention facilities that outside resources are not always readily available, and is in fact a major issue the DHS has yet to resolve.<sup>98</sup> ICE previously stated that it is a detainee's responsibility to request outside services, however these detainees usually have little to no guidance on whether they actually have the right to request these services.<sup>99</sup> Every ICE detention facility is responsible for informing detainees upon arrival of all the resources available to them.<sup>100</sup> As such, during detainee orientation, every facility should present detainees

95. Isabela Dias, *Report: Sexual Assault is Common in Immigrant Prisons, but Survivors Aren't Getting Help*, TEX. OBSERVER (Dec. 20, 2019, 11:35 AM), <https://www.texasobserver.org/report-sexual-assault-is-common-in-immigrant-prisons-but-survivors-arent-getting-help/> [<https://perma.cc/96DS-SP43>].

96. *See Hope Behind Bars: An Advocate's Guide to Helping Survivors of Sexual Abuse in Detention*, JUST. DET. INT'L 1–2, <https://www.acesdv.org/wp-content/uploads/2014/06/Hope-Behind-Bars.pdf> [<https://perma.cc/2JCA-ER2K>] (“To this day, it remains the only organization in the country, and probably the world, dedicated to ending rape behind bars.”).

97. *Id.* at 14.

98. *See* Dias, *supra* note 95 (“[R]ape crisis centers and advocates have ‘very limited interaction’ with detention facilities operated by ICE . . . .”); *see also* Roya Butler et al., *Twentieth Annual Review of Gender and the Law: Annual Review Article: Correctional Facilities*, 20 GEO. J. GENDER & L. 357, 367 (2019) (“[O]utside organizations such as the American Civil Liberties Union (“ACLU”) have complained that detainees at CBP holding centers . . . often do not have access to a telephone to make reports to outside organizations and frequently cannot make reports about possible sexual assault without a guard’s assistance.”).

99. *See* Dias, *supra* note 95 (“The report states that outside support service providers are generally ready to provide counseling, but face many barriers.”).

100. Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100, at 13127.

with plenty of information to assist and support them during their detention period. Whether that information be made in the form of pamphlets in different languages, videos, or posted all around the facility, the more information, the better detainees may be aware. Ultimately, if detainees refuse to use that information to their own advantage, the burden falls on the detainees and not the facility.

### 3. Language and Culture

Lastly, in dealing with sexual assault, immigrants may also face “language and cultural barriers” preventing them from reporting the incident.<sup>101</sup> While every sexual assault experience is different, immigrants in the United States struggle with their status as non-citizens while simultaneously keeping their connections with family in their home country.<sup>102</sup> These cultural tensions can affect how victims deal with sexual assault as some may be too embarrassed to inform their family about the assault due to fears of negative perceptions. Incidentally, some immigrants also face challenges in communicating their feelings and frustrations as many are not familiar with speaking or understanding beyond their native language.<sup>103</sup> These language barriers can affect a sexual assault victim’s response time in effectively reporting an incident, possibly causing delay, or deciding not to report at all. All the effects and added barriers an immigrant victim faces show how complex every individual situation is and how detrimental sexual assault can be on a single person.

## IV. AN AVAILABLE REMEDY

### A. *Enforcing the Prison Rape Elimination Act*

#### 1. Purpose

On September 4, 2003, President George W. Bush signed the Prison Rape Elimination Act (PREA) for the purposes of preventing rape within the United States prison system, establishing zero tolerance for any rape

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101. *Three Ways Sexual Violence Impacts Immigrants in the United States*, SEXUAL ASSAULT VICTIM ADVOC. (July 31, 2018), <http://savacenter.org/three-ways-sexual-violence-impacts-immigrants-united-states/> [https://perma.cc/EDQ2-WPGV].

102. See Mindlin et al., *supra* note 74, at 16 (explaining how victims struggle with their cultural identity, and how their culture affects their responses to sexual assault).

103. See *id.* at 17 (“Some immigrants whose first language is not English may experience challenges in overcoming language barriers in the United States.”).

incidents, implementing standards for officials to detect and reduce rape, increasing accountability, effectively gathering incident data, protecting victim's Eighth Amendment rights, and most importantly, prioritizing the elimination of prison rape.<sup>104</sup> With the passage of PREA, the act subsequently created the National Prison Rape Elimination Commission (NPREC) in charge of conducting investigations of sexual assault within prisons and developing standards to effectively eliminate prison rape.<sup>105</sup> According to the final report submitted by the NPREC in 2009, the commission found a heightened risk of sexual assault among immigration detention facilities, and recommended additional standards ICE should follow in aiding victims and further preventing sexual assault within its facilities.<sup>106</sup> After the submission of the final report, however, due to the Attorney General's delayed implementation of the NPREC's proposed standards, the U.S. Department of Justice did not release the final PREA standards until May 17, 2012.<sup>107</sup> Finally, on August 20, 2012, the final PREA rule became effective on all federal facilities under the control of the Department of Justice, and extended to all federal facilities whether government or privately run, including immigration detention facilities.<sup>108</sup>

In order for the rule to be implemented in other federal facilities, the PREA statute provides that each separate agency shall determine how to best enforce and implement the rule by developing its own set of standards complying with the recommendations of the NPREC.<sup>109</sup> Prior to the NPREC's recommended standards, ICE recognized the need to address

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104. 34 U.S.C. § 30302.

105. *Prison Rape Elimination Act*, NAT'L PREA RES. CTR., <https://www.prearesourcecenter.org/about/prison-rape-elimination-act> [<https://perma.cc/9DSF-HCQ5>]; see Bessie Munoz, Comment, *Immigrants For Sale: Corporate America Puts A Price Tag on Sexual Abuse*, 17 SCHOLAR 553, 564 (2015) ("In order to develop standards, the Commission had to study the causes and consequences of sexual abuse in correctional facilities.").

106. See Nat'l Prison Rape Elimination Comm'n, *National Prison Rape Elimination Commission Report* 176, 182–85 (June 2009), <https://www.ncjrs.gov/pdffiles1/226680.pdf> [<https://perma.cc/P2ZU-WPB5>] (setting out the standards to advance ICE's efforts in protecting immigrant detainees).

107. Munoz, *supra* note 105, at 568.

108. See National Standards to Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37, 106, 37113 (June 20, 2012) (codified at 28 C.F.R. pt. 115) ("The Department now concludes that PREA does, in fact, encompass any Federal confinement facility 'whether administered by [the] government or by a private organization . . . .'" (citation omitted)).

109. See *id.* ("For example, the Department of Homeland Security possesses great knowledge and experience regarding the specific characteristics of its immigration facilities, which differ in certain respects from Department of Justice, State, and local facilities with regard to the manner in which they are operated and the composition of their populations.").

sexual abuse within their facilities and implemented “the ICE Family Residential Standards and ICE Performance Based National Detention Standards,” detailing the responsibilities each facility must comply with to keep detainees safe.<sup>110</sup> However, after the signing of PREA the Department of Homeland Security (DHS) developed its own PREA standards that became effective on May 6, 2014.<sup>111</sup> Because the DHS PREA standards failed to apply to Contract Detention Facilities (CDF) from the start—and instead the regulations were intended to phase through with new contracts, renewals and modifications—it is important to understand DHS’s efforts in implementing the standards in CDFs following 2014.<sup>112</sup>

Though DHS’s involvement in the PREA standards has been noted, the issue of sexual assault in its facilities remains unresolved, and as such it is necessary for DHS to reevaluate their PREA standards and adhere to stricter policies. The statute outlines the purpose of the DHS PREA standards as previously discussed,<sup>113</sup> however, PREA is most necessary in these detention facilities because immigrants remain human beings no matter the time of day, and their bodies are equally as important despite their immigration status. Since the enactment of PREA in 2003, the government has prioritized preventing prison rape to protect inmates from sexual victimization.<sup>114</sup> The same way the government intends to protect incarcerated criminals, the government should further apply that priority to immigrants detained due to their immigration status.<sup>115</sup> Additionally, because of the increase of private contracting, DHS should begin by evaluating their current contracts with private corporations. In contracting with non-DHS entities, the DHS PREA standards require that new contracts or renewals include the sexual abuse standards and allow for

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110. *PREA*, *supra* note 10.

111. Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100.

112. *Id.* at 13104; Munoz, *supra* note 105, at 570–71.

113. Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100.

114. *See* 34 U.S.C. § 30302 (“[M]ak[ing] the prevention of prison rape a top priority in each prison system . . .”).

115. *See* Priscilla Mendoza, *supra* note 34, at 164 (explaining how “[t]he U.S. Supreme Court noted that immigrant detainees ‘are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.’” (quoting *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982))).

modifications when necessary.<sup>116</sup> Currently, not all private facilities comply with the standards due to active contracts, and not all have agreed to adopt the PREA standards.<sup>117</sup> In certain situations, where private facilities implement the PREA standards into an existing contract, or in new contracts, but refuse to uphold them, DHS ultimately has the power to terminate the contract.<sup>118</sup> However, DHS does not always terminate these private contracts and has instead shown that business with private contractors is far more important than upholding standards intended to protect these victims.<sup>119</sup> DHS should instead focus on adhering to the standards, or amending the standards to require termination of private contracts upon a facility's failure to uphold the standards after notification of non-compliance. One possible explanation for these continued contract renewals may be due to the infrequent PREA audits conducted by third-party agencies.<sup>120</sup> Because the audits are only conducted once every three years,<sup>121</sup> the chances of missing important documentation on sexual assault is likely higher, and remedying issues in the process is likely further delayed. Additionally, greater issues are presented by hiring independent private

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116. Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100, at 13110.

117. See Munoz, *supra* note 105, at 570–71 (discussing how not all facilities are required to comply with the PREA standards and the growing concern for the timeframe contract facilities must adopt the standards).

118. See Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100, at 13112 (“DHS, through ICE, can transfer detainees from facilities that do not uphold PREA standards after adoption and it can terminate a facility’s contract, which ICE has done in the past and will continue to do if a facility is unable to provide adequate care for detainees.”).

119. See *Two Notorious Texas Detention Centers Receive New 10-year ICE Contracts with Private Prison Corporations*, DET. WATCH NETWORK (Aug. 10, 2020) [hereinafter *ICE Contracts with Private Prison Corporations*], <https://www.detentionwatchnetwork.org/pressroom/releases/2020/two-notorious-texas-detention-centers-receive-new-10-year-ice-contracts> [https://perma.cc/X7DZ-T8LC] (highlighting two new contracts with notorious detention centers in Texas widely known for constant mistreatment and multiple sexual assault allegations).

120. See Tina Vasquez, *In Search of Justice: How DHS PREA Standards Don't Necessarily Protect Immigrants from Assault*, REWIRE NEWS GRP. (Mar. 13, 2019, 9:19 AM) [hereinafter *In Search of Justice*], <https://rewirenewsgroup.com/article/2019/03/13/search-justice-prison-rape-elimination-standards/> [https://perma.cc/ZEB4-889B] (referencing an ICE spokesperson’s statement that DHS requires “an independent, third-party auditor” to conduct audits); see also Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100, at 13148 (indicating PREA audits shall be conducted “at least once every three years”).

121. Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100, at 13148.

companies—that already do business with DHS—to conduct the audits.<sup>122</sup> Overall, to begin resolving the issue of sexual assault, DHS should conduct PREA audits more frequently, at least twice a year, to better understand what is going on in these facilities considering not all cases are investigated; and cease the renewal of contracts with private facilities that are not upholding the PREA standards.

Despite DHS's efforts in enforcing PREA throughout its facilities, ICE's facilities have progressed very little considering its increased switch to private company contracting years before the adoption of DHS PREA standards.<sup>123</sup> With long-term private facility contracts in place, as of 2017, ICE has only successfully renegotiated with a few private operated facilities to enforce PREA standards.<sup>124</sup> Even while ICE continues to advocate for sexual abuse prevention through its facilities,<sup>125</sup> a closer look at their enforcement of PREA likely demonstrates a failed system for thousands of detained immigrants.

## 2. Sexual Assault

Under the DHS PREA standards, sexual abuse and assault are forbidden against any detainee, whether it is detainee on detainee or staff on detainee.<sup>126</sup> However, thousands of sexual abuse and/or assault allegations constantly arise every year at immigration detention facilities.<sup>127</sup> For example, Laura Monterrosa, after fleeing her hometown of El Salvador to seek safety in the United States, further encountered a traumatic experience while detained in T. Don Hutto detention center in Texas on May 3, 2017.<sup>128</sup> Her story demonstrates how a system intended to protect

122. See *In Search of Justice*, *supra* note 120 (taking a closer look at how DHS conducts business with private auditor companies upon where these companies ensure the agencies they contract with will “not [be] jeopardized due to PREA deficiencies”).

123. See *A Short History of Immigration Detention*, *supra* note 20 (outlining the start of the largest privately-run prison company in 1983).

124. *Progress in Implementing 2011 PBNDS Standards and DHS PREA Requirements at Detention Facilities*, U.S. DEP'T HOMELAND SEC. 3 (Mar. 19, 2018), [https://www.dhs.gov/sites/default/files/publications/ICE%20-%20Progress%20in%20Implementing%202011%20PBNDS%20Standards%20and%20DHS%20PREA%20Requirements\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/ICE%20-%20Progress%20in%20Implementing%202011%20PBNDS%20Standards%20and%20DHS%20PREA%20Requirements_0.pdf) [<https://perma.cc/Y6Y3-7P5P>].

125. *PREA*, *supra* note 10.

126. See Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100, at 13109 (defining sexual abuse as “threats, intimidation, or other actions or communications by one or more detainees aimed at coercing or pressuring another detainee to engage in a sexual act”).

127. *Widespread Sexual Assault*, *supra* note 5.

128. *In Search of Safety*, *supra* note 73.

immigrants has constantly failed many. While under the custody of ICE, less than a month into detention, Monterrosa befriended a female officer who immediately began making inappropriate remarks towards her and clearly indicated to Monterrosa she intended to have a sexual relationship with her.<sup>129</sup> Soon after, the female officer began touching her inappropriately while Monterrosa made it clear she felt uncomfortable and did not want the officer to continue fondling her.<sup>130</sup> During Monterrosa detention in the Hutto facility, other women also came forward with sexual assault allegations;<sup>131</sup> sufficiently demonstrating that ICE was aware of the facility's unsuitable conduct for continuously failing to abide by the PREA standards in place. Even though ICE maintains a zero tolerance policy,<sup>132</sup> contractors under their employment continue breaking the first rule by violating basic human rights.

To better solve the issue of sexual assault in these detention centers, it is important for DHS to recognize there is a problem of continued sexual abuse and admit their facilities are far from perfect. Despite Congress urging ICE to improve their standards among all facilities and to consistently report on their progress, ICE instead has failed to report back to Congress and has increased or renewed contracting.<sup>133</sup> Additionally, the last PREA reports indicated facilities complied with the standards,<sup>134</sup> making it increasingly difficult for DHS to acknowledge the overlying issue. These reports are extremely necessary because they highlight the imperfections and recommend improvements to better protect detainees from sexual abuse. Essentially, if at the end of every PREA report the auditors conclude all PREA standards were satisfactory, despite countless

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129. *See id.* (“The guard’s line of questioning became increasingly inappropriate, Monterrosa said.”).

130. *See id.* (stating the guard was “groping her breasts, touching between her legs, and talking to her about ‘explicit sexual acts’”).

131. *Id.*

132. Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100, at 13110.

133. *ICE Lies: Public Deception, Private Profit*, DET. WATCH NETWORK & NAT’L IMMIGR. JUST. CTR. 5–6 (2018) [hereinafter *ICE Lies*], [https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-02/IceLies\\_DWN\\_NIJ\\_C\\_Feb2018.pdf](https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-02/IceLies_DWN_NIJ_C_Feb2018.pdf) [https://perma.cc/A2R9-3PAV]; *ICE Contracts with Private Prison Corporations*, *supra* note 119.

134. *PREA Audit: Subpart A DHS Immigration Detention Facilities Audit Report*, U.S. DEP’T HOMELAND SEC. 4 (2019), [https://www.corecivic.com/hubfs/\\_files/PREA/Subpart%20A%20-%20PREA%20Compliance%20Audit%20Report%20-%20Webb%20County%20Detention%20Center.pdf](https://www.corecivic.com/hubfs/_files/PREA/Subpart%20A%20-%20PREA%20Compliance%20Audit%20Report%20-%20Webb%20County%20Detention%20Center.pdf) [https://perma.cc/L3AC-3A3B]. An example of one of the latest PREA reports conducted on a CoreCivic facility in Texas demonstrates full compliance of this law.



sexual assault allegations launched every year, DHS will likely continue to overlook such issues. Taking a closer look at the reporting process and amending procedures can possibly underline the areas facilities are simply shortcutting. Another possible factor contributing to this issue is that authorities do not always believe the victims that do report the assault.<sup>135</sup> The repetitive process of undermining a victim's story and reporting their case as unsubstantiated,<sup>136</sup> will further lean on DHS believing sexual assault is not problematic in these facilities. In DHS's eyes, if there is no issue to solve, no reform is needed. With this unfortunate process, many more detainees will continue to endure abuse before DHS recognizes the flaws in its alleged "protective system."

### 3. Detainee Education

The DHS PREA standards further provide that all detainees must be properly educated on the facility's zero tolerance policies and must be informed on instructions for reporting all types of sexual abuse.<sup>137</sup> Because there is not a uniform information pamphlet or course that all facilities must follow in educating detainees, many facilities' methods in informing detainees vary and, for the most part, do not provide adequate sexual abuse prevention information.<sup>138</sup> Especially when not all detainees can speak or much less understand English and facilities lack alternative means of communicating and educating detainees.<sup>139</sup> While investigating Monterrosa's case, the detention facility in Hutto provided a pamphlet given to detained women instructing them to protect themselves by (1) not accepting anything from anyone else, and (2) staying away from drugs and/or alcohol that could potentially interfere with their ability to make good decisions.<sup>140</sup> A closer look at Hutto's sexual abuse prevention and

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135. See *Widespread Sexual Assault*, *supra* note 5 (finding the Inspector General only investigates less than 3% of the total of complaints).

136. See *In Search of Safety*, *supra* note 73 (discussing how "allegations are almost always found to be 'unsubstantiated,'" meaning only a small percentage of victims have a credible case).

137. See Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100, at 13127 ("[U]pon custody intake, each facility provide detainees information about the agency's and the facility's zero-tolerance policies with respect to all forms of sexual abuse, including instruction on a number of specified topics.").

138. See Munoz, *supra* note 105, at 566 (highlighting on how non-reporting of sexual abuse can correlate to a "detainee's lack of knowledge about their rights"); see also *In Search of Safety*, *supra* note 73 (indicating the difference between the Hutto detention center and a Pennsylvania detention center).

139. Munoz, *supra* note 105, at 567 (2015).

140. *In Search of Safety*, *supra* note 73.

response policy indicates CoreCivic's procedure to educate detainees includes an orientation program, where all residents are handed a resident handbook including information about reporting, and are required to watch videos pertaining to PREA topics.<sup>141</sup> However, by placing a greater focus on detainees' responsibility to worry about their actions and inactions to protect themselves from sexual abuse should not be regular practice; these detainees are almost always the victims and the facility's officers/guards are mostly the offenders.<sup>142</sup> Additionally, when comparing other detention facilities' PREA programs, their resident handbooks information on sexual assault may also differ depending on the language;<sup>143</sup> considering language barriers can affect a detainee's awareness.<sup>144</sup> Unless DHS constructs a formal education standard for private and non-private facilities to properly inform detainees on their rights, continued inconsistency between facilities will further impact immigrant's ability to gain helpful information when facing sexual abuse.

#### 4. Retaliation

Even if detention facilities do provide adequate education on sexual abuse, immigrant detainees do not always report due to fears of retaliation.<sup>145</sup> Retaliation against a sexual assault victim, whether intentional or not, should never be the answer in an already vulnerable setting. The DHS PREA standards specifically state that any type of retaliation against detainees for reporting, complaining, or participating in sexual abuse investigations is prohibited.<sup>146</sup> Despite having these standards in place, several victims have indicated in recent years that when they do build up the courage to report their abuser, often the guards or officers initiating the abuse state the agency will likely take their word over the

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141. T. Don Hutto Residential Center, Sexual Abuse Prevention and Response § 14-105.4 (2018).

142. *See In Search of Safety*, *supra* note 73 (“[P]utting the onus on detainees, is particularly troubling given that sexual abuse allegations are often lodged against individuals employed at detention facilities.”).

143. *See id.* (providing information on how the Berks County Residential Center in Pennsylvania features their English and Spanish handbooks).

144. Munoz, *supra* note 105, at 567.

145. *See* Mindlin et al., *supra* note 74, at 3 (reporting how immigrant women often do not speak up about sexual abuse due to fears of being deported); *see also* Plaintiff's Original Complaint & Jury Demand, *supra* note 13, at 21–22 (“[R]ape and sexual abuse tend to be highly underreported in immigration detention facilities due to many factors, including fears of retaliation . . .”).

146. Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100, at 13139.

victim's, or threaten deportation.<sup>147</sup> Although DHS understands that deportation should not be used against detainees as a form of retaliation,<sup>148</sup> the standards further indicate that DHS may still remove a detainee even while investigation is pending,<sup>149</sup> which can eventually be problematic. Due to the growth of fear of deportation among undocumented people—whether detained or not—in several instances deportation can be seen as a form of retaliation.<sup>150</sup> Further, even if detainees are not subsequently deported after reporting, detainees may still experience retaliation by being isolated from other detainees, denying privileges already in place, or using threats against the detainees.<sup>151</sup> Because any type of retaliation against a detainee is prohibited, if these clear violations of DHS PREA standards continue, the standards initially serve no purpose to any detention facility.

##### 5. Staff Members

One of the most beneficial solutions to reforming detention facilities is to terminate perpetrators from the start. The DHS PREA standards allow for the termination of any staff member “that engaged in or threatened to engage in sexual abuse.”<sup>152</sup> This is significant for two reasons: (1) automatically disciplining staff members by terminating them can protect other detainees from falling victim to the same abuser, and (2) holding officers accountable can likely deter others from committing the same mistake. Unsurprisingly, out of all the allegations reported yearly, officers are rarely held responsible, much less terminated.<sup>153</sup> Instead the

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147. See *In Search of Safety*, *supra* note 73 (describing Monterrosa's encounter with her abuser in the facility that laughed at her stating they will never believe her if Monterrosa reports the abuse); see also *E.D. v. Sharkey*, 928 F.3d 299, 304–05 (3rd Cir. 2019) (discussing how Sharkey threatened to deport E.D. if she reported him for his sexual advances).

148. Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100, at 13139.

149. *Id.* at 13122.

150. See Kriel, *supra* note 70 (describing how a witness was deported soon after she came forward with sexual assault allegations against a detention employee).

151. See *Sharkey*, 928 F.3d at 304 (“E.D. alleges that, after the relationship was reported, the defendant BCRC staff members retaliated by denying her and her son privileges and instituting a restrictive clothing policy that led to other detainees isolating her.”).

152. Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100, at 13142.

153. See Goldscheid, *supra* note 61, at 1641 (indicating little attention is placed on holding government officials accountable for sexual assault as compared to other higher position individuals); see also *In Search of Safety*, *supra* note 73 (“Given how infrequently guards face criminal charges . . . the experience only brings more trauma.”).

majority of officers accused of sexual assault or abuse remain employed in the facility alongside their victims pending an investigation.<sup>154</sup> In the last decade that has been only one case in which an offer was terminated in an immigration facility for initiating a sexual relationship with a detainee.”<sup>155</sup> This major issue highlights the importance of reforming the government’s response to such violations.

Furthermore, in comparing U.S. immigration detention standards to other jurisdictions when it comes to accountability, other countries take a more serious approach in protecting their people from any type of sexual abuse. In Sweden, a recently enacted rape law significantly increased conviction rates through modification of the definition of rape; defining it as any nonconsensual sex without the need to prove “threat of violence or coercion.”<sup>156</sup> Sweden’s immigration detention systems are considered one of the most humane detention systems in the world<sup>157</sup> which may be attributed to Sweden’s strict laws on rape.

Swedish detention centers strictly abide by the Aliens Act of 2005<sup>158</sup> (the Act). The Act lays the foundation for how detention centers must function and treat the detainees, with a specific focus on the needs of immigrants.<sup>159</sup> The distinguishing factor between Sweden and other countries appears to rest on the fact that, in Sweden, every detainee’s case is prioritized from the beginning of their arrival until the end, not only by having a good relationship with the staff, but by meeting the needs of the

154. See *In Search of Safety*, *supra* note 73 (describing Monterrosa’s investigation process and how her abuser remained in the facility after she reported the incident).

155. *Sharkey*, 928 F.3d at 299.

156. Emma Batha, *Rape Conviction Rates Rise 75% in Sweden After Change in the Law*, REUTERS (June 22, 2020, 12:35 PM), <https://www.reuters.com/article/us-sweden-crime-rape-law-trfn/rape-conviction-rates-rise-75-in-sweden-after-change-in-the-law-idUSKBN23T2R3> [<https://perma.cc/W4ZM-ND4D>].

157. See Izabella Majcher & Michael Flynn, *Harm Reduction in Immigration Detention: A Comparative Study of Detention Centres in France, Germany, Norway, Sweden, and Switzerland*, GLOB. DET. PROJECT 45 (2018) (“Sweden is often lauded for having more humane detention practices than its Scandinavian neighbours, including Norway and Denmark.”).

158. Aliens Act, Swedish Code of Statutes (2005:716); See Yuliia Pohorilets, (Master’s thesis), *Detention of Asylum-Seekers: Comparison of the Asylum and Detention Practices in United States and Sweden*, CHAP. UNIV. DIGIT. COMMONS 41 (2020) (“Chapter 11 of the Aliens Act gives details on how detention centers should be run.”).

159. See Aliens Act, *supra* note 158 (“An alien who is being held in detention shall be treated humanely and his or her dignity shall be respected. Activities that concern detention shall be organised in a way that results in the least possible infringement of the alien’s integrity and rights.”); Majcher & Flynn, *supra* note 157, at 11.

detainees and making them feel safe and secure at every moment.<sup>160</sup> In comparing the staff hired to run these facilities, Sweden recognizes the importance of hiring employees with a variety of ethnic backgrounds that demonstrate a high level of competence, language skills, and education.<sup>161</sup> By requiring high qualifications for staff members, a detention center can avoid hiring potential perpetrators that may possibly cause harm to detainees.

Additionally, in one of Sweden's largest detention centers, "Märsta," the facility provides detainees with more freedom; it affords detainees access to recreational areas, freedom to make personal phone calls, entry to computer rooms with internet capability, assistance in the form of government health care, and, most importantly, legal access.<sup>162</sup> Essentially, immigrants detained in these facilities have all the resources to allow them to have a comfortable stay, and if they suffer any type of violence, they would likely feel more confident in reporting and seeking help.<sup>163</sup> Although Sweden's immigration detention system may appear nearly perfect, their facilities are not without faults—they too experience instances of violence and violations of human rights.<sup>164</sup> However, because of lack of reports on sexual abuse in these facilities and the confidentiality of information, Sweden does not often report on any preventive measures it takes. Despite this missing information and lack of concrete statistics, Sweden regularly detains a mere 5,000 non-citizens (or less) across their facilities, with the average stay spanning a month (excluding those outliers for exceptional reasons).<sup>165</sup> In view of these significantly low numbers, it may well be inferred that the occurrences of sexual assault between staff and detainees is similarly, very low—especially in light of Sweden's strict laws on rape and the vast measures it takes to protect detainees. Nevertheless, Sweden's approach remains much more humane than the United States; the United States

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160. Pohorilets, *supra* note 158, at 42.

161. *Id.* at 43.

162. Majcher & Flynn, *supra* note 157, at 51; *see* Pohorilets, *supra* note 158, at 44 (describing Swedish detention centers as more humane when compared to the U.S. immigration detention system).

163. *See* Majcher & Flynn, *supra* note 157, at 49 (providing regulations for detention centers through the Aliens Act that allow for detainees to be visited by public counsel without being monitored).

164. *See* Pohorilets, *supra* note 158, at 44 ("Despite the Swedish government's and the Migration Board's emphasis on the humane treatment of detainees . . . there is broad and systematic violation of their human rights in detention centers and during deportations.").

165. Majcher & Flynn, *supra* note 157, at 46–47.

should incorporate a handful of these features into its facilities to better provide detainees with the help and aid they seek.

## V. CONCLUSION

The rise in sexual assault allegations against employees in immigration detention centers necessitates the immediate need for the establishment of accountability measures. Immigrants such as Doe<sup>166</sup> arrive daily across the nation's borders in hopes of attaining a better future for themselves and their families, only to be stripped of their rights and detained in a facility where they become susceptible to rape.<sup>167</sup> For many, their survival stories will never be heard, and for the rest who speak up, this country will do what it does best and deport them. Congress acts and begins punishing officials for injuring immigrants, both physically and mentally, while in detention, ICE will continue treating immigrants as disposable.

In response to the influx of immigrants seeking asylum in the U.S., the Trump Administration apparently focused on a punitive course of action—punishing these individuals by imprisoning them in inhumane facilities for lengthy periods of time.<sup>168</sup> The result of such an approach, in addition to irreversible physical trauma, is the increase in post-traumatic stress disorders among victims, and further, a feeling among immigrants that they are just another nameless number in an immigration statistic. Past Administrations left nothing but empty promises, and it is uncertain whether the next Administration will bring a positive change for the immigrant community.

While ICE continues to pose as an agency with zero tolerance on sexual abuse and assault,<sup>169</sup> thousands of complaints against facility guards are left untouched with no investigation reports.<sup>170</sup> Even with DHS's PREA standards specifically designed to protect detainees,<sup>171</sup> facilities have not changed their tune—they are complicit in ignoring such standards. Sexual assault and abuse are prohibited under the standards<sup>172</sup> and officers continue breaking this rule by taking advantage of detainees in vulnerable

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166. Plaintiff's Original Complaint & Jury Demand, *supra* note 13, at 2–3.

167. Meaghan Fitzpatrick & Leslye E. Orloff, Article, *Abused, Abandoned, or Neglected: Legal Options for Recent Immigrant Women and Girls*, 4 PA. STATE J.L. & INT'L AFF. 614, 614 (2016).

168. Maria Mendoza, *supra* note 7, at 426; Villazor & Johnson, *supra* note 51, at 601–03.

169. PREA, *supra* note 10.

170. *Widespread Sexual Assault*, *supra* note 5.

171. Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100, at 13100.

172. *Id.* at 13109.

situations. Although the standards provide for proper education of all detainees upon arrival,<sup>173</sup> all facilities—whether private or non-private—differ in education programs, and as such, detainees are not informed of all rights available to them when seeking aid. Additionally, even if facilities were to provide detainees with the information necessary to report an incident, detainees do not always report the abuse due to fear of retaliation.<sup>174</sup> The standards further allow for the termination of employees that engage in any sexual relationship with a detainee;<sup>175</sup> however, DHS places little importance on holding these officers accountable, much less terminating them, and instead allows them to continue working alongside their victim. Despite Congress's urging of ICE to improve its standards among all facilities and report on such progress, ICE has continually failed to do so, and instead has increased or renewed contracting under outdated standards.<sup>176</sup> Implementing new hiring procedures under private contracts with contractors running facilities can also be a start in cutting off perpetrators from the beginning.

The U.S. should follow the example set by other countries—such as Sweden—and modify the current rape laws to allow greater conviction of rapists,<sup>177</sup> and in addition, place increased importance on the needs of detained immigrants.<sup>178</sup> Focusing on the resources provided to detainees and setting high standards for the hiring of employees can significantly reform the conditions of detention centers, not only by benefitting immigrants, but by changing ICE's image as well. If the United States continues to allow for the operation of a system in which employee discipline is completely disregarded—specifically in relation to employees hired under private corporations that contract with ICE—the message we are sending is all too clear: employees deserve a free pass (to continue their abhorrent behavior), and immigrants are disposable (and unworthy of the title of “human”).

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173. *Id.* at 13127.

174. *See* Plaintiff's Original Complaint & Jury Demand, *supra* note 13, at 2, 3, 13 (“[Only] 10 percent’ of female detainees . . . [have] come forward with reports of sexual misconduct by . . . officers that included sexual harassment, fondling during searches, and sexual misconduct.”).

175. Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100, at 13142.

176. *ICE Lies*, *supra* note 133, at 5–6; *ICE Contracts with Private Prison Corporations*, *supra* note 119.

177. Batha, *supra* note 156.

178. *See* Aliens Act, Swedish Code of Statutes (2005:716) (explaining the “responsib[ility] for the treatment and supervision of an alien who is being held in detention” should not be taken lightly).