COMMITTEE ON THE JUDICIARY: SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

"Holiday on ICE: The U.S. Department of Homeland Security's New Immigration Detention Standards."

Written Testimony of Michelle Brané
Director, Detention and Asylum Program
Women's Refugee Commission

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Good afternoon. Thank you for this opportunity to testify about this extremely important matter, which profoundly affects the lives of hundreds of thousands of people.

The Women's Refugee Commission identifies gaps, researches solutions and advocates for change to improve the lives of crisis-affected women and children.. In particular, the Detention and Asylum Program focuses on the detention of migrants and access to due process and human rights protections within the United States. For nearly two decades we have visited immigration detention facilities throughout the United States and internationally, and spoken to detention center staff, local service providers and to detainees about policies, practices, conditions of detention, and access to protection. There is no question that conditions of immigration detention in the United States have been grossly inadequate, inhumane, and unsafe. These conditions have been in violation of the U.S. Constitution and our obligations under international law and treaties, exposing detainees to harm and leaving the Department of Homeland Security and its employees vulnerable to litigation.

ICE operates the largest detention and supervised release program in the country. In FY 2010, the agency detained approximately 363,000 individuals, not including those enrolled in supervisory programs.[1] On an average day in FY 2011, ICE had in its custody over 33,300 individuals.[2] Many will be detained for months or even years. It is critical to understand the difference between the administrative purpose of ICE detention and the punitive purpose of the criminal incarceration system. The purpose and authority of ICE detention is to hold, process, and prepare individuals for removal. It is not to punish or rehabilitate. Despite this distinction, ICE relies primarily on a correctional incarceration system. Aside from a few exceptions,

[1] "Annual Report: Immigration Enforcement Actions: 2010." Department of Homeland Security Office of Immigration Statistics. June 2011. http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement-ar-2010.pdf
[2] "Fact Sheet: Detention Management." Immigration and Customs Enforcement. November 10, 2011. http://www.ice.gov/news/library/factsheets/detention-mgmt.htm

detainees are confined in facilities that were built and operate as jails and prisons intended for pre-trial and sentenced felons. This system both imposes more restrictions and provides fewer protections than are necessary or appropriate for this distinct population. Immigration detainees have very different needs and security requirements from those of populations awaiting criminal proceedings or serving criminal sentencing.[3]

ICE has no criminal detention authority, but pursuant to the Immigration and Nationality Act ICE has administrative authority to detain aliens during the removal process.[4] Regardless of the purpose of detention, the agency has a duty to provide basic services and care to those in its custody.

Immigration detainees include pregnant women, families, the sick, the elderly, legal permanent residents, torture survivors, and victims of human trafficking. In addition, U.S. citizens are increasingly being detained as immigrants, leading to the need for a hotline to address the problem.[5] Due to the civil nature of the system, immigration detainees are not entitled to a court-appointed lawyer and 84% do not have an attorney.[6]

The detention reforms we are discussing today are a response to the public outcry and litigation over conditions of confinement for the hundreds of thousands of individuals who are detained by ICE each year that were — and continue to be — inappropriate, inefficient, and unsafe. In addition to inadequate standards, the system lacks an effective oversight mechanism. ICE's jailors violate current minimum standards of confinement frequently and often with impunity. Abuses and inhumane conditions have been well documented not just by NGOs such as the Women's Refugee Commission,[7] but also by investigative reports including the New York

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[3] Despite all too common references to the criminality of immigrants in immigration proceedings, detainees in immigration custody are being held on administrative, civil infractions and are not serving criminal sentences. ICE does not have authority to detain aliens for criminal violations. The authority to detain on criminal charges lies with the Department of Justice, subject to review of the federal courts. For example, while many aliens who enter illegally have committed a misdemeanor criminal offense in violation of 8 U.S.C. 1325, it is the Department of Justice, not ICE that has the authority to detain aliens for that criminal violation while criminal proceedings are pending. Dr. Dora Schriro, *Immigration Detention Overview and Recommendations,* Department of Homeland Security, Immigration and Customs Enforcement, Oct. 6, 2009, *available at* http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf

[4] Immigration proceedings are civil proceedings and immigration detention is not punishment. *Zadvydas v. Davis*, 533 U.S. 678, 609 (2001).

[5] Julia Preston, *Immigration Crackdown also Snares Americans*, New York Times, December 13, 2011, available at: http://www.nytimes.com/2011/12/14/us/measures-to-capture-illegal-aliens-nab-citizens.html?pagewanted=all; http://www.ice.gov/detention-reform/toll-free-hotline/

[6] S. Lewis and Paromita Shah, "Detaining America's Immigrants: Is this the Best Solution?," *Detention Watch Network*.

[7] Women's Refugee Commission, *Migrant Women and Children at Risk: In Custody in Arizona*, October 2010, available at: http://www.womensrefugeecommission.org/resources/doc_download/656-migrant-women-and-children-at-risk-in-custody-in-arizona; Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration detention, Human Rights watch, March 2009

Times,[8] the Washington Post,[9] and government agency reports such as the Government Accounting Office and the DHS Office of the Inspector General.[10] A report by then-DHS Special Advisor Dr. Dora Schriro, issued after an extensive internal review of the system, concluded that significant reforms were necessary.[11]

As a result, ICE announced in 2009 the beginning of a reform effort. Reforms included reviewing and updating the 2008 Performance Based National Detention Standards (PBNDS) to address the many concerns and shortcomings outlined in Dr. Schriro's report, the media and by advocates.[12] On February 27, 2012, ICE released the updated 2011 PBNDS. These long-anticipated standards were a welcome step that, when implemented, will afford thousands of immigrants in immigration detention slightly more appropriate environments. Perhaps most importantly, the 2011 PBNDS articulate stronger guarantees to appropriate and necessary medical, mental health, women's health care, and protections against sexual assault for immigration detainees. But let's be clear, they are not a "hospitality guide." Rather, they set the minimum standards necessary to prevent abuse, neglect, injury, or death. Moreover, these standards, despite years of development, are only slightly better than the 2008 version. Concerns remain that these new standards are insufficient to hold accountable the hundreds of facilities under ICE contract, many of which are still operating under insufficient standards that date back to 2000.

**Conditions of Detention**

In my numerous visits to detention facilities across the country I have encountered reports of sexual assault, insufficient medical care, lack of access to telephones, frequent and disruptive transfers, limited access to legal services, severely limited recreation and visitation, and restricted access to family courts that has led to the permanent loss of parental rights. Prohibition of contact visits among family members is common and was found to be "unnecessary and cruel" by the Police Assessment Resource Center in October 2009.[13] Telephone access in immigration detention is plagued by broken equipment, confusing and complicated instructions,

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[8] for example: Nina Bernstein, *Ill and in Pain Detainee Dies in U.S. Hands*, New York Times, August 12, 2008 available at: http://www.nytimes.com/2008/08/13/nyregion/13detain.html?pagewanted=all

[9] Dana Priest and Amy Goldstein, *Careless Detention*, Washington Post, May 11-14, 2008, *available at* http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d1p1.html

[10] Department of Homeland Security, Office of Inspector General, *Immigration and Customs Enforcement: Detention Bedspace Management*, OIG-09-52, April 2009, *available at* http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_09-52_Apr09.pdf; *Immigrations and Custom Enforcement Policies and Procedures Related to Detainee Transfers*, DHS Office of Inspector General, OIG-10-13, Nov. 2009, *available at http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_10-13_Nov09.pdf*

[11] Dr. Dora Schriro, *Immigration Detention Overview and Recommendations,* Department of Homeland Security, Immigration and Customs Enforcement, Oct. 6, 2009, *available at* http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf

[12] See ICE Press Releases at http://www.ice.gov/pi/nr/0910/091020boston.htm and http://www.ice.gov/pi/nr/0911/091123philadelphia2.htm

[13] Police Assessment Resource Center, *The Los Angeles County Sheriff's Department 28th Semiannual Report*, Oct. 2009, at 41, *available at* http://www.parc.info/client_files/LASD/28th%20Semiannual%20Report.pdf

steep service rates, and limited hours of operation. The use of remote facilities and the overuse of transfers severely curtail detainees' access to legal services and family, and impede their ability to challenge their detention and deportation. Advocates in Minnesota reported in 2009 that it takes attorneys an average of six days to make initial contact with their clients in immigration detention.[14] The DHS Inspector General documented the harsh and disruptive consequences of frequent and haphazard transfers in their 2009 report.[15]

Overwhelmingly, what strikes most people after meeting with detainees is the daily humiliation and lack of contact with the outside world. Most ICE facilities have open showers and toilets with no shower curtains, doors or partitions. Even the provision of shower curtains that begin at the waist have been welcomed by detainees as a significant improvement. In addition, when detention lasts for extensive periods, recreation is not a luxury but a fundamental human right. Many ICE facilities provide at most one hour of recreation in an enclosed area with no exposure to natural light. Lack of exposure to natural light and air for extended periods of time can also lead to medical issues, skin conditions, and mental health issues.

The litany of shortcomings, abuses, and tragic consequences are too numerous to address here in their entirety. I will concentrate on a few areas that have been of particular concern to the Women's Refugee Commission and which are addressed, at least in part, in the new 2011 PBNDS.

**Medical Care**

Medical care is a critical concern in immigration detention. The denial of adequate medical care to immigration detainees is well documented.[16] Reports are based on hundreds of interviews with detainees, direct observations, and conversations with jail and immigration officials over the past decade. Deficiencies include difficulty accessing medical records; delayed or denied care; shortage of qualified staff; unsanitary facilities; improper care of mentally ill patients; inadequate care of physically disabled patients; denial of and inattention to administration of prescription

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[14] Jacob Chin, Katherine Fennely, Kathleen Moccio, Charles Miles, Jose D. Pacas, *Attorneys' Perspectives on the Rights of Detained Immigrants in Minnesota,* Nov. 2009, *available at* http://lawprofessors.typepad.com/files/final-cura-article-11-10-09.pdf

[15] Department of Homeland Security, Office of Inspector General, *Immigration and Customs Enforcement's Tracking and Transfers of Detainees*, OIG-09-41, March 2009, *available at* http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_09-41_Mar09.pdf

[16] Women's Refugee Commission, Politicized Neglect: A Report from Etowah County Detention Center, March 2012, available at: http://www.womensrefugeecommission.org/resources/doc_download/809-politicized-neglect-a-report-from-etowah-county-detention-center , Women's Refugee Commission, *Migrant Women and Children at Risk: In Custody in Arizona*, October 2010. Available at: http://www.womensrefugeecommission.org/resources/doc_download/656-migrant-women-and-children-at-risk-in-custody-in-arizona; Women's Refugee Commission and Lutheran Immigration and Refugee Service, *Locking Up Family Values: The Detention of Immigration Families*, February 2007, available at: http://www.womensrefugeecommission.org/resources/doc_download/150-locking-up-family-values-the-detention-of-immigrant-families; letter to ICE regarding our visit to Willacy, Women's Refugee Commission and Dr. Susan MacNamara, April 6, 2010, Available on file from the WRC; Human Rights Watch, *Detained and Ignored*

medication; lack of translation; abusive behavior by some clinic staff; and threats of transfer in retaliation for complaints.

As evidenced by the over 120 documented deaths in immigration custody since 2003, this lack of medical care is not a frivolous matter to be cast aside as insignificant.[17] Prior to the implementation of reforms, not only were detainees dying in immigration custody due to lack of even basic medical care, these deaths were routinely not recorded or reported until brought to light through outside inquiry from family or advocates.[18]

Mr. Boubacar Bah: The case of Mr. Bah, documented by Nina Bernstein in the New York Times, demonstrates the extreme negligence and inhumane treatment that has happened under the immigration detention system we are talking about reforming. Mr. Bah died after emergency surgery for a skull fracture and multiple brain hemorrhages. "Government documents detail how he was treated by guards and government employees: shackled and pinned to the floor of the medical unit as he moaned and vomited, then left in a disciplinary cell for more than 13 hours, despite repeated notations that he was unresponsive and intermittently foaming at the mouth."[19]

> *"It began about 8 a.m., … Guards called a medical emergency after a detainee saw Mr. Bah collapse near a toilet, hitting the back of his head on the floor. When he regained consciousness, Mr. Bah was taken to the medical unit … He became incoherent and agitated, reports said, pulling away from the doctor and grabbing at the unit staff. Physicians consulted later by* The Times *called this a textbook symptom of intracranial bleeding, but apparently no one recognized that at the time. He was handcuffed and placed in leg restraints on the floor with medical approval, "to prevent injury," a guard reported. "While on the floor the detainee began to yell in a foreign language and turn from side to side," the guard wrote, and the medical staff deemed that "the screaming and resisting is behavior problems."*
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> *Mr. Bah was ordered to calm down. Instead, he kept crying out, then "began to regurgitate on the floor of medical," the report said. So Mr. Bah was written up for disobeying orders. And with the approval of a physician assistant, Michael Chuley, who wrote that Mr. Bah's fall was unwitnessed and "questionable," the tailor was taken in shackles to a solitary confinement cell with instructions that he be monitored.*

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[17] Eric Tucker, *Chinese Detainee's Widow Wants Government Kept in Lawsuit,* Boston Globe, Nov. 12, 2009, *available at:* http://www.boston.com/news/local/rhode_island/articles/2009/11/12/chinese_detainees_widow_wants_government_kept_in_lawsuit/; Nick Miroff, *ICE Facility Detainee's Death Stirs Questions,* Washington Post, Jan. 30, 2009, *available at* http://www.washingtonpost.com/wp-dyn/content/story/2009/01/31/ST2009013101877.html; Nina Bernstein, *U.S. Agency Issues Scathing Report on Death of Immigrant in its Custody,* New York Times, Jan. 16, 2009, *available at* http://www.nytimes.com/2009/01/16/world/americas/16iht-detain.1.19422767.html

[18] *Id.*

[19] Nina Bernstein, "Few Details on Immigrants Who Died in Custody", New York Times, May 5, 2008.

*Under detention protocols, an officer videotaped Mr. Bah as he lay vomiting in the medical unit, but the camera's battery failed, guards wrote, when they tried to tape his trip to cell No. 7.*

*Inside the cell, a supervisor removed Mr. Bah's restraints. He was unresponsive to questions asked by the Public Health Service officer on duty, a report said, adding: "The detainee sat up in his bed and moan and he fell to his left side and hit his head on the bed rail."*

*.....The watching began. As guards checked hourly, Mr. Bah appeared to be asleep on the concrete floor, snoring. But he could not be roused to eat lunch or dinner, and at 7:10 p.m., "he began to breathe heavily and started foaming slightly at the mouth," a guard wrote. "I notified medical at this time."*
*However, the nurse on duty rejected the guard's request to come check, ...at 8 p.m., when the warden went to the medical unit to describe Mr. Bah's condition, the nurse, Raymund Dela Pena, was not alarmed. "Detainee is likely exhibiting the same behavior as earlier in the day," he wrote, adding that Mr. Bah would get a mental health exam in the morning.*

*About 10:30 p.m., more than 14 hours after Mr. Bah's fall, the same nurse, on rounds, recognized the gravity of his condition: "unresponsive on the floor incontinent with foamy brown vomitus noted around mouth." Smelling salts were tried. Mr. Bah was carried back to the medical unit on a stretcher.*
*Just before 11, someone at the jail called 911.*

*When an ambulance left Mr. Bah at the hospital, brain scans showed he had a fractured skull and hemorrhages at all sides of his swelling brain. He was rushed to surgery, and the detention center was informed of the findings.*

*But in a report to their supervisors the next day, immigration officials at the center described Mr. Bah's ailment as "brain aneurysms" — a diagnosis they corrected a week later to "hemorrhages," without mentioning the skull fracture. After Mr. Bah's death, they wrote that his hospitalization was "subsequent to a fall in the shower.""*[20]

Reforms:

ICE medical policies for detainees have been generally limited to treating emergencies that are "threatening to life, limb, hearing or sight."[21] This has led to countless cases in which needed

[20] Nina Bernstein, "Few Details on Immigrants Who Died in Custody", New York Times, May 5, 2008.
[21] Division of Immigration Health Services, *DIHS Medical Dental Detainee Covered Services Package*, Sept. 19, 2007.

medical services are denied because life-threatening consequences are not considered imminent. When questioned about this policy, an ICE spokesperson explained, "We are in the deportation business. . . . Obviously, our goal is to remove individuals ordered to be removed from our country. . . . We address their health care issues to make sure they are medically able to travel and medically able to return to their country."[22] Experts in penal detention systems have clearly articulated that this standard would be unquestionably unacceptable even in the Bureau of Prisons system.

The 2011 PBNDS eliminate some of these restrictions and allow on-site medical personnel to provide basic care to detainees without bureaucratic pre-approval from Washington, D.C. Medical providers will now have greater authority to provide medically necessary treatment. This is more in line with medical service provision for incarcerated populations and ensures not only improved services, but a more cost effective and efficient system for everyone involved. This is the very minimum of what experts have recommended and is consistent with rules that apply to the incarcerated population.

**Women's Medical Standards**

Women comprise approximately 10% of the population detained by ICE. Current standards—the 2008 PBNDS and the National Detention Standards—for women's needs fall well below those in our federal prison system. Routine women's medical needs, such as gynecological, reproductive, and obstetric health needs, including routine age- and gender-appropriate reproductive system evaluations, pelvic and breast examinations, Pap smear and STI tests, and mammograms, are considered non-emergency and are very difficult or impossible to obtain even where medically and urgently necessary. Pregnant women are routinely denied appropriate pre-natal care, or are released in unsafe conditions, late in their pregnancy, late at night, in remote areas. They are routinely shackled during their pregnancy, and even on occasion during labor and recovery.

Ectopic Pregnancy:

On December 18, 2003, a woman at the Broward Transitional Center (BTC) in Broward County, Florida, requested assistance from the medical staff for symptoms of severe abdominal pain and a missed period. Although she had the classic symptoms of an ectopic pregnancy, a painful and potentially fatal condition, her concerns were ignored. On several occasions, she was simply given Tylenol and told her pain was normal. When she began to bleed profusely, the medical staff still did not take her complaints seriously. Two and a half weeks later, when she was finally seen by a doctor, she was immediately taken to a hospital for surgery, resulting in both the loss of her unborn child and the removal of her fallopian tube.[23]

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[22] Caitlin Webber, *ICE Officials' Testimony on Detainee Medical Care Called into Question*, Congressional Quarterly, June 16, 2008.

[23] FIAC and the Women's Commission for Refugee Women and Children wrote DHS to request an investigation into this case and another case involving a pregnant woman at BTC. An investigation was conducted, but FIAC was advised that the results could not be forwarded.

*I was told that this was not uncommon. Also that several other women missed their period for two or three months due to stress and not to worry about it. At that visit, I was given about 20 packets of Ibuprofen for the pain. …By January 1, 2004 the pain was getting much worse… I was in too much pain. After being told again that this was due to stress I was given Tylenol and Ibuprofen and asked to go back to bed. When I went to bed the pain was so bad that I was moaning and the officers came. They went downstairs to get a nurse but no one is in the clinic at night. The officers thought it might be a stomach problem so they gave me antacid and soda…When I woke up there was blood everywhere. I was bleeding heavily. The officers wrote the request for me to go to the clinic that morning, on January 2, 2004.*

*I was given more Tylenol and Ibuprofen and asked to go back to bed again. I insisted that it was not normal for me not to get my period and was finally given a pregnancy test. The test revealed that I was pregnant… But the pain continued to get worse and I kept bleeding. On January 3, 2004, I went to the clinic again… They kept giving me more Tylenol and Ibuprofen and sending me back to bed. ... On January 4, 2004 the pain was severe. My roommate… helped me get to the clinic. They [clinic employees] wanted to send me back to my room again but my roommate said no. She told them how much I was suffering and said she would not take me back to my room in that condition.*

*Finally, they brought me back to a room with a table in the clinic and told me to lie down on the table. A male doctor was there. I was in so much pain I was screaming. All he did was touch my stomach and then he said they had to take me to the emergency room immediately. They took me out in a wheelchair. I was taken to the Broward Medical Center and was told by the Doctor there that it was too late and they needed to operate because I had an infection. He said it was an ectopic pregnancy.*

*I had surgery on January 5, 2004. I was told afterwards that one of my tubes had to be removed. I was devastated by the news because not only had I lost the baby but also because now it would be much more difficult for me to have a baby….I spent three days at the hospital and all the time that I was there, even though there was a phone in my room, the guard that stayed with me did not allow me to use the phone to contact my relatives and let them know what had happened… I was not able to get any special visit with my family either…. I will never be able to forget all that I went through since I've been here.*[24]

Miscarriage:

Another female detainee who miscarried while in immigration custody at the Turner Gilbert Knight (TGK) facility in Florida described her failed efforts to get medical attention:

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[24] Statement of Haitian woman at the Broward Transitional Center (February 4, 2004). See also letter from Kerline Phelizor (April 27, 2003).

*"When I was brought to this jail facility I was placed in the intake holding cell. The room I was locked in for hours had feces smeared on the walls and floor. I thought well maybe it was just that room, however, I was moved to another one and that too had feces smeared on the walls and the rooms where absolutely filthy disgusting…. I was six weeks pregnant when I came into this place.*

*I have been so distraught about the physical conditions and cleanliness of this place. On 7/12/04 I put in a written request to see the facility psychiatrist as I felt these above conditions were not viable to my pregnancy. I wanted to document the stress this facility is causing me. My written request went ignored and on 7/15/04 I miscarried. I was taken to Jackson Memorial Hospital in shackles and handcuffs. I sat in the waiting room amongst other pregnant women who wore looks of concern sitting next to what looked like a criminal. I was wearing bright orange jail uniform and in shackles and handcuffs with two guards at all times. I waited for three hours at which point I started to visibly hemorrhage and only at this point did the medical staff attend to me. I was supposed to go back to the hospital for a follow up, however I was not going back through that humiliation and violation of my human rights unless my life depended on it. To date my request to see the facility psychiatrist has still gone ignored and I have been unable to tell anyone of the upset and emotional stress I have gone through losing my child in a place like this. This jail is not set up to handle real medical emergencies."*[25]

ICE's detention reform efforts have included much-needed improvements to the provision on medical care to detainees. The 2011 PBNDS provide clear and concrete guidelines to protect detainees, detention officials, and the agency from the dangers all were subject to prior to the development of these standards. These are not extreme services but the most basic medical services called for in responsible medicine. They include basic provisions for care that must be made available where medically advised and are consistent with, not more generous than, what is available in the federal prison system and by law. These include appropriate access to pre-natal care and gynecological services. The new standards institute sensible restrictions on the use of shackles on women during childbirth, and provide instructions for how to use them in the rare cases where they are considered necessary.[26] These guidelines are long overdue.

[25] Letter from detainee to FIAC, July 28, 2004.

[26] *See* Villegas v. Metropolitan Government of Davidson County, 2011 WL 1601480, *24 (M.D. TN 2011) (holding that the "shackling of a pregnant detainee in the final stages of labor shortly before birth and during the post-partum recovery violates the Eighth Amendment's standard of contemporary decency"); *see also* Nelson v. Correctional Medical Services, 583 F.3d 522, 533 (8th Cir. 2009) (denying summary judgment for officer because shackling pregnant prisoner during labor clearly established as a violation of the Eighth Amendment); Women Prisoners of D.C. v. District of Columbia, 93 F.3d 910, 918, 936 (D.C. Cir. 1996) (recognizing that correctional authorities cannot use "restraints on any woman in labor, during delivery, or in recovery immediately after delivery" and noting prison did not challenge district court's finding that "use of physical restraints on pregnant women . . . violate[s] the Eighth Amendment"); Brawley v. State of Washington, 712 F.Supp.2d 1208, 1221 (W.D. Wash 2010) (denying summary judgment because shackling a prisoner in labor clearly established as a violation of the Eighth Amendment).

**Sexual Assault**

Sexual assaults in custody are a major concern of the Women's Refugee Commission.[27] They occur during intake, during detention, and even during transport and removal. While immigration detention authorities have for decades insisted that sexual assaults are not common and are adequately addressed, evidence continues to indicate otherwise.[28]

Sexual assault in detention:

In 2000, the Women's Refugee Commission issued a report documenting widespread sexual, physical and emotional abuse of detainees held at the Krome Service Processing Center in Miami.[29] Over 15 officers were involved in sexual assaults varying from rape to fondling. The ensuing scandal led to the transfer of all women out of the Krome facility, but little or nothing was done to correct the systemic issues that led to the situation.

In 2009, an officer pled guilty to entering the rooms of women being held in isolation at the Port Isabel detention facility in Texas, and ordering them to strip so that he could fondle them. [30] On Aug. 4, 2011, a guard pleaded guilty to forcing a female immigration detainee at the Willacy detention center in Texas into a guard bathroom and having intercourse with her. Although the detainee immediately complained, internal e-mails show that officials did not put the guard on leave until eight months later.[31]

Sexual assault during transport:

Sexual assault during transport to and from appointments, during transfer, or even release has been well documented. The Women's Refugee Commission and Americans for Immigrant Justice[32] have made repeated requests to ICE to implement policies to prevent the risk of sexual assault during transport. In 2003, an ICE agent was charged criminally with raping a female detainee prior to returning her to the facility after her medical appointment.[33] In 2007, another ICE agent was charged with raping a female detainee during transport from one facility to

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[27] Women's Commission for Refugee Women and Children, "Innocents in Jail: INS Moves Refugee Women From Krome To Turner Guilford Knight Correctional Center, Miami," June 2001 (follow-up Report to "Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center," October 2000.

[28] Human Rights Watch, *Detained and At Risk*, August 2010, available at: www.hrw.org/sites/default/files/reports/us0810webwcover.pdf

[29] Women's Commission for Refugee Women and Children, *Behind Closed Doors: Abuse of Refugee Women at the Krome Detention Center*, Oct. 2000, *at* http://womensrefugeecommission.org/press-room/557-sexual-abuse-widespread-at-krome-detention-center-miami-refugee-women-and-immigrants-subjected-to-

[30] Mary Flood, *Ex-Prison Guard Admits to Fondling Immigrant Women*, Houston Chronicle, Sept. 24, 2009, *available at* http://www.chron.com/news/houston-texas/article/Ex-prison-guard-admits-to-fondling-immigrant-women-1722996.php

[31] http://www.justice.gov/opa/pr/2011/August/11-crt-1016.html

[32] Formerly Florida Immigrant Advocacy Center

[33] *Immigration Officer Accused Of Raping Detainee*, KHBS, Sept. 24, 2003, *at* http://spr.igc.org/en/news/2003/0924-3.html.

another.[34] He later pled guilty to federal sexual battery charges in order to avoid a charge of aggravated sexual assault.[35] Last fall, the American Civil Liberties Union filed a class action lawsuit against ICE alleging that one of its contract guards sexually assaulted at least nine female detainees during transportation from the Hutto Detention Center in Texas. State and federal criminal charges also have been filed.[36]

2011 PBNDS:

On our visits to detention facilities over the past 15 years we have consistently heard conflicting understandings of the governing policy regarding reporting and response to sexual assaults, what constitutes a sexual assault – with some facilities informing us that sexual assault requires penetration and that only confirmed penetration cases are reported to ICE - and varying procedures to avoid or prevent assault. The Women's Refugee Commission has long advocated for the full implementation of Prison Rape Elimination Act (PREA) standards in DHS facilities. The PREA standards are the result of bipartisan concern over the prevalence of prison rape in confinement. Representatives Frank Wolf (R-Va.) and Bobby Scott (D-Va.) wrote DHS Secretary Janet Napolitano in December of 2011, urging her to support the new PREA regulations and stating that the law's original intent was to include immigrant detainees under the statute's protections.

While the 2011 Standards do not go far enough to fully implement PREA, they are a step in the right direction toward preventing and responding to rape in custody. The new 2011 Standards provide many but not all of the provisions set forth in PREA.[37] The 2011 PBNDS provide for numerous protections and response mechanisms, including special consideration for factors that could lead to victimization and assault, a written policy of zero tolerance for all forms of sexual assault, a coordinated, multidisciplinary team approach to responding to sexual abuse, written procedures for internal administrative investigations, and a requirement that victims shall be provided emergency medical and mental health services and ongoing care.

The new standards also incorporate recommendations for basic protections against assault during transport by prohibiting that a individual officer transport an individual detainee of the opposite gender, and also provide restrictions and guidelines for performing strip searches.

To imply that these very basic protections are a "holiday" or an undue burden on the agency is simply wrong. They are basic standards of decency that provide what should be the minimum

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[34] Jay Weaver, *Ex-ICE agent: I had sex with immigration detainee*, Miami Herald, Apr. 4, 2008, *at* http://detentionwatchnetwork.org/node/808.
[35] Id.
[36] Doe v. Neveleff, No. 1:11-cv-907 (E.D. Tex., Oct. 19, 2011); Julia Flip, *Sexual Abuse Continues in Immigration Jails*, Courthouse News service, October 24, 2011, available at: http://www.courthousenews.com/2011/10/24/40857.htm
[37] Lovisa Stannow, *When Good is Not Good Enough*, Huffington Post, March 6, 2012, available at: http://justdetention.org/en/jdinews/2012/03_06_12.aspx

response to any assault or rape. To refer to these critical protections and guidelines for enforcing rule of law as "perks" is absurd. In fact, the 2011 PBNDS do not go far enough in protecting detainees from sexual assault and should be expanded to implement the full intent of PREA, including clear mechanisms for detainees and third parties to report abuse, provisions for confidential staff reporting, agreements with outside public entities and community service providers, appropriate training, audits and oversight. Denying the need for these protections not only puts detainees at risk, it exposes the agency to further scandal and liability.

**Family Separation and Parental Rights**

Thousands of parents are detained by ICE, leaving behind thousands of children. Many of these children end up in the child welfare system at taxpayer expense. In some cases, parental rights are terminated by the state, not because a parent intends to abandon their child, or due to abuse or neglect, but simply because a parent in immigration detention is unable to attend a family court hearing.[38]

PBNDS 2011 contains new language permitting detainees to make escorted trips to attend family-related state court proceedings, at the discretion of an ICE Deportation Officer and at the expense of the detainee. These are minimal protections that do not burden the system and in fact provide a mechanism that will facilitate coordination between federal and state stakeholders, ease the burden on state foster care systems, and save taxpayers money, while also protecting the due process rights of parents and U.S. citizen children.

**Reform**

ICE has responded to the numerous findings of abuse within their system by implementing reforms designed to operate a detention system with policies, facilities, programs, and oversight mechanisms that align with the administrative purpose of Immigration Detention.[39]

Revising existing detention standards is not only necessary for the safety of detainees, it is a significant opportunity for ICE to create a more efficient and effective system of enforcement.

In addition to the improvements made to its standards, ICE has developed an online detainee locator system so that individuals detained by ICE can be located by family members and attorneys; has hired Detention Services Managers, whose responsibility is to ensure appropriate conditions exist at detention facilities; developed a risk classification assessment to assist in determining both whether detention is necessary and the most appropriate placement (not yet

[38] Women's Refugee Commission, *Torn Apart By Immigration Enforcement: Parental Rights and Immigration Detention*, December 2010. Available at: http://www.womensrefugeecommission.org/resources/doc_download/667-torn-apart-by-immigration-enforcement-parental-rights-and-immigration-detention

[39] See ICE Press Releases at http://www.ice.gov/pi/nr/0910/091020boston.htm and http://www.ice.gov/pi/nr/0911/091123philadelphia2.htm

implemented); improved transparency by increasing access to facilities and detainees for visitation and monitoring purposes; and improved medical procedures and eliminated obstacles to medical care.

While the 2011 PBNDS provide for important improvements to current conditions, they are not enough. They continue to rely heavily on penal standards that were designed for a criminal population and do not take into account that detainees in ICE custody are there on the basis of civil violations only and are not serving criminal sentences or awaiting criminal proceedings. The improvements merely bring ICE detention standards closer to a minimum level of compliance with legal obligations of a civil detention system.

It is critical to note that any actual improvement in conditions will depend on the implementation of these announced reforms and the enforcement of adequate standards. These standards must be mandatory at all facilities with sufficient oversight to produce consistent and humane treatment of detainees. Violations must trigger appropriate and enforceable sanctions.

Within this context, NGOs have welcomed the administration's announcements of reform. It is ICE's responsibility to ensure the adequacy of medical care, protections from assault and rape, access to attorneys, and other basic care are provided to its detainees, regardless of where they are housed, because it is ICE that holds them prisoner. ICE has in the past abdicated this responsibility by failing to oversee the provision of such care.

The 2011 PBNDS are a bare minimum for the operation and oversight of ICE's vast network of confinement and custody. Though a start, they will only become meaningful if the agency continues to implement and institutionalize the reforms recommended by Dr. Schriro's report and commits to creating a civil system of detention that is used as a last resort and not modeled on the criminal incarceration system. This includes implementing effective tools for detaining only where appropriate and necessary; ending the use of all jail and jail-like facilities for immigration detention; screening apprehended immigrants to inform care, needs and custody restrictions; ensuring functional and meaningful oversight and monitoring of detention operations, performance and outcomes; and imposing sanctions on facilities that violate ICE's standards.