



MALDEF

The Latino Legal Voice for Civil Rights in America.

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Testimony of Marisa Bono, MALDEF Staff Attorney
“PREA and Complaints of Sexual Abuse at ICE Karnes Facility”

U.S. Commission on Civil Rights

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Members of the U.S. Commission on Civil Rights, thank you for inviting the Mexican American Legal Defense and Educational Fund (MALDEF) to testify as part of this briefing entitled “The State of Civil Rights at Immigration Detention Facilities.” MALDEF is a national civil rights organization that conducts community education, policy advocacy and, when necessary, litigation. Promoting and preserving the civil rights of Latino immigrants residing in the United States remains a core priority for MALDEF.

Specifically, this written testimony sets forth the requirements of the Prison Rape Elimination Act (PREA) as it applies to immigration detention facilities, complaints about PREA violations at the Karnes County Residential Center (the “Karnes Facility”) located in Karnes County, Texas, and recommendations for ensuring future PREA compliance at the Karnes Facility and other immigration detention facilities moving forward.

The Requirements of the Prison Rape Elimination Act (PREA) and Related Regulations

Congress passed the Prison Rape Elimination Act (PREA) in 2003 with unanimous, bipartisan support. The purpose of the act is to “provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations and funding to protect individuals from prison rape.” PREA establishes a “zero-tolerance standard for rape in prisons in the United States.” 42 U.S.C. § 15601–02. The U.S. Department of Homeland Security (DHS) issued final regulations for PREA in March of 2014. Under 28 C.F.R. § 115.6, “sexual abuse” of a detainee by a staff member at a detention facility includes any sexual contact with a detainee or resident, regardless of whether such contact is consensual. It also includes any “attempt, threat, or request” by a staff member to engage in sexual acts with detainees. 28 C.F.R. § 115.6.

The PREA regulations set forth a comprehensive regime for preventing, detecting, and investigating allegations of sexual abuse at immigration detention facilities. For example, under 28 C.F.R. § 115.111, DHS and ICE must have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct. Each facility must establish and publish a protocol for investigating and referring allegations of sexual abuse. 28 C.F.R. § 115.122. Any staff or contractor suspected of sexual abuse must be removed from all duties requiring detainee contact, pending the outcome of an investigation. 28 C.F.R. § 115.166. DHS also requires immigration detention facilities to complete sexual abuse incident reviews within thirty (30) days of the completion of an investigation and maintain data collected on sexual abuse and assault incidents in a secure location. 28 C.F.R. §§ 115.189.

Reported Sexual Abuse at the Karnes Facility

In July of 2014, ICE responded to a substantial influx of Central American immigrants by converting already-established federal facilities into new family detention centers for women and children ages seventeen (17) and younger, starting with a Federal Law Enforcement Training Center in Artesia, New Mexico. Previously, ICE only had one detention center for families. ICE also converted a 532-bed facility in Karnes County to house families, and the Karnes Facility opened on August 1, 2014. That same month, pro bono attorneys began conducting intakes with the families incarcerated at the Karnes facility for potential legal representation. Through this process, attorneys became aware of allegations of ongoing sexual abuse and violations of PREA at the facility.

Specifically, at least a few women detained at the Karnes Facility alleged that sexual abuse was ongoing since the facility opened in August of 2014, including:

- Karnes Facility guards and/or personnel removing female detainees from their cells late in the evening and during early morning hours for the purpose of engaging in sexual acts in various parts of the facility;
- Karnes Facility guards and/or personnel calling detainees their “novias,” or “girlfriends,” and using their respective position and power over the highly vulnerable detained women within the detention facility by requesting sexual favors from female detainees in exchange for money, promises of assistance with their pending immigration cases, and shelter when and if the women are released; and
- Karnes Facility guards kissing, fondling and/or groping female detainees in front of other detainees, including children.

The Letter Complaint and the DHS and ICE Response

On September 30, 2014, attorneys from MALDEF, the University of Texas School of Law Immigration Clinic, the University of Texas School of Law Civil Rights

Clinic, the Refugee Protection Program of Human Rights First, and the Law Office of Javier N. Maldonado, P.C. (collectively, “Complainants”), sent a joint letter complaining of the sexual abuse allegations described above to the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), the Karnes County Residential Center, and the GEO Group, Inc.¹

If true, these incidents of sexual abuse and harassment and the hostile and unsafe environment for the women and children not only likely violate federal laws and regulations, they also likely subject the detained families to conditions that are punitive and unconstitutional under the Due Process Clause of the Fifth Amendment.

Complainants called for an immediate investigation into these serious allegations of sexual abuse and the immediate protection of all women and children forced to reside in the facility, including but not limited to an investigation by the Office of Civil Rights and Civil Liberties (CRCL), pursuant to its authority under 6 U.S.C. § 345. Complainants urged the agencies to take swift action to investigate the allegations and implement protective and punitive measures in a timely manner, including disciplinary action, contract termination and staff dismissal as appropriate. Given the seriousness of the allegations and the poor management of the facility, Complainants requested that DHS provide direct oversight to ensure the complete safety and well-being of the detained families, including the immediate provision of appropriate medical and psychological services for victims.

Complainants also demanded that ICE bring the Karnes Facility into compliance with PREA, its implementing regulations, and the Family Residential Standards by developing, supervising, and enforcing a written policy to prevent, detect, and respond to unlawful sexual abuse by Karnes Facility staff and ICE personnel. This would include an accessible and transparent complaint process for detained families, and proper training for all staff and management. Complainants reminded authorities that all case records associated with claims of sexual abuse, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and/or counseling should be maintained in appropriate files in accordance with the Family Residential Standards. Pursuant to 28 C.F.R. § 115.116, the Karnes Facility is required to take appropriate steps to ensure that all detainees, including those who are not proficient in English, have an equal opportunity to benefit from all aspects of efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps include providing access to interpreters.

¹ Specifically, the letter was addressed to Jeh Johnson, the Secretary of DHS; the Office for Civil Rights and Civil Liberties of DHS; Kevin Landy, the Assistant Director of the Office of Detention and Policy Planning of ICE; Enrique Lucero, the San Antonio Field Office Director of ICE; the PREA Coordinator of the Karnes County Residential Center; and Phebia Moreland, the GEO Corporate PREA Coordinator for the GEO Group, Inc.. The following individuals and organizations received copies of the letter: Eskinder Negash, the Director Office of Refugee Resettlement; the Office of Inspector General; Jallyn Sualong of the Administration for Children and Families for Health and Human Services; the Special Litigation Section, Civil Rights Division, U. S. Department of Justice; the Warden of the Karnes County Residential Center; Texas Department of Family and Protective Services; the Texas Rangers, Texas Department of Public Safety; and Sheriff Dwayne Villanueva, Karnes County Sheriff’s Department.

Finally, Complainants requested a written response detailing what ICE and the Karnes Facility did in order to address the grave concerns described.

To date, Complainants have received two formal responses from federal agencies. Complainants received an October 29, 2014 letter from ICE indicating that the complaint had been received, and that an investigation was ongoing. Complainants called the contact provided in the letter, but did not receive a return phone call. Complainants also received a December 4, 2014 letter from DHS Civil Rights and Civil Liberties confirming that the complaint had been received and that an investigation was ongoing. The Office of the Inspector General (OIG) investigator also contacted Complainants in October of 2014, informing Complainants that OIG was conducting an investigation. Despite repeated requests, Complainants have no additional information regarding the details of the investigations.

Although at least one detained woman reported the unlawful conduct to Karnes Facility personnel, to Complainants' knowledge, no action has been taken to stop or prevent this abuse. On information and belief, at least three Karnes Facility employees are suspected as having engaged in the described sexual abuse and all are still working at the Karnes Facility. As recently as December 1 and December 4, 2014, the Warden of the Karnes Facility and representatives from the GEO Group, Inc. denied publicly that any sexual abuse had taken place during testimony provided to the Karnes County Commissioners Court. These individuals also stated that "an investigation" concluded that the complaints were unfounded, even though, to Complainants knowledge, the investigations are purportedly "ongoing."

Recommendations for Full PREA Compliance and Conclusion

It is apparent from the actions described above that either there is no prevention plan in place for the Karnes Facility, or in the alternative, the Karnes Facility policy is not being properly implemented, overseen or enforced.

As described above, under PREA, each facility must establish and publish its protocol for investigating and referring allegations of sexual abuse; to date neither ICE nor DHS has provided a copy of the protocol nor have we been told where it is published, despite multiple requests. Similar requirements exist under PREA for third party reporting protocols; to date none have been provided. The Karnes Facility was required to refer the complaints to a law enforcement agency; again, to our knowledge, this did not occur. The accused employees are purportedly still employed at the facility and maintain access to detainees despite the "zero tolerance policy." To Complainants' knowledge, all of the known victims or witnesses to the abuse have either been deported or have been bonded out of the Karnes Facility, and it is therefore unclear how a proper investigation can be conducted. Put simply, it is not apparent that PREA implementation is being properly monitored or supervised.

It is MALDEF's honor to provide testimony before this distinguished Commission. Please do not hesitate to contact Marisa Bono, MALDEF staff attorney, with any further questions or requests for additional information at (210) 224-5476 ext. 204.