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Claire Trickler-McNulty, Assistant Director, Office of Detention Policy and Planning
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, D.C. 20536

John F. Kelly, Secretary
John Roth, Inspector General
Department of Homeland Security
245 Murray Lane SW
Washington, D.C. 20528

Veronica Venture
Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Building 410, Mail Stop #0190
Washington, D.C. 20528

April 11, 2017

Re: Sexual Abuse, Assault, and Harassment in U.S. Immigration Detention Facilities

Dear Director Homan, Assistant Director Trickler-McNulty, Secretary Kelly, Inspector General Roth, and Officer Venture:

Community Initiatives for Visiting Immigrants in Confinement (CIVIC) submits this complaint detailing: the prevalence of reports of sexual abuse, assault, and harassment in U.S. immigration detention facilities; the lack of adequate government investigation into these reports; and the government's refusal to disclose relevant records.

CIVIC provides direct support to and advocates for people in immigration detention across the country. In the last three years, CIVIC has documented 27 sexual abuse-related complaints in immigration detention. Most of these individuals have not been in a position to file formal grievances or complaints because of fear of retaliation. This letter summarizes complaints lodged directly with CIVIC, including eight representative class complainants. Most of the complainants have agreed to be referred to by name, but a few have reserved their right to be referred to by a pseudonym:

1. Maria Ortiz Cortez
2. Damion "Latoya" Ricketts
3. Douglas Menjivar Pineda
4. Rosanna Santos
5. Yordy Cancino
6. A.M.
7. C.O.
8. B.N.

An additional 1,016 people, at least, under the custody of the Department of Homeland Security (DHS) in detention have submitted sexual abuse-related complaints to the Office of the Inspector General (OIG) at DHS since 2010. Although sexual assault has been documented at 76 immigration detention facilities, according to data received from ICE, the top five facilities with the most sexual assault complaints are all privately-run immigration detention facilities:

1. Jena/Lasalle Detention Facility (Louisiana - GEO Group)
2. Houston Contract Detention Facility (Texas - CCA/CoreCivic¹)

¹ Corrections Corporation of America (CCA) rebranded itself as CoreCivic in October 2015. Despite CCA's unfortunate and confusing use of the name "CoreCivic," CIVIC, the nonprofit representing the complainants in this

3. Adelanto Correctional Facility (California - GEO Group)
4. Northwest Detention Center (Washington - GEO Group)
5. San Diego Contract Detention Facility (California - CCA/CoreCivic)

In addition to the four recommendations at the end of this complaint, we urge the DHS Office for Civil Rights and Civil Liberties (CRCL), pursuant to its authority under 6 U.S.C. § 345, to immediately investigate this multi-individual complaint of sexual assault, abuse, and harassment in U.S. immigration detention facilities and to promptly develop protocols to ensure that all such reports of sexual abuse are thoroughly investigated and that relevant records are disclosed to the public.

I. Overview of the Complaint

Civil and human rights organizations, both governmental and non-governmental, have raised concerns over sexual abuse in U.S. immigration detention facilities for years:

- In 2009, the National Prison Rape Elimination Commission issued a report finding that “a large and growing number of detained immigrants are at risk of sexual abuse.”² Factors cited for the “heightened vulnerability” of people in immigration detention included social isolation, language barriers, and reluctance to report abuse due to fears of retaliation and/or deportation.
- In 2010, Human Rights Watch released a report documenting more than 15 separate incidents and allegations of sexual abuse and harassment involving more than 50 alleged victims.³
- In 2011, the American Civil Liberties Union obtained and published data containing nearly 200 allegations of sexual abuse in immigration detention since January 1, 2007.⁴
- In 2014, the Mexican American Legal Defense and Education Fund submitted a complaint regarding numerous allegations of substantial, ongoing sexual abuse of women detained in the Karnes Center in Texas.⁵
- In 2016, Human Rights Watch released a report about sexual assaults faced by many transgender women in immigration detention facilities.⁶

Despite repeated calls from advocates for the U.S. government to prevent sexual abuse in immigration detention and ensure justice for survivors, sexual abuse remains a systemic problem. Data obtained by CIVIC suggests that the number of allegations have increased since 2010.

This complaint is structured in the following manner:

- Section II provides an overview of data CIVIC received from the Office of the Inspector General (OIG) at the Department of Homeland Security (DHS) concerning sexual assault or physical abuse complaints and investigations against DHS component agencies.
- Section III analyzes data CIVIC received from the DHS’s OIG concerning sexual assault or physical abuse complaints and investigations from people in immigration detention.
- Section IV analyzes data regarding calls made to the ICE ERO Detention Reporting and Information Line (DRIL).

letter, has no connection or relationship with CCA/CoreCivic aside from CIVIC’s monitoring and advocacy work on behalf of immigrants held in CCA/CoreCivic facilities.

² National Prison Rape Elimination Commission (NPREC). “National Prison Rape Elimination Commission Report.” 2009. <https://www.ncjrs.gov/pdffiles1/226680.pdf>.

³ Human Rights Watch. “Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention.” August 2010. <https://www.hrw.org/report/2010/08/25/detained-and-risk/sexual-abuse-and-harassment-united-states-immigration-detention>.

⁴ American Civil Liberties Union. “ACLU of Texas Today Files Federal Lawsuit on Behalf of Women Assaulted at T. Don Hutto Detention Center.” October 2011. <https://www.aclu.org/news/documents-obtained-aclu-show-sexual-abuse-immigration-detainees-widespread-national-problem>.

⁵ Mexican American Legal Defense and Education Fund. “RE: Complaints Regarding Sexual Abuse of Women in DHS Custody at Karnes County Residential Center.” September 2014. https://www.maldef.org/assets/pdf/2014-09-30_Karnes_PREA_Letter_Complaint.pdf.

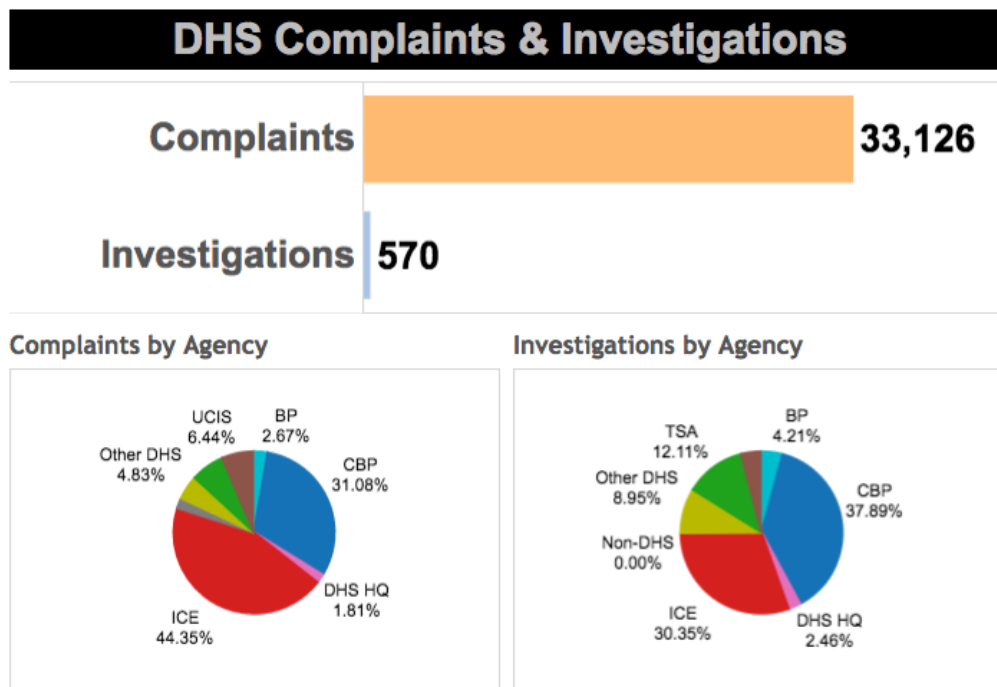
⁶ Human Rights Watch. “Do You See How Much I’m Suffering Here?’ Abuse against Transgender Women in US Immigration Detention.” March 2016. https://www.hrw.org/sites/default/files/report_pdf/us0316_web.pdf.

- Section V details information about the 27 complaints CIVIC has received directly from people in immigration detention about sexual assault, providing more detailed information about the eight class complainants.
- Section VI explains how sexual abuse in immigration detention is clouded in secrecy and the difficulty CIVIC had in obtaining data from all levels of government regarding sexual abuse and assault in immigration detention.
- Section VII provides legal analysis about why people in immigration detention who have experienced sexual assault and abuse are protected by the U.S. Constitution, federal law, and immigration detention standards.
- Section VIII provides four recommendations for immediately addressing the urgent concerns raised in this complaint.

II. The Department of Homeland Security has established a pattern and practice of sexual assault and/or physical abuse with a total of 33,126 complaints against DHS component agencies between January 2010 and July 2016.

On May 27, 2016, CIVIC filed a Freedom of Information Act request (FOIA) for specific sexual assault data from 2010 to the present from U.S. Immigration & Customs Enforcement (ICE), the DHS Office for Civil Rights & Civil Liberties (CRCL), and the DHS Office of the Inspector General (OIG). The OIG was the only department that responded to the FOIA with the requested documents. The data the OIG provided documents a total of 33,126 complaints of sexual and/or physical abuse against DHS component agencies between January 2010 and July 2016.⁷ DHS component agencies include ICE, Citizenship & Immigration Services, Customs & Border Protection, Border Patrol, Transportation Security Administration, Coast Guard, Federal Emergency Management Agency, Federal Protective Service, and the Secret Service.

a. Overview of the OIG Data



⁷ In the OIG data, some complaint case numbers are assigned to two or more complaints. It is unclear why there might be a case number with multiple corresponding complaints; it could be due to the complaint being submitted multiple times by the same individual, the complaint being submitted by multiple individuals, or because the complaint pertains to one incident involving multiple people. OIG should clarify this.

Of the 33,126 complaints of sexual and/or physical abuse, the OIG opened investigations into only 247 of them, or 0.07%. This was determined by calculating the number of investigations that had matching complaint case numbers. OIG did undertake 570 total investigations of sexual and/or physical abuse incidents, but only 247 arose out of a complaint.

More complaints were submitted against ICE than any other DHS component agency. Of the total number of complaints, 44.4% (or 14,693 complaints) were lodged against ICE. The agency that is the subject of the second-most complaints is Customs & Border Protection (CBP), the subject of 10,295 complaints (31.1% of the total).

ICE is the agency that oversees the 211 adult and family immigration detention facilities. CBP also holds people in immigration detention at ports of entry. According to an American Immigration Council (AIC) report published in August 2016, hundreds of thousands of people are detained in CBP facilities each year. These facilities are not intended to be used for overnight custody, but routinely are. These facilities have been widely decried for a lack of beds, extremely cold temperatures, overcrowding, and inadequate food, water, and medical care. Despite these deplorable conditions, the AIC report revealed that individuals are frequently held for days and sometimes even months in CBP facilities. Between September 1, 2014 and August 31, 2015, 44,202 individuals were held in CBP facilities for 72 hours or more.⁸

While ICE has created Performance Based National Detention Standards (PBNDS) as guidelines for its immigration detention facilities, there are no public standards that govern the conditions and procedures in CBP facilities. The absence of standards is especially troubling given recent reports of widespread sexual abuse in CBP facilities:

- In June 2014, a group of civil and human rights organizations filed a complaint on behalf of more than 100 children who experienced abuse while in CBP custody. Approximately one in four of the children had reported some form of physical abuse or sexual assault, and more than half of these children reported verbal abuse, such as sexually-charged comments.⁹
- In May 2015, a CBS News investigation found sexual misconduct in the ranks of CBP to be significantly higher than other federal law enforcement agencies. Their investigation included the testimony of James Tomscheck, who handled sexual misconduct investigations as the Chief of Internal Affairs at CBP for eight years. Between 2012 and 2014, he noticed a spike of more than 35 sexual misconduct cases against agents.¹⁰
- In March 2017, the American Civil Liberties Union (ACLU) of Northern California filed two claims with the federal government on behalf of two sisters from Guatemala who were sexually assaulted by a CBP officer in July 2016. The sisters, then 19 and 17 years old, encountered CBP officers after crossing the border. They asked for help and were taken to a CBP field office. Once there, the sisters were led by a federal officer into a closet-like room one at a time, told to remove all their clothes, and sexually assaulted. The sisters reported the abuse shortly after it occurred to another CBP officer in the field office where they were held, and an investigation was launched by the DHS OIG. Federal authorities have not pursued criminal charges against the

⁸ American Immigration Council. "Detained Beyond the Limit: Prolonged Confinement by U.S. Customs and Border Protection along the Southwest Border." August 2016.

<https://www.americanimmigrationcouncil.org/research/prolonged-detention-us-customs-border-protection>.

⁹ National Immigrant Justice Center, Esperanza Immigrant Rights Project, Americans for Immigrant Justice, Florence Immigrant and Refugee Rights Project and the ACLU Border Litigation Project. "Re: Systemic Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection." June 2014.

<https://www.acluaz.org/sites/default/files/documents/DHS%20Complaint%20re%20CBP%20Abuse%20of%20UICs.pdf>.

¹⁰ Anna Werner and Laura Strickler. CBS News. "'Disturbing' sex abuse within agency that patrols U.S. border, says former top official." May 2015.

<http://www.cbsnews.com/news/u-s-border-patrol-has-a-sex-abuse-problem-says-whistleblower>.

officer, nor is it clear whether the officer has faced any disciplinary actions for his assaults on the sisters.¹¹

b. Concerns About OIG’s Data Collection

It is unfortunate that the data provided by the OIG suffers from inconsistent categories and large gaps in crucial information, making it difficult to analyze.

- The categories that the OIG uses to classify complaints have changed over time. For example, the category “Detainee reported sexual abuse or assault” was not used prior to May 28, 2014.
- Other complaint categories, such as “physical or sexual abuse” are broad and vague, making it impossible to determine how many complaints within them are related to sexual violence.
- None of the sexual abuse complaints were lodged by people that DHS categorized as transgender. This is surprising as CIVIC has documented several sexual assault complaints lodged by transgender individuals, in particular complaints involving unlawful and degrading strip searches.¹² HRW also documented several cases of sexual assault against transgender immigrants in detention between 2011 and 2015.¹³
- The data on OIG investigations contains thousands of duplicates. The data set contains a total of 4,793 cases, but 4,223 of those cases were in fact duplicate investigations, as determined by duplicate investigation case numbers. It is unclear whether the inclusion of thousands of duplicates was an active attempt to inflate investigation numbers or simply the result of data entry glitches or an ineffective database system.

Despite the data’s flaws, the information that *can* be gleaned is illustrative and disturbing.

III. As the agency within DHS that receives the most sexual abuse complaints, ICE has failed to enforce federal laws to protect public safety. OIG received between 1,016 and 2,573 sexual abuse complaints from people in DHS detention. The OIG also failed to investigate more than 97 percent of these complaints.

Complaints by Allegation & Agency								
	BP	CBP	DHS HQ	ICE	Non-DHS	Other DHS	TSA	UCIS
Coerced Sexual Contact	5	84	9	402	44	36	109	13
Detainee Reported Abuse	546	2,593	6	6,821	267	113	8	9
Detainee Reported Sexual Abuse/Assault	20	45		918	22	9		2
Non-Criminal Misconduct	131	3,758	278	3,566	126	770	867	1,696
Other Criminal Misconduct	184	3,320	285	2,410	226	617	1,137	371
Physical or sexual abuse	0	284	2	380		22	10	16
Sexual harassment		211	18	196		34	105	25
Grand Total	886	10,295	598	14,693	685	1,601	2,236	2,132

¹¹ American Civil Liberties Union (ACLU) of Northern California. “ACLU of Northern California Files Claims Against Customs And Border Protection for Sexual Assault.” March 2017. <https://www.aclunc.org/news/aclu-northern-california-files-claims-against-customs-and-border-protection-sexual-assault>

¹² CIVIC. “Federal Civil Rights Complaint Documents Santa Ana City Jail’s Illegal Strip Searches of Women.” January 2015. <http://www.endisolation.org/SantaAna>.

¹³ Human Rights Watch. “Do You See How Much I’m Suffering Here?”

The OIG received at least 1,016 reports of sexual abuse or assault filed by people in detention between May 28, 2014 and July 12, 2016. This means that the OIG received on average more than one complaint of sexual abuse or assault from people in detention per day during this time period. There is no definite number of reports of sexual abuse or assault filed by people in detention before May 28, 2014, because the OIG did not use the category "Detainee reported sexual abuse/assault" to categorize complaints before that date. However, there was an additional 1,557 complaints lodged against ICE and CBP that were categorized by OIG as "coerced sexual contact," "sexual harassment," and "physical or sexual abuse." Therefore, it is plausible that there were a total of 2,573 sexual abuse or assault complaints from people in detention between January 2010 and July 2016.

Of the complaints lodged by people in detention after May 2014, 80.8% of complainants were male and 19.2% were female. The OIG field office that received the most complaints was Tucson (120), followed by Houston (89), Miami (88), and Atlanta (71).

OIG investigated only 24 of those complaints, or 2.4% of the total. For 92.6% of the complaints, OIG declined to investigate and merely referred the complaint to the relevant agency (e.g., ICE) without requesting any follow-up. 3.5% of the cases were closed without even a referral to the relevant agency.

Of the 24 OIG investigations into sexual abuse or assault reported by people in detention, only two were determined to be substantiated and five remained under investigation. The low rate of complaints deemed "substantiated" is perhaps unsurprising, given the fact that the complainants often do not have physical evidence to substantiate their assaults, witnesses can be transferred or deported, and investigations often occur a significant length of time after the incident occurred, when traditional evidence such as testimony from witnesses and rape kit exams have become unavailable.

a. Coerced Sexual Contact

In addition to the 1,016 complaints of sexual abuse/assault reported by people in detention after May 2014, there were 702 complaints of "coerced sexual contact" submitted to OIG between January 2010 and July 2016.

Exactly 402 of these complaints of coerced sexual contact were lodged against ICE. Of these, the OIG declined to investigate 90.8% of the complaints, instead referring them to ICE without any response requested. The OIG closed 5.5% of the cases without taking any action at all. The OIG only opened 11 investigations (2.7% of the complaints), and eventually referred all but one to the affected agency without requesting any reply. Of the 11 investigated allegations, three were determined to be substantiated and three remained under investigation.

Exactly 84 of these complaints of coerced sexual contact were lodged against CBP. Of these, the OIG only opened 7 investigations, or 8.3%. Four of these were ultimately referred to the relevant agency without requesting follow-up. They closed one of the investigations without any referral, and for two, the final action taken by the OIG is not entered.

b. Sexual Harassment

Of the 589 complaints of "sexual harassment" submitted to OIG, 196 were lodged against ICE and 211 were lodged against CBP. The OIG did not open any investigations into complaints of sexual harassment lodged against ICE or CBP. Of the complaints lodged against ICE, 92.3% were referred to the relevant agency without any follow-up requested and 7.1% were closed without any referrals. Of the complaints lodged against CBP, all but one were referred to the relevant agency without any follow-up requested.

c. Physical or Sexual Abuse

Of the 714 complaints of "physical or sexual abuse" submitted to OIG, 380 were lodged against ICE and

an additional 284 complaints were lodged against CBP. ICE and CBP only investigated 5 and 3 of these complaints, respectively.

IV. The top five immigration detention facilities with the most sexual and physical assault complaints are all privately-run facilities.

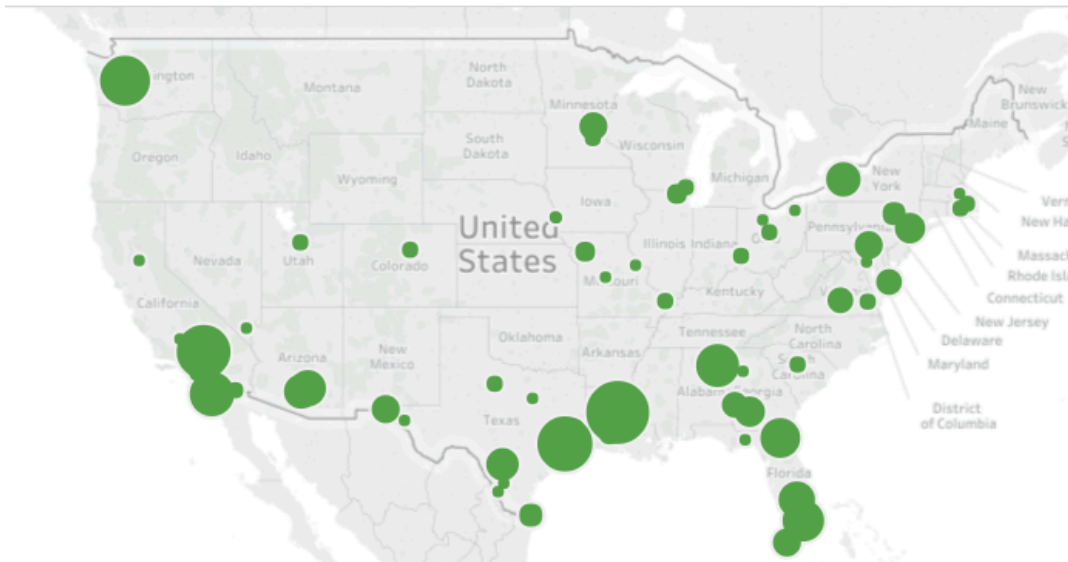
CIVIC analyzed data regarding calls made to the ICE ERO Detention Reporting and Information Line (DRIL) between October 1, 2012 and March 14, 2016. The data was received by Human Rights Watch (HRW) in response to a request under the Freedom of Information Act and shared with CIVIC.

According to this data, the highest number of DRIL calls related to sexual and/or physical abuse incidents came from the following detention facilities, with the most coming from the Jena/LaSalle Detention Facility:

Detention Facility	State	Operator	Number of Calls	Rate of Calls per Average Population
1. Jena/LaSalle Detention Facility	LA	GEO Group	30	1 call per 34 people
2. Houston Contract Detention Facility	TX	CCA	23	1 call per 38 people
3. Adelanto Correctional Facility	CA	GEO Group	22	1 call per 56 people
4. Northwest Detention Center	WA	GEO Group	19	1 call per 69 people
5. San Diego Contract Detention Facility	CA	CCA	15	1 call per 43 people
6. Etowah County Jail	AL	County	14	1 call per 20 people
7. Baker County Detention Center	FL	County	12	1 call per 16 people
8. Krome North Service Processing Center	FL	ICE	12	1 call per 43 people
9. Glades County Detention Center	FL	County	10	1 call per 18 people
10. Batavia Processing Center	NY	County	9	1 call per 51 people

ICE's DRIL received only a total of 380 calls related to sexual and/or physical abuse incidents within this time frame, which is surprising given the high volume of sexual and/or physical abuse complaints made to the OIG. Therefore, it is difficult to draw any conclusions from this data. However, of the facilities where calls reporting sexual and/or physical abuse were made, there was on average one call made per 67 people. Of the above 10 detention facilities, all of them had call rates higher than average except for Northwest Detention Center, which had an average rate of one call per 69 people.

ICE Hotline Sexual & Physical Abuse Complaints



Map developed by CIVIC with ICE's DRIL data. For interactive data analytics, visit: www.endisolation.org/sexual-assault.

CIVIC also analyzed data on grievances related to sexual and/or physical abuse. HRW received a total of 19 summarized complaints relating to sexual and/or physical abuse filed between 2011 and 2015. CIVIC analyzed these complaints, and nine of them appear to be duplicates. The following are the 10 unique complaints and the actions ICE took in response:

- A medical exam of a young girl under 18 showed indications of a sexually transmitted disease and vaginal scarring. Despite physical evidence, ICE declared the allegation of sexual abuse unfounded. (Karnes County Residential Center, Karnes City, TX)
- A detained individual alleged sexual assault, inadequate medical attention, dirty clothing, and mistreatment by guards. ICE determined the allegations unfounded. (South Texas Detention Complex, Pearsall, TX)
- A detained individual complained about being touched inappropriately and offered marijuana by a contracted facility officer in the medical unit. The contractor, Emerald Companies, substantiated the complaint. The FOIA data did not state whether the contracted facility officer was reprimanded or fired. (Rolling Plains Detention Center, Haskell, TX)
- A detained individual complained about being sexually assaulted by an Immigration Health Service Corps Physician Assistant during a medical examination. The complaint was simply closed. (Northwest Detention Facility, Tacoma, WA)
- A detained individual alleged that guards frisk and fondle people in a sexual manner, and reported an improper relationship between a guard and a detained individual. The complaint was "not referred to management." (Jack Harwell Detention Center, Waco, TX)
- A detained individual contemplated suicide due to inadequate medical treatment and lack of grievance resolution after reporting an incident of sexual abuse. The allegations were declared unfounded. (Monmouth County Jail, Freehold, NJ)
- A detained individual complained about not receiving medical attention for sexual assault. The complaint was closed with manager notification only. (Adelanto Correctional Facility, Adelanto, CA)
- A detained individual alleged sexual misconduct by another detained individual in medical isolation for high risk for violent behavior. The complaint was closed with manager notification only. (Santa Ana City Jail, Santa Ana, CA)

- A detained individual alleged sexual harassment by an ICE employee. The complaint was closed. (Krome North Service Processing Center, Miami, FL)
- A detained individual alleged being subjected to sexually graphic pictures. ICE declared the allegation unsubstantiated. (Essex County Jail, Newark, NJ)

V. Within this context, CIVIC submits the complaints on behalf of eight people who are in immigration detention or have been released from detention who have experienced or witnessed sexual abuse.

Between 2013 and 2016, CIVIC documented 27 sexual abuse-related complaints in immigration detention occurring at the Aurora Processing Center (Colorado), Northwest Detention Center (Washington), Karnes County Residential Center (Texas), the T. Don Hutto Residential Center (TX), Joe Corley Detention Facility (Texas), the Broward Transitional Center (Florida), the Krome Service Processing Center (Florida), the Eloy Detention Center (Arizona), Theo Lacy Facility (California), Santa Ana City Jail (California), Adelanto Detention Facility (California) Otay Detention Facility (California), Yuba County Jail (California), York County Jail (Pennsylvania), Stewart Detention Center (Georgia). These complaints included a rape of a woman in immigration detention by a detention facility official, sexual comments lodged against male and female immigrants in detention, and inappropriate touching of genitalia in spaces in the facility that were not covered by cameras. Most of the 27 individuals did not want to file formal grievances because of fear of retaliation, including the woman raped by a detention facility official.

a. A.M., Adelanto Detention Facility (California, GEO Group)

A.M. was sexually assaulted while detained at the Adelanto Detention Facility, one of the largest privately-run immigration detention facilities in the country, in December 2015. According to an interview CIVIC conducted with A.M., another person in immigration detention sexually assaulted A.M. at night and tried to kiss her during the daytime in view of the GEO Group officers. A.M. reported the behavior to GEO Group and ICE personnel, but received no response, so she called 911 from the facility. The San Bernardino Sheriff's Department conducted an interview with A.M. on December 15, 2015. A.M. eventually became so depressed as a result of the abuse that she attempted to commit suicide. ICE subsequently transferred A.M. to the Santa Ana City Jail in March 2016. Neither ICE, GEO Group, nor the San Bernardino Sheriff's Department ever followed up with A.M.

According to data received in response to CIVIC's California Public Record Act request, the San Bernardino Sheriff's Department responded to 408 emergency calls from the Adelanto Detention Facility between January 2010 to June 2016. At least five of these calls concerned an alleged rape or sexual battery.

In addition, there were 17 other incidents of assault. Two of these incidents resulted in recorded injuries. Similar to the OIG data, the list of incident reports to the San Bernardino Sheriff's Department do not appear to be properly or thoroughly categorized. For example, a report received on December 15, 2015, and labeled as an assault may have in fact been A.M.'s sexual assault.

b. Yordy Cancino, Otay Detention Facility (California, CCA/CoreCivic)

Yordy Cancino, an individual who was detained at the Otay Detention Facility (also known as the San Diego Contract Detention Facility) in 2014, experienced consistent sexual harassment by Corrections Corporation of America (CCA) guards. When Mr. Cancino took showers, one of the male guards would position himself so that he could see Mr. Cancino naked. Guards would call him over the detention facility radio, "Cancino, my royal princess, wake up." Mr. Cancino once witnessed a female guard kissing a man who was in immigration detention in the receiving and departure (R&D) room, where there are no cameras. This guard threatened Mr. Cancino that she would ensure that ICE deported him if he told anyone about it. Mr. Cancino complained to both CCA and ICE, but to no effect: "That made me feel so uncomfortable. Why don't they do nothing to these guards? When we complain about it, no one actually did anything about it."

c. Damion “Latoya” Ricketts, Santa Ana City Jail (California, City Jail IGSA)

On July 12, 2016, Damion “Latoya” Ricketts, a transgender woman, was sexually harassed by a male corrections officer at the Santa Ana City Jail. She was taken into the men’s changing room by the corrections officer after being visited by her immigration attorney. The officer instructed that Ms. Ricketts take off each article of clothing “slowly” and hand it to him and to run her fingers through her hair. The officer ordered Mr. Ricketts to take off her underwear “in a lustful way.” The officer then ordered Mr. Ricketts to turn around, bend over, spread her buttocks with her hands, and cough. He ordered her to do this at least three times in a row. Ms. Ricketts observed the officer’s arousal and felt violated. Ms. Ricketts filed a complaint regarding this incident with the U.S. District Court on July 25, 2016. This incident occurred six months after CIVIC put ICE, CRCL, and OIG on notice about the unlawful and degrading strip searches occurring at the Santa Ana City Jail, as detailed in our January 2016 complaint on behalf of 31 cisgender and transgender immigrants.

d. Maria Ortiz Cortez, Yuba County Jail (California, County Jail IGSA)

For several months in 2016, Maria Ortiz Cortez, a woman in immigration detention at the Yuba County Jail, was sexually abused, harassed, and threatened by another woman that Ms. Ortiz believed to be mentally unstable. Ms. Ortiz filed a report. She was subsequently transferred to West County Detention Facility, a transfer that she presumes to be a result of her complaint. At the West County Detention Facility, she requested to see a psychologist to help her address strong feelings of depression and anxiety, which were also taking a physical toll on her health, causing rapid weight gain. However, she has been consistently denied adequate mental health treatment.

e. Douglas Menjivar Pineda, Joe Corley Detention Facility (Texas, GEO Group)

In September 2013, Douglas Menjivar Pineda, an individual in immigration detention at the Joe Corley Detention Facility, was raped by a man in the presence of four others. Another man in his bunk was also raped. The perpetrators told Mr. Menjivar that if he reported them, they would kill him and his family in El Salvador. Despite his fears, Mr. Menjivar immediately reported the rapes to a supervising facility official. The facility official responded that Mr. Menjivar was the most “stupid” person in detention at the facility because he “let” this happen to him. The facility official did not document the report or attempt to secure medical or psychological care for Mr. Menjivar. Mr. Menjivar was transferred to the IAH Secure Adult Detention Facility in May 2014. Mr. Menjivar reported the rape to Dr. Pablo Splenser at the IAH Detention Facility in November 2014. Mr. Menjivar was interviewed on January 7, 2015 and Feb 20, 2015 by DHS officials regarding the rape. On neither occasion was Mr. Menjivar allowed the support or assistance of his attorney, who was not permitted to attend and was not provided with transcripts of either interview. Within hours of the brief interview on February 20, 2015, Mr. Menjivar received a notice from ICE that stated that “the facts and evidence did not support that the incident occurred” and “the investigation is closed”.

f. Rosanna Santos, York County Jail (Pennsylvania, County Jail, IGSA)

On March 28, 2013, Rosanna Santos, an individual in immigration detention at the York County Prison, was sexually harassed by a corrections officer, C.C. C.C. was escorting Rosanna and another detained woman to a waiting area prior to an immigration hearing when he told them that they were under his control and that if they did not do whatever he said quickly and without question that they would be subjected to a physical sexual assault (the officer’s exact words were, “ass-fucking”). She was then placed in an attorney-client meeting room without cameras, completely under control of this officer. Ms. Santos immediately informed her lawyer, who filed complaints with the Warden of York County Prison and DHS. Shortly thereafter, Ms. Santos was inexplicably placed into solitary confinement for 11 days. She believes this to have been retaliation. On May 31, 2013, she was interviewed by Dana Day, a Detention & Deportation Officer of the DHS/ICE/ERO Administrative Inquiry Unit, with no results. Officer C.C. continued to work on the women’s side of the prison. As a survivor of domestic violence, this incident and the aftermath caused Ms. Santos to suffer intense anxiety, depression, and nightmares. She requested psychological counseling from the facility but did not receive any.

g. C.O., Stewart Detention Center (Georgia, CCA/CoreCivic)

In June 2016, a CCA guard strip searched C.O. in a bathroom, making him undress fully, and then touched his genitals. He filed a complaint, resulting in questioning by guards including questions about his sexual orientation that frustrated him. C.O. felt that he couldn't forget the incident. He felt violated and became depressed.

h. B.N., Stewart Detention Center (Georgia, CCA/CoreCivic)

In December 2016, a female CCA guard sexually harassed B.N., expressing her desire for a sexual relationship with him.

VI. Sexual abuse in immigration detention is clouded in secrecy. People in immigration detention are afraid to file grievances for fear of retaliation, complaints are promptly closed or not investigated, and government data on sexual abuse is routinely withheld from NGOs.

On May 27, 2016, CIVIC filed a Freedom of Information Act (FOIA) for specific sexual assault data from 2010 to the present for U.S. Immigration & Customs Enforcement (ICE), the DHS Office for Civil Rights & Civil Liberties (CRCL), and the DHS Office of the Inspector General (OIG). As explained above, the OIG was the only department that responded to the FOIA with the requested documents in a prompt manner. The CRCL was unresponsive.

On June 30, 2016, we received a response from ICE that stated, "The timeframe of 2010 to present is not in line with our record keeping of allegations of sexual abuse and assault. OPR started cataloging these allegations in 2012 based on an agency Directive requirement... So anything prior to 2012 will be difficult to identify. Anything outside of this, including email correspondence would be terribly burdensome." CIVIC responded that we could limit our request to the time frame of 2012 to the present and that email correspondence could be excluded. However, since June 30, 2016, we have not yet received any responsive documents from ICE, despite multiple attempts to obtain this information.

At the local level, we filed state open record requests to determine the number of times that local police had been called to immigration detention facilities and the reasons for the calls to determine whether people in detention were making 911 calls to report sexual abuse or assault. We filed these open record requests with the following municipalities: the Harris County Sheriff's Office in Texas for the Houston Contract Detention Facility; the Jena Police Department in Louisiana for the LaSalle Detention Facility; the LaSalle Parish Sheriff's Office for the LaSalle Detention Facility; the San Diego Sheriff's Department in California for the Otay Detention Facility; the San Bernardino Sheriff's Department in California for the Adelanto Detention Facility; the Pierce County Sheriff's Department in Washington for the Northwest Detention Facility; and the Tacoma Police Department for the Northwest Detention Facility.

Only the San Bernardino Sheriff's Department was responsive to our California Public Record Act request. The Pierce County Sheriff's Department told us to contact the Tacoma Police Department, which in turn told us that there was only one responsive document and directed us to file the request with South Sound 911. We filed the request with South Sound 911, but received no response. All of the other localities violated their state open record laws by not responding to our requests, despite multiple follow-up attempts.

VII. People in immigration detention who have experienced sexual assault and abuse are protected by the U.S. Constitution, federal law, and immigration detention standards.

On August 21, 1989, Dee Farmer, a black, transgender woman, sued prison officials for the rape she endured in her prison cell of a maximum security federal prison. On June 6, 1994, the Supreme Court unanimously ruled in *Farmer v. Brennan* that Dee Farmer's case against the prison could move forward and she could seek damages from the officials responsible for placing her somewhere where she could be assaulted. In 2003, President George W. Bush signed the Prison Rape Elimination Act because of the epidemic of sexual violence in prison. In 2014, DHS disseminated regulations, "Standards to Prevent,

Detect, and Respond to Sexual Abuse and Assault in Confinement Facility," 79 Fed. Reg. 13,100 (Mar. 7, 2014), implementing PREA in immigration detention facilities.

- a. **The U.S. Constitution protects people in immigration detention from cruel and unusual punishment, and 42 U.S.C.S. § 1983 provides a civil cause of action against any person who, acting under color of state law, deprives another of constitutional rights.**

The Eighth Amendment prohibits cruel and unusual punishment, and requires prison officials to "take reasonable measures to guarantee the safety of inmates in their custody." *Hayes v. N.Y. City Dep't of Corr.*, 84 F.3d 614, 620 (2d Cir. 1996); see also *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). Specifically, "[p]rison officials have a duty to protect prisoners from violence at the hands of other inmates since being violently assaulted in prison is 'simply not part of the penalty that criminal offenders pay for their offenses against society.'" *Lee v. Artuz*, No. 96-CV-8604, 2000 U.S. Dist. LEXIS 2022, 2000 WL 231083, at 4 (S.D.N.Y. Feb. 29, 2000) (quoting *Farmer*, 511 U.S. at 834). However, "not . . . every injury suffered by one prisoner at the hands of another . . . translates into constitutional liability for prison officials responsible for the victim's safety." *Farmer*, 511 U.S. at 834. Instead, "the prisoner must allege actions or omissions sufficient to demonstrate deliberate indifference; mere negligence will not suffice." *Hayes*, 84 F.3d at 620.

To satisfy the deliberate indifference standard, a plaintiff must show that (1) "[s]he is incarcerated under conditions posing a substantial risk of serious harm," and (2) "the defendant prison officials possessed sufficient culpable intent." *Hayes*, 84 F.3d at 620 (citing *Farmer*, 511 U.S. at 834). See also *Price*, 2014 U.S. Dist. LEXIS 116019, 2014 WL 4146276, at 8 (explaining that to establish deliberate indifference, "a plaintiff must prove that the defendant official actually knew of and disregarded an excessive risk of harm to the plaintiff's safety"). A corrections officer's intentional contact with an inmate's genitalia or other intimate area, which serves no penological purpose and is undertaken with the intent to gratify the officer's sexual desire or to humiliate the inmate, violates the Eighth Amendment. *Crawford v. Cuomo*, 796 F.3d 252, (2d Cir. N.Y. 2015).

All of the complainants in this letter could prove that ICE and/or the detention facility officials actually knew of and disregarded an excessive risk of harm to the complainants' safety. The circumstances involved either a sexual assault by a detention facility guard and/or multiple failed attempts by the complainant to seek aid and protection from officers at the detention facility, ICE, or in the greater community. Moreover, the circumstances surrounding the sexual assaults against Ms. Ricketts, Mx. Cancino, and Ms. Santos served no penological purpose and were undertaken with the intent to at minimum humiliate them.

In addition, some courts have established further protections for people in immigration detention. For example, the Ninth Circuit has held that the "Eighth Amendment provides too little protection for those whom the state cannot punish." *Hydrick v. Hunter*, 500 F.3d 978, 994 (9th Cir. 2007). Therefore, persons detained under a civil process, such as people in immigration detention, are entitled to greater protection than those detained under criminal process. *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004). Even the Supreme Court has held that conditions and restrictions of a detention facility may not amount to punishment; punishment is reserved only for those who have been tried and convicted. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).

Like Ms. Farmer, the complainants here are bravely standing up against the sexual abuse they suffered in confinement. We know there are many others who are suffering in silence and isolation. We hope this complaint will help them to come forward.

- b. **ICE's Performance-Based National Detention Standards and the Prison Rape Elimination Act, as adopted by DHS regulations, should offer protections to people in detention from sexual assault and abuse, but they have not been thoroughly implemented or enforced.**

Non-family immigration detention facilities that are permitted to hold people in immigration detention for more than 72 hours are required by ICE to comply with one of three sets of detention standards,

depending on the contract: either the 2000 National Detention Standards (NDS 2000), the 2008 Performance Based National Detention Standards (PBNDS 2008), or the 2011 Performance Based National Detention Standards (PBNDS 2011). The NDS 2000 do not make any mention of sexual abuse and assault prevention and intervention. The PBNDS 2008 and PBNDS 2011 contain standards titled “Sexual Abuse and Assault Prevention and Intervention” (sections 2.14¹⁴ and 2.11,¹⁵ respectively). In 2016, the PBNDS 2011 were revised, and ICE explicitly stated that the “most significant” revisions were made to PBNDS 2011 Standard 2.11 “Sexual Abuse and Assault Prevention and Intervention.”¹⁶ Many detention facilities are not required by ICE to comply with the PBNDS 2008 or 2011 and so are unaffected by this latest revision.

The Prison Rape Elimination Act (PREA) was signed into law in 2003 to address the problem of sexual abuse of people in the custody of U.S. agencies. PREA established the National Prison Rape Elimination Commission (NPREC), whose 2009 report found that “a large and growing number of detained immigrants are at risk of sexual abuse” due to isolation, language barriers, and fear of retaliation.¹⁷ However, in 2011 the Department of Justice (DOJ) determined that PREA did not cover immigration detention facilities.¹⁸ In the wake of resulting criticism, the DOJ issued a final rule in 2012 stating that PREA in fact does apply to DHS immigration detention facilities.¹⁹ In May 2012, ICE issued Directive 11062.1, titled “Sexual Abuse and Assault Prevention and Intervention” (subsequently superseded by ICE Directive 11062.2 in May 2014²⁰) with the stated objective of being “consistent with the goals” of PREA.²¹

It was not until March 2014 that the DHS finalized the “Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities,” intended to enact PREA regulations at all detention facilities.²² This rule states that DHS facilities and contract facilities that hold people in immigration detention must comply with PREA when a detention facility contract is either signed, renewed, or substantively modified. DHS does not have the legal power to coerce facilities into complying with PREA standards without changing existing contracts and so can only encourage contracting facilities to implement PREA standards.²³ According to ICE, “all ICE detention facilities have contractually adopted the DHS PREA standards,” and audits of the facilities’ compliance with PREA should have begun in fiscal year 2017.²⁴

However, the effectiveness of PREA audits in curbing sexual assault is questionable, at best. According to the results of our FOIA, OIG’s Office of Audits (OA) and Office of Inspections and Evaluations (OIE) uncovered 0 sexual assault complaints between January 2010 and July 2016 during their regular audits and inspections of immigration detention facilities. The fact that these audits uncovered 0 instances of sexual assault calls into question their ability to monitor immigration detention conditions in any substantive way. While it remains to be seen whether DHS’s PREA audits will be just as ineffective at

¹⁴ ICE. “ICE/ERO Detention Standard: Sexual Abuse and Assault Prevention and Intervention.” 2008.

https://www.ice.gov/doclib/dro/detention-standards/pdf/sexual_abuse_and_assault_prevention_and_intervention.pdf

¹⁵ ICE. “2011 Operations Manual ICE Performance-Based National Detention Standards: 2.11, Sexual Abuse and Assault Prevention and Intervention.” 2016. Page 127. <https://www.ice.gov/doclib/detention-standards/2011/2-11.pdf>

¹⁶ ICE. “2011 Operations Manual ICE Performance-Based National Detention Standards.”

¹⁷ National Prison Rape Elimination Commission (NPREC). “National Prison Rape Elimination Commission Executive Summary.” 2009. http://static.nicic.gov/UserShared/2013-03-29_nprec_execsummary.pdf.

¹⁸ DOJ. “National Standards to Prevent, Detect, and Respond to Prison Rape, Notice of Proposed Rule Making, 76 Fed. Reg. 6248 (February 23, 2011).” 2011.

¹⁹ DOJ. “National Standards to Prevent, Detect, and Respond to Prison Rape, Final Rule, 77 Fed. Reg. 37105, (June 20, 2012).” 2012.

²⁰ ICE. “Policy No. 11062.2. Sexual Abuse and Assault Prevention and Intervention.” 2014.

<https://www.ice.gov/doclib/detention-reform/pdf/saapi2.pdf>.

²¹ ICE. “Policy No. 11062.1. Sexual Abuse and Assault Prevention and Intervention.” 2012.

https://www.ice.gov/doclib/foia/dro_policy_memos/sexual-abuse-assault-prevention-intervention-policy.pdf

²² DHS. “Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities.” 2014.

<https://www.federalregister.gov/documents/2014/03/07/2014-04675/standards-to-prevent-detect-and-respond-to-sexual-abuse-and-assault-in-confinement-facilities>

²³ U.S. Commission on Civil Rights. “With Liberty and Justice for All: The State of Civil Rights at Immigration Detention Facilities.” 2015. Page 75.

²⁴ ICE. “2011 Operations Manual ICE Performance-Based National Detention Standards.”

unearthing sexual assault as OIG's regular audits have been up until now, the effectiveness of PREA audits in the prison context is worrisome. For example, the Glades County Detention Center, which according to ICE DRIL data receives 1 sexual/physical assault call per 18 people, received a passing final PREA audit on March 15, 2016, from the Department of Justice.²⁵ In fact, the audit found that the facility met or exceeded all relevant PREA standards. The main problem with these audits is that they primarily review the facilities' policy compliance with PREA, rather than also investigating the facilities' practices.

Given the continuing and widespread nature of sexual abuse in immigration detention facilities, it is clear that DHS's immigration detention standard regulations and revisions over the years have not been sufficient to ensure the safety and security of detained individuals.

VIII. Recommendations & Conclusion

In light of the disturbing reports and numerous sexual abuse allegations detailed in this complaint, CIVIC urges that the following steps be taken immediately:

- Congress should establish the second bipartisan National Prison Rape Elimination Commission (NPREC) to investigate the effectiveness of PREA in preventing sexual assault and violations of PREA in CBP and ICE detention facilities. If DHS is either unable or unwilling to ensure that zero sexual abuses occur in immigration detention, then Congress should defund immigration detention and close all facilities.
- DHS should ensure that all DHS facilities, including all ICE detention facilities and CBP holding facilities, have not only contractually adopted but also implemented the DHS PREA standards. The DHS PREA standards call for a zero tolerance policy for any sexual abuse, mandatory PREA training for all staff, and at least one outside audit for PREA compliance every three years.
- DHS should establish a policy that requires victims of sexual abuse in immigration detention to be informed about the possibility of their eligibility for a U visa. The U visa is a nonimmigrant visa for victims of crimes who have suffered substantial mental or physical abuse and are willing to assist law enforcement and government officials in the investigation or prosecution of the criminal activity. In addition, ICE and CBP should clarify the process for U visa applicants to request a U Nonimmigrant Status Certification (USCIS Form 1-918, Supplement B) from ICE or CBP.
- Given the refusals of ICE and CRCL to provide data about sexual abuse in immigration detention in response to FOIA requests, Congress should mandate that DHS proactively and quarterly publish information on all reported complaints of sexual abuse in DHS facilities, without compromising confidentiality. This information should include actions taken and investigation outcomes.

We look forward to your prompt attention to this issue. Should you have any questions, please contact CIVIC's Independent Monitor, Rebecca Merton, at RMerton@endisolation.org or CIVIC's General Counsel, Christina Fialho, at CFialho@endisolation.org.

Sincerely,



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CC: Nicole Boehner, United Nations High Commissioner for Refugees
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²⁵ <http://www.gladessheriff.org/media/docs/PREA/2016%20PREA%20FINAL%20AUDIT.pdf>