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Briefing Paper

To: United Nations Special Rapporteur on the Rights of Migrants

From: National Immigrant Justice Center¹

Date: April 16, 2007

Re: **The Situation of Immigrant Women Detained in the United States**

INTRODUCTION

The problems of isolation, inhumane conditions, and lack of reliable access to legal counsel and health care that characterize immigration detention in general are particularly problematic for women. Women comprise approximately 10 percent of the immigrant detention population, a fact that may account for the government's apparent failure to recognize the particular concerns and needs of this vulnerable group. Anecdotal evidence suggests that the majority of immigrant women in detention are asylum seekers fleeing persecution or are victims of some other form of violence. Unfortunately, a dearth of hard data on the population of detained immigrant women prevents advocates from comprehensively understanding the makeup of this group and the potential relief available to individual detainees.

This briefing paper covers five major areas of concern among advocates of immigrant women who are detained by the Department of Homeland Security's Immigration and Customs Enforcement (ICE):

1. **Medical and Mental Health Conditions for Victims of Violence.** Many women who are detained are victims of violence or persecution, and have critical medical and mental health needs. Stories from women who have suffered in immigration detention show that the system does not properly address these needs. Cultural and language barriers, compounded by ICE practices that effectively deny women access to outside social services, make it difficult for detained women to obtain the medical and mental health care they need.

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2. **Medical Conditions for Pregnant and Post-Natal Women.** Pregnant women and those who are nursing report problems with accessing proper health care and nutrition while they are detained.
3. **Sexual assault.** Guards and detention facility staff members hold considerable power over detainees. Any lack of accountability over jail staff leaves women vulnerable to danger of sexual assault from jail staff or other inmates.
4. **Family separation.** Many women who immigrate to the United States come with their families and are their families' primary caregivers. When mothers are detained, entire families suffer. In addition, researchers have found that mothers who are asylum seekers are more likely to give up on their claim if they are detained and separated from their children.
5. **Access to counsel.** Many immigrant detainees, male or female, face hurdles to securing legal counsel. However, women who have experienced violence in the past or who are vulnerable to abuse inside the jail have an acute need of legal advocates, and especially ones that are independent of the detention system. In addition to pursuing legal relief, attorneys who build trusting relationships with detained clients can also advocate for the client's legal and human rights while in custody.

The U.S. government should increase the transparency of the detention system in a way that provides for a clearer understanding of the gender makeup of the detainee population in general, and the situation of women and other vulnerable populations in particular. Furthermore, the government should codify regulations that recognize and address the gender-specific needs of immigrants in detention.

HUMAN RIGHTS OF IMMIGRANT WOMEN IN DETENTION

I. United States Law

In 2000, the Immigration and Naturalization Service (the predecessor to ICE) developed 36 standards to ensure the "safe, secure, and humane treatment of individuals" detained in immigrant detention, but the standards are not codified in law and therefore are not legally binding. None of the 36 standards are gender-specific, and they only briefly reference care for pregnant or post-natal detainees. The standards do not address the prevention of sexual assault or rape, or the treatment of detainees who have suffered such abuses prior to being taken into custody. In December 2006 the Department of Homeland Security's Office of Inspector General released an audit of five immigrant detention facilities, finding that all five facilities violated some aspect of the detention standards.²

² Department of Homeland Security Office of Inspector General, *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities*, December 2006.
http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_07-01_Dec06.pdf

The Inspector General reported that detainees at all five facilities alleged physical, sexual, and verbal abuse by corrections officers, and criticized ICE for not addressing detainee reporting of abuse in its detention standards.³ The Inspector General also reported that at three of the five facilities, medical personnel did not respond to medical requests from detainees within an appropriate timeframe.⁴

The Prison Rape Elimination Act of 2003, which calls for the Department of Justice to collect information and statistics regarding the incidence of rape in prisons, created the National Prison Rape Elimination Commission (NPREC) to “study federal, state, and local government policies and practices respecting the prevention, detection and punishment of prison sexual assaults.” In December 2006, the commission held a hearing on prison rape and sexual assault in immigrant detention. Witnesses at this public hearing described sexual assaults they or their clients had experienced while in immigrant detention and shared recommendations on how such violations can be prevented. The commission is in the process of developing standards for the Prison Rape Elimination Act that will specifically address immigrant detention.

For county jails that are contracted by ICE to hold immigrant detainees, state laws regulate the provision of medical care and security. The vast differences in how jails in different parts of the country address the well-being of female inmates was noted by the Special Rapporteur on Violence Against Women during her visit to the United States in 1999. Special Rapporteur Radhika Coomaraswamy stated in her report, “There is a need to develop minimum standards with regard to state practices in women’s prisons, especially in the area of sexual misconduct.”⁵

One State’s Law

Illinois state law, which governs the state’s two county jails that have contracted with ICE to hold about 265 detainees, rarely provides for the special needs of female inmates, and does not address prevention of sexual assault, a need highlighted in the NPREC hearing. Illinois does provide for pregnant inmates or others with signs of unusual physical or mental distress to be referred to health care personnel as soon as possible upon their admission to a jail facility. The Illinois law also says that jails should “liaison with community medical facilities and resources,” a standard that would be particularly helpful for female asylum seekers needing access to medical and psychological care. But this standard is helpful only to the extent that it is implemented, however. Unfortunately, implementation appears to be problematic. Attorneys at the National Immigrant Justice Center in Chicago have had difficulty in arranging visits for physicians who have volunteered to evaluate and treat immigrant detainees.

³ Department of Homeland Security Office of Inspector General, page 28.

⁴ Department of Homeland Security Office of Inspector General, page 4.

⁵ Coomaraswamy, Radhika, *Report of the mission to the United States of America on the issue of violence against women in state and federal prisons*, January 1999, page 13.

<http://daccessdds.un.org/doc/UNDOC/GEN/G99/100/12/PDF/G9910012.pdf?OpenElement>

II. International Law

The United States is a party to a number of international laws that require governments to protect incarcerated women from violence and provide them with proper health care, social services, and humane living conditions. Many of these treaties make special mention of the treatment of pre-natal or post-natal women, or women who have been victims of violence:

- Under the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT), the United States is obligated to educate personnel who are involved in the confinement of detainees about the anti-torture provisions of the convention. Detainees who are ill-treated should be able to file a complaint and have their cases promptly and impartially examined by the proper authorities.⁶
- The Standard Minimum Rules for the Treatment of Prisoners state that women's institutions should make arrangements for the treatment of pregnant and post-natal prisoners. Women prisoners should be supervised only by women officers.⁷
- The Declaration on the Elimination of Violence Against Women provides all women with equal protection under the law, the right to the "highest standard attainable" for physical and mental health care, and the right not to be subjected to torture or other cruel, inhumane or degrading treatment.⁸

Under this declaration, governments must exercise due diligence to prevent, investigate and punish acts of violence against women. Women who are victims of violence should have access to the justice system and effective remedies for the harm they suffer. "States should also inform women of their rights in seeking redress through such mechanisms," according to the declaration.⁹ Testimony from the December 2006 hearing on prison rape suggests that such mechanisms are not always available to women in immigration detention in the United States.

The declaration's prohibition of laws and practices that re-victimize women is particularly compelling for asylum seekers and other victims of gender-based violence. Many detained immigrant women who have suffered abuse say they are traumatized further by the experience of being detained in immigration custody. The declaration also states that governments must provide victims of violence access to rehabilitation services, childcare assistance, counseling, and

⁶ Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, Article 10. <http://www.ohchr.org/english/law/cat.htm>

⁷ Standard Minimum Rules for the Treatment of Prisoners, Article 23. <http://www.ohchr.org/english/law/treatmentprisoners.htm>

⁸ Declaration on the Elimination of Violence Against Women, Article 3. <http://www.ohchr.org/english/law/eliminationvaw.htm>

⁹ Declaration on the Elimination of Violence Against Women, Article 4.

health and social services.¹⁰ These provisions have routinely been absent from U.S. facilities that detain immigrant women victims of violence.

- The Convention on the Elimination of all Forms of Discrimination Against Women calls for governments to ensure that women who are incarcerated during a pregnancy or post-natal period receive free services when necessary, as well as adequate nutrition.¹¹ Legal service providers, however, have reported that pregnant women complain of poor conditions and have even abandoned legitimate immigration claims because they feared the effects their detention would have on their pregnancy.

UNIQUE ISSUES FACING DETAINED IMMIGRANT WOMEN

I. Medical and Mental Health Conditions for Victims of Violence

Historically, the majority of detained immigrant women are held in custody because they are asylum seekers who arrived in the United States without proper travel documentation, or because they are victims of domestic violence that resulted in an encounter with ICE. While jailed, asylum seekers and immigrant victims of violence have little access to legal, medical, or psychological resources to help them cope with the trauma they have endured. In addition to these extremely vulnerable populations, an increasing number of female immigrants are held in custody for unauthorized work status or unlawful presence.

The detention centers and county jails that house immigrant detainees are not designed to serve asylum seekers or victims of violence with mental or medical health problems.¹² For example, a Sierra Leonean woman detained in Wisconsin experienced severe cramping and abdominal bleeding, a symptom she had suffered ever since she was forced to undergo female genital mutilation as a teenager. Her requests for medical care were frequently ignored. She also suffered from Post-Traumatic Stress Disorder due to the violence she witnessed during her home country's civil war and a rape she survived while she was living in the United States as a refugee. As a result, the woman occasionally became agitated during her nearly three years in the jail. ICE cited her outbursts as justification for housing her with violent criminal inmates.

¹⁰ Ibid.

¹¹ Convention on the Elimination of all Forms of Discrimination Against Women, Article 12.
<http://www.ohchr.org/english/law/cedaw.htm>

¹² When researchers interviewed detainees in 2003, they found that the levels of anxiety, depression and Post-Traumatic Stress Disorder among detained asylum seekers were substantially higher than those reported in previous studies of refugees living in refugee camps and asylum seekers living freely in the United States. Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: the Health Consequences of Detention for Asylum Seekers*, June 2003, page 64. <<http://www.physiciansforhumanrights.org/library/documents/reports/report-perstoprison-2003.pdf>>.

An immigrant rights advocate in New York recalled an asylum seeker she met from the United Kingdom: The woman had survived sexual abuse by her father and was so terrified to return to her country that she endured detention in the United States. While detained, she was shackled in leg and belly chains during doctor visits outside the facility. The doctor was unable to properly examine the woman because the jail guards refused to remove the belly chains.

In some cases, a jail's protocol for addressing mental or medical health issues or behavioral issues deters women from seeking assistance. The Legal Aid Society of New York reported that one woman client who had been a victim of serious verbal abuse was afraid to ask for mental health treatment due to the jail's pattern of placing everyone seeking mental health care on suicide watch.

In Chicago, the National Immigrant Justice Center represented a Lithuanian woman whose abusive U.S. citizen husband locked her in a room to prevent her from leaving the couple's home. The client told her attorneys that she was further traumatized when she was locked in a county jail cell in immigrant detention. The woman, who was eventually granted protection under the Violence Against Women Act, became addicted to antidepressants while detained and had to be hospitalized upon her release.

II. Medical Conditions for Pregnant and Post-Natal Detainees

Pregnant women and mothers who are detained while they are still nursing have complained about a lack of proper treatment in immigrant detention.

The Department of Immigrant Health Service's 2003 Provider Handbook requires that all pregnant women receive an initial evaluation by an obstetric specialist and monthly visits by medical staff, but pregnant detainees have reported that the health care they receive is inadequate. A lawyer with the Florida Immigrant Advocacy Center said some of her pregnant clients have complained about a lack of proper medical care and poor nutrition while detained. Some clients who were eligible to remain in the United States have abandoned their cases and accepted deportation in order to leave detention so they could maintain a healthy pregnancy. Some ICE districts around the country have been known to allow pregnant detainees to bond out or receive humanitarian parole, but this practice is not universally implemented.

Legal service providers across the country, including those who have responded to recent workplace raids, were alarmed to encounter women immigrants who were detained within weeks of giving birth and while still nursing their newborn children. These women reported suffering extreme physical pain during their detention. Their spouses reported that the infant children who were left behind suffered physical distress, including fevers because they were forced to stop breastfeeding so abruptly.

III. Family separation

Immigrant women not only contribute to their families' finances, but also are frequently the primary caregivers for children and elderly relatives. When these women are detained, their children and families suffer.

As ICE increases the frequency of workplace raids, family separation issues are gaining wider public attention. The majority of the workers arrested during the March 6, 2007, raid in New Bedford, Massachusetts, were women. The aftermath of the raid gained national media coverage because social service providers, relatives, and babysitters struggled to care for infants and sick children who were abandoned when their parents were detained, with many subsequently transferred to facilities in Texas. More than half the workers arrested in a March 7, 2007, raid in Mishawaka, Indiana, were women with 32 children reportedly left behind. The women arrested in this raid were detained in Kenosha, Wisconsin, for several days, until the Mexican Consulate was able to secure their bond.

Even outside of workplace raids, mothers are being detained suddenly and cut off from contact with their children. In Chicago, a Polish delicatessen owner and mother who had received bad advice from a fraudulent immigration attorney was suddenly arrested and detained when she visited an ICE office after receiving a letter saying she could pick up her green card. The woman was unable to communicate with her teenage U.S. citizen children for several weeks while detained, and her family suffered financially from her absence at the delicatessen.

According to the 1999 report by Human Rights First, *Refugee Women at Risk: Unfair U.S. Laws Hurt Asylum Seekers*, detained mothers who are primary caregivers are more likely to give up on legitimate asylum claims and agree to return to dangerous situations in their home countries so that they can be reunited with their children.¹³ Some mothers in immigration custody have been prohibited from having contact visits, even with young children:

A Peruvian woman, who arrived at the Atlanta airport in December 1999, was handcuffed in front of her 9-year-old daughter and taken to a county jail. Her child – who was already traumatized from the persecution the family had suffered in Peru – was taken away and placed in another institution. When the woman learned that if she wanted to apply for asylum she would be detained and separated from her already traumatized child for longer, she withdrew her request for asylum and returned to Peru – even though she feared for their safety there.¹⁴

¹³ Human Rights First, *Refugee Women at Risk: Unfair U.S. Laws Hurt Asylum Seekers*, December 2002, page 3. http://www.humanrightsfirst.org/refugees/reports/refugee_women.pdf

¹⁴ Human Rights First, page 15.

IV. Sexual Assault and Rape

Detainees can be subject to rape, sexual assault, and other abuse by jail guards and by other inmates. Immigrant women detainees are often barred by language and cultural barriers from defending themselves or reporting abuse. In many cultures, speaking of sexual assault or rape is taboo, and women are blamed or shamed when they are raped. When women are isolated in immigrant detention with limited or no access to lawyers or social service providers, they will be even less likely to report such intimate and traumatic matters.¹⁵

The public hearing on Sexual Violence in Immigration Detention Facilities hosted by the National Prison Rape Elimination Commission (NPREC) brought to light the prevalence of sexual assault in immigration detention in the United States. Shiu-Ming Cheer of the Civil Rights Unit of the South Asian Network testified that immigration agents and guards have used threats of violence and deportation to force detainees to perform sexual acts and to prevent them from reporting rape and sexual assault.

Guards have also threatened to place detainees in solitary confinement or to transfer them away from their families and attorneys if they report these abuses. Some women have dropped their asylum claims so that they can escape the detention center where the abuse happened. A witness at the NPREC hearing, a male-to-female transgender woman who was raped by an immigration official and had the courage to report the incident, testified that she later dropped her asylum petition because her living conditions in the jail became “hopeless” and she could no longer endure pressure by detention officers to withdraw her complaint.¹⁶

In October 2000, the Women’s Commission for Refugee Women and Children reported “widespread sexual, physical, verbal and emotional abuse of detainees, especially women” at the Krome Service Processing Center, a detention center on the outskirts of Miami. The Justice Department launched an investigation into the conduct of at least 15 INS officers at Krome.¹⁷ The women detainees were transferred to a criminal detention center farther away from their families and legal counsel. The Florida Immigrant Advocacy Center reported that in their new location, the women continued to complain of sexual harassment.

The Department of Homeland Security’s Office of Inspector General reported that in all five of the facilities it audited in 2006, immigrant detainees alleged that correctional staff physically, sexually, and verbally abused them while in custody. The Inspector General also found that even when women do report rape by a guard, there is no guarantee their attackers will be charged. When a female detainee at a facility in San Diego was sexually

¹⁵ Testimony of Shiu-Ming Cheer, Public Hearing on Sexual Violence in Immigration Detention Facilities, National Prison Rape Elimination Commission, December 13, 2006.

http://www.nprec.us/proceedings_sxvimmigdet_d13.htm.

¹⁶ Ibid.

¹⁷ Women’s Commission for Refugee Women and Children, *Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center*, October 2006, page 1.

<http://www.womenscommission.org/pdf/krome.pdf>

assaulted, the Office of Investigations issued a report, and the guard was fired. However, both the local U.S. Attorney's Office and the Civil Rights Division declined to prosecute.¹⁸

Gender-based violence in detention is not limited to abuse committed by detention officials. The practice of spreading women immigrant detainees throughout a facility and mixing them with criminal inmates, rather than grouping them with other immigrant detainees in civil custody, places them in greater danger of assault. The ICE detention standards that discourage mixing non-violent immigrant detainees with violent criminal inmates are rarely enforced. A lawyer from the Florida Immigrant Advocacy Center who has been able to make the eight-hour drive from Miami to visit immigrant detainees in Wacola County Jail near Tallahassee, Florida, reports that women immigrant detainees in that facility are held deep within the jail, mixed with criminal inmates, with no guards present and only one call box to use in an emergency.

Women who do have lawyers are not always allowed the privacy to speak with counsel out of earshot of other inmates. These detainees often hesitate to report abuse because they fear retribution if their conversation is overheard. The National Immigrant Justice Center represents a Thai detainee in Wisconsin who was sexually assaulted in custody by other inmates. She reported the sexual assault to jail guards, but they refused to help her, even after one assault resulted in an overnight stay in the hospital. Because the jail facility did not afford her the ability have a private telephone conversation, the Thai woman could not safely tell her lawyer of the incident for three months. Finally, the client was able to arrange a private meeting with her attorney, who intervened to have the client transferred to another local facility.

V. Access to Counsel

Another briefing paper submitted for the May 2007 U.S. visit of the U.N. Special Rapporteur on the Rights of Migrants, *Access to Counsel and Due Process for Immigrants*, prepared by the National Immigrant Justice Center, covers the major concerns regarding immigrant detainees' access to counsel. For detained women, an attorney may be the only link to the outside world and often provide the only safe opportunity to report complaints of past abuse or of sexual assault inside the jails. Women who do not have legal representation face significant hurdles to advocating affectively for their own human rights, medical needs, and safety while in custody.

RECOMMENDATIONS

- In collaboration with legal service providers and non-governmental organizations that work with detained immigrant women, ICE should develop gender-specific detention standards that address the medical and mental health concerns of immigrant women who have survived mental, physical, emotional or sexual violence.

¹⁸ Department of Homeland Security Office of Inspector General, page 28.

- In collaboration with legal service providers and non-governmental organizations that work with detained immigrant women, ICE should elaborate on current standards that address the medical treatment of detained pregnant or post-natal immigrant women.
- The Department of Homeland Security should codify the detention standards in legally binding regulations so that the protections these standards offer detained immigrants will be enforced.
- Whenever possible, immigrant women who are suffering the effects of persecution, abuse, or who are pregnant or nursing infants, should not be detained. If these vulnerable women cannot be released from ICE custody, the Department of Homeland Security should develop alternative programs such as intense supervision or electronic monitoring, typically via ankle bracelets. These alternatives have proven effective during pilot programs. They not only are more humane for immigrants who are particularly vulnerable in the detention setting or who have family members who require their presence, but they also cost, on average, less than half the price of detention.¹⁹
- As a part of its normal reporting of statistics on the makeup of the detained immigrant population, ICE should be required to collect and report gender-specific data that will help service providers better understand the female detention population. This data should include the proportion of detainees who are asylum seekers and the proportion who have reported being victims of violence.
- Research should be undertaken to better understand the makeup of the detained women immigrant population and the conditions they face. Such research would give service providers and advocates a better understanding of the proportion of detained immigrant women who are asylum seekers or victims of violence. It would also help clarify the frequency with which ICE detains women during pregnancy or post-natal periods.

¹⁹ Detention Watch Network, “Why Detention is Not Smart Enforcement,” <http://detentionwatchnetwork.org/aboutdetention>.