



Immigrant Women and the 2011 Performance-Based National Detention Standards

A Ray of Hope for Health, Dignity, and Justice for Female Detainees

Since 1994, the National Latina Institute for Reproductive Health (NLIRH) has defended and supported equality for Latinas, who face a unique and complex array of reproductive health and rights issues. These issues are exacerbated by poverty, gender, racial and ethnic discrimination, xenophobia, and often, language barriers, all of which make it especially difficult for Latinas to access the full range of available reproductive health care services, including abortion services. NLIRH integrates human rights principles into our work and believes that immigrant rights are women's rights. And, as a founding steering committee member of the National Coalition for Immigrant Women's Rights (NCIWR), which is comprised of more than 50 local, state, and national organizations that represent millions of constituents, NLIRH is making a real difference in the lives of immigrant women and families in the U.S.

In February 2012, Immigrations and Customs Enforcement (ICE) released the Performance-Based National Detention Standards 2011 (PBNDS 2011). The long-awaited release of the PBNDS 2011 is a welcome sign from the administration of its commitment to improving conditions in immigration detention. NLIRH was a key player in revising the 2008 version of the PBNDS and was particularly instrumental in advocating for the inclusion of a standard specifically addressing women's health care; despite having thousands of women in detention on any given day, the medical care standard in the PBNDS 2008 included only three mentions of female detainees.¹

While immigrant women are affected by detention standards on all topics, several regulations are of particular importance for this subpopulation: women's health care (**including, but not limited to, maternal and prenatal health care**), sexual assault prevention and intervention, and treatment of transgender detainees. It is promising to see the inclusion in the PBNDS 2011 of NLIRH-recommended protocols and protections for women regarding topics such as routine gynecological and obstetric care, contraception, and pregnancy services, including pre- and post-natal care and abortion care, and revised sexual assault response standards. We also applaud the inclusion of a standard providing for continuity in hormone therapy for transgender detainees, as well as the adjustments made to the standard regarding the use of restraints on female detainees during pregnancy, labor, delivery, and post-delivery. NLIRH has been a strong supporter of these provisions.

¹ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE). 2008 OPERATIONS MANUAL ICE PERFORMANCE-BASED NATIONAL DETENTION STANDARDS (PBNDS) [hereinafter PBNDS 2008]. *ICE/DRO Detention Standard: Medical Care*, at http://www.ice.gov/doclib/dro/detention-standards/pdf/medical_care.pdf.

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Despite these advances, the PBNDS 2011 are not perfect; however, these new standards are a positive step forward and a direct outcome of NLIRH's efforts. We look forward to the full implementation of the PBNDS 2011 and to ICE continuing to act in support of its expressed commitment to immigration policies and practices that respect human rights.

4.4 Medical Care (Women)

The PBNDS 2011's inclusion of a section specifically addressing medical care for women is a huge victory for immigrant women. The PBNDS 2008 lacked a section on this particular topic, addressing medical needs for female detainees in a general section on medical care.² The section included only three mentions of female detainees and no discussion of necessary preventive healthcare for women such as pap smears, mammograms and other breast exams, and STI testing.

Under the new standards, by contrast, immigrant women in detention should be provided a full range of women's health services from well-woman and basic breast care, to prenatal services, delivery support, and post-partum care, to access to abortion.³ This standard also strictly limits the use of restraints on pregnant detainees.⁴ ICE's answer to the public outcry over the cruel practice of shackling of women immediately before, during, or after giving birth is a rule that details the narrow circumstances in which restraints are acceptable, as well as the situations in which restraints are *never* acceptable.

2.11 Sexual Abuse and Assault Prevention and Intervention

Although the PBNDS 2008 makes explicit reference to standards contained in the Prison Rape Elimination Act (PREA), the PBNDS 2011 eliminates any reference to this legislation.⁵ PREA's applicability to immigration detention facilities is a long-standing source of contention. Legislative history indicates that PREA was intended to apply to *all facilities* where people are detained—a category which would include immigration detention facilities—and human rights advocates support this position.⁶ The Department of Homeland Security (DHS) has consistently rejected this reading and insisted that the

² *Id.*

³ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE). PERFORMANCE-BASED NATIONAL DETENTION STANDARDS 2011 (PBNDS 2011), 4.4 at <http://www.ice.gov/doclib/detention-standards/2011/pbnds2011.pdf> [hereinafter PBNDS 2011].

⁴ *Id.* at 4.4.V.E.1.

⁵ PBNDS 2008, *supra* note 1, at 14, available at http://www.ice.gov/doclib/dro/detention-standards/pdf/sexual_abuse_and_assault_prevention_and_intervention.pdf.

⁶ US: All Immigration Detainees Deserve Protection from Rape, at <http://www.hrw.org/news/2011/12/07/us-all-immigration-detainees-deserve-protection-rape>.

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PBNDs brings immigration facilities into compliance with PREA's most important standards⁷; the advocacy community disagrees.⁸ And in addition to refusing to apply PREA to immigration detention facilities, ICE continues to base its standards on those of correctional facilities, which is inappropriate given the civil nature of immigration detention.

While the PBNDs 2011 standard on sexual abuse is deficient in crucial ways, it is a marked improvement in others. For instance, in emphasizing that detention should be a safe environment, the PBNDs 2011 mentions that personal safety in detention should not vary based on a detainee's sexual orientation or gender identity (the older version of the standard did not mention gender identity).⁹ The PBNDs 2011 also includes a more expansive understanding of sexual abuse and/or assault than the PBNDs 2008 by recognizing that certain verbal statements, if repeated, could constitute such an offense.¹⁰ The rule reiterates the importance of a detainee's privacy when s/he reports sexual assault and/or abuse, that information about an incident should be shared within ICE only on a need-to-know basis, and that administrative segregation is appropriate only as a very short-term housing solution for addressing a victim's post-assault needs.¹¹ Finally, the PBNDs 2011 specifically mentions that the health care treatment to which a detainee-victim is entitled is not limited to testing and treatment for pregnancy and sexually transmitted infections (STIs)—under some circumstances, emergency contraception will also be available to victims of sexual abuse and/or assault.¹²

Standards addressing the needs of LGBTQ detainees

Several standards included in the PBNDs 2011 address the unique vulnerabilities and needs of lesbian, gay, bisexual, transgender, and queer (LGBTQ) detainees.¹³ A detainee's sexual orientation or gender identity is recognized in the PBNDs 2011 as a source of potential vulnerability, particularly as regards sexual assault, and a consideration in determining a detainee's level of custody; however, it is clear that the standards are intended to apply equally to all detainees.

⁷ Rentz, Catherine. *Will immigrant detainees get protection from abuse?* FRONTLINE: LOST IN DETENTION, Feb. 2, 2012, available at <http://investigativereportingworkshop.org/investigations/immigration-detention/story/will-immigrant-detainees-get-protection-abuse/>.

⁸ Stannow, Lovisa. *When Good Isn't Enough*. HUFFINGTON POST, March 6, 2012, at http://www.huffingtonpost.com/lovisa-stannow/when-good-isnt-enough_b_1317745.html.

⁹ PBNDs 2011 *supra* note 3 at Appendix 2.11.C.

¹⁰ *Id.* at 2.11.V.C.f.

¹¹ *Id.* at 2.11.V.E, 2.11.V.C.h.

¹² *Id.* at 2.11.V.K.

¹³ PBNDs 2011, *supra* note 3, at 2.1, 2.2, 2.10, and 4.3.

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In addition to providing for continuity of hormone therapy for transgender detainees who were already undergoing hormone therapy prior to entering ICE custody, a detainee self-identifying as transgender will be asked her or his gender identity and any history of transition-related care. A transgender detainee's gender identity is to be taken into account in making classification or housing decisions for that detainee. Transgender detainees will also be allowed to request that a staff member of the same gender conduct any strip or body cavity searches; such searches will be conducted in private and, if a staff member of the same gender as the detainee is *not* available to conduct such a search, s/he will, at least, be present for the search and the reasons that s/he could not conduct the search will be recorded.

NLIRH applauds the release of the PBNDS 2011 and looks forward to seeing these standards implemented. We hope that the PBNDS 2011 will bring improvements to health, dignity, and justice for immigrant women and LGBTQ Latin@s in immigration detention, as we continue on the path to reducing and eliminating the use of immigration detention.

Next steps:

- ☼ Monitor implementation in facilities where PBNDS 2011 do apply
- ☼ Continue monitoring conditions in facilities where PBNDS 2011 do *not* apply (e.g., under 72-hour facilities)
- ☼ Advocate for improved conditions and higher standards in facilities where PBNDS 2011 will not apply
- ☼ Emphasize that PBNDS 2011 is a step in the right direction, but continue to push for expanded use of alternatives to detention

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