



**WOMEN'S
REFUGEE
COMMISSION**

Statement for the Record
Women's Refugee Commission
Before the Committee on the Judiciary
United States Senate

"The Violence Against Women Act: Building on Seventeen Years of Accomplishments"

July 13, 2011

As members of the Senate Judiciary Committee consider the remarkable accomplishments of seventeen years of implementation of the Violence Against Women Act's groundbreaking provisions for victims of abuse, crime and violence, the Committee must also consider the gaps that remain to be filled in order to protect one of the most vulnerable and frequently forgotten group of victims: immigrant women. Despite continued efforts to promote the rights of victims of abuse and violence in the United States, immigrant victims still face an impossible choice. If they come forward to report violence or abuse, they must conquer their fear of detention, deportation and separation from their children and loved ones. Or, if they choose not to come forward, they must face the painful silence of enduring assault, abuse and rape. The Women's Refugee Commission regularly hears stories of immigrant victims of domestic violence, rape and sexual assault. These include stories where immigrants were unable to access or were denied access to protections after an instance of abuse, assault or rape; stories of immigrant women who were detained as a result of reporting victimization to authorities; and cases of immigrant parents who were separated from their children and dependents after reporting abuse to authorities. These cases illustrate violations of the basic rights and protections afforded to those on U.S. territory. The circumstances which allow them to occur can and must be eliminated.

Several key actions are critical to protect immigrants:

1) Implement PREA in Immigration Detention

Despite the substantial advances in protecting victims of sexual assault, rape and similar crimes, lawmakers must ensure that vulnerable immigration detainees receive the same protections from sexual crimes as individuals in U.S. jails. In 2003, Congress unanimously passed the Prison Rape Elimination Act of 2003 (PREA) to ensure that no imprisoned or detained individual would be subjected to sexual abuse or assault and to ensure that those who were assaulted or abused in prison or detention would have access to protections and remedies.

Although the recommendations subsequently issued by the National Prison Rape Elimination Commission¹ were intended to apply to immigration detention, the rules proposed by Attorney General Holder earlier this year specifically exclude application of PREA rules to thousands of immigrants detained in Immigration and Customs Enforcement (ICE) and Office of Refugee Resettlement (ORR) custody.²

The failure to implement PREA in immigration detention is not only contrary to the original intent of the law, it creates a scenario in which individuals serving criminal sentences are granted protections against rape and sexual assault while immigrants, who are in administrative, civil detention, without any criminal convictions, are left vulnerable and are not protected. Given that many immigrants who are ultimately detained are already vulnerable and in need of protection, this exclusion is particularly acute.

Immigration detainees include unaccompanied children,³ asylum seekers, torture survivors and victims of violence. They are not entitled to government-provided counsel to help them understand their rights and often do not speak English. Immigration detainees are rarely well-informed about the grievance system available to them. In addition, these individuals are in the hands of guards and immigration officers who have the power to detain, transfer and deport them. Even when they understand how to use protection mechanisms available to them, the power dynamics of immigration detention leave them feeling unable to report instances of abuse without the fear of physical or emotional retaliation.

The Women's Refugee Commission believes that safeguards must be in place to protect victims of sexual assault if and when such instances occur. These safeguards include immediate steps an immigration detainee could take if an assault occurs while in custody, such as access to an independent phone line or independent non-governmental service organization where they could report the incident without fear of retaliation, and the assurance of an independent investigation into any wrongdoing. Victims must also be placed into a safe environment where they are separated from their alleged abuser. However, they should not be placed in segregation or protective custody unless they have expressly requested such housing.

2) Access to Relief for Victims

It is also critical to ensure that immigrant victims have access to protections that may be available to them under law. Immigrant victims may be entitled to legal relief, such as U Visas that would ensure their physical safety and legal protection as they assist in the prosecution of an offender. However, many immigrants are

¹ National Prison Rape Elimination Commission, "Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Adult Prisons and Jails: Supplemental Standards for Facilities with Immigration Detainees" (NPREC Report), June 2009, <http://www.ncjrs.gov/pdffiles1/226680.pdf>.

² The Women's Refugee Commission submitted comments to the Attorney General's proposed rule. They can be found at: <http://www.womensrefugeecommission.org/press-room/op-eds-letters-a-articles/1142-national-standards-to-prevent-detect-and-respond-to-prison-rape?q=prea>

³ Women's Refugee Commission, *Halfway Home: Unaccompanied Children in Immigration Custody*, February 2009, <http://womensrefugeecommission.org/programs/detention/unaccompanied-children>.

unaware that this protection exists. Furthermore, without the assistance of an attorney to explain his or her rights and assist with applying for relief, an immigrant victim of crime, sexual assault or abuse remains vulnerable to detention and deportation by Department of Homeland Security officials who retain the power over their detention placement and removal from the United States.

Women's Refugee Commission detention center visits consistently show that despite ICE's attempts to improve training to prevent and address sexual assault, detention center officials—both private contractors and DHS employees—remain insufficiently trained in identifying, understanding and responding to sexual assault in detention. We have heard stories of immigrant women who, when reporting a grievance, are intimidated and sometimes placed into isolating segregation units. Without understanding their rights, and without the implementation of safeguards that ensure immigrant detainees can access protection and justice when victimized or assaulted, vulnerable immigrant women, men and children are left with insufficient remedies and a violation of their basic human rights.

3) Eliminate the Climate of Fear: Apprehension and Parental Custody

Those immigrants who have been the victim of a crime or sexual assault or abuse that occurred outside of federal custody also fear reporting their attackers or their attackers' crimes. While many victims are afraid to contact police for fear that they will be apprehended, detained and deported, victims are also concerned that they will be separated from their children as a result of contacting law enforcement. The Women's Refugee Commission has met with countless individuals where contact with law enforcement (regardless of the underlying reason) resulted in detention of an adult caregiver and the placement of a dependent either in a potentially unstable situation with a relative, neighbors or friends or into the local child welfare system. If the latter, immigrant parents who find themselves detained in ICE or DHS custody have very few remedies available to them to reunite with their child or dependent. Few safeguards exist to ensure that a parent could make child care arrangements in the event of apprehension and detention. In addition, caregivers struggle to stay in meaningful contact with their dependents and are often unable to participate in state custody proceedings from within immigration detention.⁴

As a result, many immigrants fear informing officials of the existence of their children, even where a child may be in danger if left in the custody of an abusive partner. Immigrant parents approaching law enforcement or immigration officials to report violence, an assault or a crime committed against them ought never to have to fear the unnecessary separation from their children or dependents as a result. Safeguards must be in place to protect immigrant parents who are victims of crime and violence, and their children, in particular in situations where a caregiver's partner may be the abuser. As with those immigrants reporting a crime or assault from within immigration detention, caregivers who come forward as victims to local law enforcement or immigration officials should be provided with access to the appropriate social services and legal remedies. They must be able to understand their rights and the protections available to them, and should receive the same treatment as any

⁴ Women's Refugee Commission. *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention*. December 2010. http://womensrefugeecommission.org/reports/doc_download/667-torn-apart-by-immigration-enforcement-parental-rights-and-immigration-detention.

individual, immigrant or not, who reports a violent or sexual crime. The vulnerabilities immigrants face as victims of crime outside of detention are no less frightening, confusing and dangerous than the vulnerabilities faced by immigrant victims of crime who are abused in detention.

Conclusion: VAWA and the Need for Protection

The Violence Against Women Act has provided immigrant victims of crime with significant and important protections, and the Women's Refugee Commission commends Congress for recognizing the importance of the specific needs and vulnerabilities of these populations. Yet more must be done to eliminate the risk of abuse and assault faced by immigrant women, men and children and to protect the rights of and provide access to justice for those who are victims of violence, sexual assault, abuse and rape. These individuals ought never to think that their immigration status precludes them from protections or efforts to prevent violence and sexual abuse against them if they have been victimized. Anything less would be a failure of U.S. obligations to meet basic human rights. VAWA reauthorization can, and must, acknowledge the ongoing prevention and protection needs of immigrant victims.