

Conditions at the NWDC: Reporting of Sexual Abuse and Assault



Photo courtesy La Resistencia

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This report is part of a series regarding **Human Rights Conditions at the Northwest Detention Center** in Tacoma, Washington, based on ongoing research efforts and released to highlight initial findings in the urgent context of the COVID-19 pandemic.

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Calls to nowhere: Reports of sexual abuse and assault go unanswered at the NWDC

Executive summary

Concerns about sexual abuse and assault are common in immigration detention. UWCHR reviewed records from multiple sources about reports of sexual abuse at the Northwest Detention Center^[1]—including incident reports drafted by ICE personnel, complaints of sexual abuse logged by national hotlines operated by DHS and ICE, written grievances filed by people in detention at the NWDC, and records from the Tacoma Police Department—and discovered grounds for serious concern. This report focuses on the gaps this research uncovered in the implementation of the standards to which the facility is bound under its contract, and to which ICE is bound under the Prison Rape Elimination Act (PREA) and the agency's own standards. These gaps have not been previously detected in PREA audits of the facility. Their existence suggests that no one really knows how widespread sexual abuse may be at the NWDC, and that rather than focusing on

adding more procedures to an already-long list of detailed policies to prevent sexual assault in detention, these problems should be understood as endemic in sites where people are detained without judicial overview or transparency.

Introduction

The United States Congress passed the Prison Rape Elimination Act (PREA) in 2003, requiring all prisons to incorporate “zero tolerance” policies for sexual assault and abuse. Eleven years later, the Department of Homeland Security began to issue a series of regulations, policies, and directives on preventing sexual assault in immigration detention facilities which draw directly on the requirements of PREA. For example, in 2014, DHS issued the regulation titled “Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities” and, several months later, issued ICE Policy No. 11062.2: Sexual Assault and Abuse Prevention and Intervention. ICE’s 2011 Performance-Based National Detention Standards (PBNDS) and its 2016 revision also included, in Section 2.11, significant requirements based on these same standards established in PREA. And while the PBNDS’ standards themselves are not directly binding on detention centers, the contracts between individual facility operators, like GEO Group, require facilities to uphold the standards laid out in the PBNDS and other documents. Many private prison operators, including GEO, also have corporate policies demanding adherence to PREA rules. And lastly, PREA, PBNDS, DHS’s regulations and ICE’s directives as well as GEO’s corporate policies require individual facilities to develop their own written policies to prevent sexual abuse at the facility.

Despite this, organizations of detained people and their communities continue to denounce sexual abuses in ICE detention centers across the country.^[2] Journalists^[3] and human rights organizations^[4] have documented “systematic” sexual assault by guards,^[5] abuse by medical personnel,^[6] and a failure to protect against abuses among the detained population. These accounts have prompted lawsuits,^[7] and Congressional demands for investigations,^[8] and even a 2013 report by the U.S. Government Accountability Office, the conclusions of which foreshadow our findings here. Sadly, despite these problems being extensive and well-documented for many years, it is unclear whether anything at all has changed for migrants detained in civil detention facilities like the Northwest Detention Center, who remain vulnerable to sexual abuse.

Indeed, in response to the growing outcry around these issues, ICE and facility operators typically tout the rigor of the standards themselves rather than any empirical evidence of the standards' effectiveness.^[9] How many sexual assaults have been reported at the NWDC, for example? The question is a basic one, but the answer remains unknown.

In this context, the UW Center for Human Rights reviewed a range of records pertaining to sexual assault/abuse^[10] at the NWDC, and to aid in their interpretation, consulted stakeholders including service providers and migrant justice organizations. We have *not* attempted to speak to currently detained people about this topic, as we cannot ensure that they are able to speak freely while in custody. ICE's Community Relations Officer has also declined to speak to us, directing us instead to use the Freedom of Information Act (FOIA) to obtain information about the agency.

Using FOIA and Washington state's Public Records Act, we obtained and reviewed the following documents:

- All ICE Significant Incident Reports^[11] filed through ICE's Significant Event Notification system in the Seattle Area of Operations between January 1, 2015 and September 1, 2019, obtained through FOIA litigation. As noted below, ICE personnel are mandated to use this system to document any allegation of sexual abuse within 24 hours. Of the hundreds of documents reviewed, 25 involve allegations of sexual assault/abuse at the NWDC.
- A log of all calls received by the ICE ERO's Detention Reporting and Information Line (DRIL) from October 24, 2014 to September 30, 2019, regarding the Northwest Detention Center. Of 2426 calls during this period, 9 reported concerns about sexual abuse/assault. As described below, DRIL is a hotline established by ICE to facilitate reporting of abuse claims involving people detained in ICE custody.
- Copies of all written grievances filed by people detained at the NWDC from January 1, 2012 to March 10, 2018. UWCHR researchers reviewed 4544 pages of complaints, many of them handwritten, and identified 30 pages covering 21 reported cases of sexual abuse/assault reported through this mechanism during this period. Under ICE's rules, facilities are required to maintain a grievance log and note the receipt and resolution of formal (written) and informal (verbal) complaints received from those incarcerated there.^[12]

- 101 complaints about conditions at the NWDC submitted to DHS' Office of Civil Rights and Civil Liberties (CRCL) from January 1, 2014 through October 1, 2019, of which 8 referred to reports of sexual abuse/assault.
- Tacoma Police Department's call logs and incident reports, and supplemental incident reports, from January 1, 2015 to November 15, 2019. UWCHR researchers reviewed the call log for all calls originating from the NWDC during this period, requested incident reports and supplemental documentation for the 26 calls coded as "sex/molestation," "rape," or "sex/lewd conduct" on the log, and reviewed all files received, some of which contained ICE or GEO documents in addition to TPD documents.

We compiled the reports of abuse/assault contained in these various documents into a single spreadsheet, cross-referencing them by date and descriptions of the incidents and alleged victims or perpetrators. In several cases, we found the same incident reflected in multiple reports, either because the person reporting the incident contacted multiple institutions seeking response, or because one of the institutions informed another. (For example, in most cases TPD documents reflected the fact that they were informed of an alleged assault by NWDC personnel.) In total, we reviewed documentation of 63 reports of sexual assault/abuse at the NWDC, though some reports mentioned multiple incidents.

We also reviewed the publicly-available copies of the audit reports for both PREA audits conducted at the NWDC, the first in March 2017, by Nakamoto Group and the second in December 2019 by Creative Corrections.

Of course, there are important limitations to what can be concluded on the basis of this data, which is more limited than the data available to the auditors mentioned above. We cannot, for example, draw conclusions about the total number of sexual abuses or assaults reported at the facility, since verbal reports would not be captured in the aforementioned documents; we also cannot surmise anything about the credibility of the reports received or the thoroughness of any investigations conducted. We can *only* conclude that where policies require ICE documentation and yet ICE has failed to produce such documents, gaps in implementation of these policies exist; this suggests that even in this area where standards governing facility operations are most rigorous, they are routinely ignored.

What the standards say: mandated practices to prevent sexual abuse/assault

GEO's contract to operate the NWDC clearly states that GEO is to uphold ICE's written policies and guidelines—as well as many others,^[13] encompassing matters that range from admissions procedures to uniforms to medical care, and many more. Of these, the standards governing prevention of sexual abuse/assault are arguably the most stringent, inasmuch as they are rooted in federal law, enumerated in a range of documents at the agency (DHS) and sub-agency (ICE) level, private company (GEO) level, and facility (NWDC) level, and subjected to their own PREA-specific auditing processes.^[14]

These governing documents include ICE's 2011 Performance-Based National Detention Standards, (revised in 2016), Standard 2.11 of which addresses sexual abuse/assault; Subpart A of ICE's March 2014 "Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities," (sometimes referred to as "DHS PREA Regulation"); and ICE's May 2014 Policy No. 11062.2: Sexual Assault and Abuse Prevention and Intervention (also referred to as the "ICE SAAPI Directive"). In addition, under PBNDS, each facility must develop its own written policy and procedures for the Sexual Abuse and Assault Prevention and Intervention Program (SAAPI); the same requirements are laid out in GEO's Corporate Policy and Procedure Manual 5.1.2 "Zero Tolerance Policy Towards Sexual Abuse and Harassment." While GEO's NWDC-specific policy documents have not been made public, references to them elsewhere^[15] suggest that they replicate the same rules as the above documents, all of which derive from PREA specifications.

The rules contained in these various documents are detailed and voluminous. We do not attempt here to describe them all, not only because of how many there are, but also because UWCHR's research only sheds light on compliance with some of them. For example, without access to the facility or its staff, we cannot assess the extent to which personnel are adequately trained or posters are displayed on-site with relevant information. However, the independent analysis of available public documents does permit us to assess compliance with those requirements that generate a written record. In this report, we focus on those requirements regarding *reporting*, *investigations*, and *post-investigative reviews* of alleged sexual abuses at the NWDC.

In the below, we describe what the standards require in each of these areas, and the degree to which available documents reveal adherence to these standards.

Reporting

The NWDC is required to follow a series of requirements to ensure that anyone in facility custody who experiences sexual abuse or assault is able to safely report their concerns. The rules impose requirements for GEO, as the operators of this individual facility, and for ICE, as the agency overseeing all civil detention facilities. The rules require that multiple avenues be made available for detained people to report sexual abuse/assault, both within the facility and beyond its walls; and that GEO and ICE respond immediately to allegations once they are brought forward.

For example, the PBNDS requires that facilities “develop policies and procedures to ensure that detainees have multiple ways to privately report sexual abuse,”^[16] including speaking to facility staff members, filing written grievances, contacting the DHS Office of the Inspector General (OIG), calling their consular office, and “at least one...public or private entity or office that is not part of the agency, and that is able to receive and immediately forward detainee reports of sexual abuse to agency officials, allowing the detainee to remain anonymous upon request.”^[17]

To ensure that those in detention are able to access these mechanisms, ICE (and separately, GEO^[18]) require PREA posters to be displayed in ICE detention facilities;^[19] these “PREA posters” advertise multiple agency-run hotlines; similar information must also be provided in the Detainee Handbook given to everyone booked into the facility.^[20] The handbook advises those in detention to “Report all Sexual Abuse and Assaults” and includes a list of forms such reporting can take, including, under the heading “Report to DHS or ICE Headquarters,” the ICE Detention Reporting and Information



ICE PREA Poster

Line (DRIL), and the DHS Office of the Inspector General (OIG), both of which have toll-free numbers and direct dial shortcuts making them reachable from within the facility.^[21] These are the same hotlines advertised on the PREA posters.

Once an incident of potential sexual assault at the NWDC is brought to a GEO officer's attention, they are required to immediately notify the ICE personnel on site.^[22] Those personnel, in turn, are required to immediately notify others up ICE's chain of command: ICE's Field Office Director must inform ICE's Assistant Director for Field Operations and the ICE Joint Intake Center (JIC) by telephone within two hours of becoming aware of the alleged sexual abuse or assault, and in writing within 24 hours, using ICE's Significant Event Notification database. Relatedly, GEO staff, in coordination with ICE personnel, are responsible for reporting any abuse that is potentially criminal to the Tacoma Police Department for criminal investigation.^[23] In its 2020 audit of the facility, Creative Corrections noted that it is GEO practice to contact the Tacoma Police Department in *every* case of sexual abuse alleged at NWIPC, allowing the police make the determination as to whether a crime was committed.^[24]

In sum, *any* report of abuse brought to ICE's attention should, according to the rules, trigger immediate reporting—well prior to an assessment of its credibility^[25]—and within 24 hours, that reporting should include written notification through ICE's SEN system. Unfortunately, however, the records released to UWCHR from ICE's SEN system suggest that this doesn't always happen. In fact, the records show that ICE appears to fail to respond adequately—in some cases, *at all*—to abuse reported through the very mechanisms the agency has created purportedly to facilitate reporting.

For example, 18 of the 20 sexual abuse/assault cases reported using the facility's grievance system^[26] were never documented in ICE's SEN system, despite the fact that in several cases records show ICE was made aware of the incident. For example:

- On March 21, 2016, a Ukrainian woman reported that a fellow detained person had been making “inappropriate sexual comments” to her and others in her unit. She characterized the remarks as “harassing” and said that these remarks made her “extremely uncomfortable.” In response, facility management reported that ICE and GEO were aware of the incident and it was currently under investigation; the record

also notes the case was closed and the allegation deemed “unfounded.” But this case was never documented in the SEN system.

Grievance - 16-0008 (SJM Ref #800,093)

From:	(b)(6); (b)(7)(C) UKRAINE)	Date Submitted:	03/21/2016 11:29 PM
Housing Area:	D3	Date Received:	03/22/2016 1:00 PM
Assigned To:	ICE Grv Grp	Status:	CLOSED
Issue:	Detainee Sexual Acts	Type:	Informal
Outcome:	Unfounded	Urgent:	No

Request

Original Request...

to whom it may concern,
i would like to inform you that detainee (b)(6); (b)(7)(C) in room 203 in D3 unit, has made innapropriate sexual comments shortly after my arrival to detention center. i was holding back because i am victim of sexual abuse in the past and its in my nature to hide and close in without reporting. but after other detainees came out and said she been harrassing them as well in sexual manner. it makes me feel extremely uncomfortable (b)(6); (b)(7)(C) shows such behavior. i hope it will be resolved soon

Response by DO, (b)(6); (b)(7)(C) on 03/22/2016 at 1:49 PM

ICE and GOE are aware of this and it is currently under investigation.

Above: Grievance 12-0008

- On September 26, 2017, a detained person had an encounter with a health care provider in the NWDC’s medical center that gave rise to a series of written grievances. In multiple reports, the patient alleged that the health care provider touched their “gluteals” inside their underwear, and made a comment about their skin; in one of the relevant grievances, they wrote “I feel assaulted,” and in another, “I’m heartbroken by your inadequate service.” Following this incident, the detained person reported panic attacks, self-harm practices, and suicidal thoughts. The grievance forms note that the detainee’s accounts were deemed “unfounded,” and that following a discussion with the Clinical Director, a GEO Lieutenant Commander told them that if they did not want to have to see the man again, they could request to be transferred to another facility.

Without reviewing the investigation, it is impossible to gauge whether the response was appropriate, but it is clear that under agency policy, allegations of sexual assault by a detained person against a medical provider should be reported in the SEN system. In this case they were not.

- On October 18, 2017, a person at the NWDC reported having been sexually harassed by a GEO officer on October 5, 2017, reporting that they felt unsafe and disturbed, to the point where they had a nightmare following the incident. They filed a grievance with GEO, but complained that no apparent action had been taken, since the officer was “still freely working the units,” and a GEO Major had claimed the comments were just a joke. “Sexual language under any circumstances is neither funny or professional,” the detained person insisted, “It’s making me feel unsafe and disturbed.” An ICE officer noted in response, “Actions have been taken to prevent this from happening again.” The next day, the detained person filed a second grievance complaining that the problem had not been addressed, to which ICE responded, “Action has been taken, however, it cannot be disclosed to you.” This case, while apparently considered serious enough for “action to be taken,” was apparently not documented in ICE’s SEN system.

Grievance - ICE - #2,243,648

From: [REDACTED] NA) Date Submitted: 10/18/2017 1:00 PM
Housing Area: F4 Date Received: 10/18/2017 4:00 PM
Assigned To: ICE Grv Grp Status: **CLOSED**
Issue: -None Selected- Type: -None Selected-
Outcome: -None Selected- Urgent: No

Request

Original Request...

ON OCT. 5, 2017 I WAS SUBJECTED TO SEXUAL HARRASMENT BY A GEO OFFICER [REDACTED] AFTER GRIEVING IT TO THE HIGHEST LEVEL WITH GEO, I WASN'T ABLE TO SEE ANY OFFICIAL RESULTS. THE OFFICER IS STILL FREELY WORKING THE UNITS. BOTH THE MAJOR AND [REDACTED] CAME TO HIS DEFENSE BY SAYING IT WAS JUST A JOKE. SEXUAL LANGUAGE UNDER ANY CIRCUMSTANCES IS NITHER FUNNY OR PROFESSIONAL. IT'S MAKING ME FEEL UNSAFE AND DISTURBED, I HAD A NIGHTMARE FOLLOWING THIS INCEDENT. PLEASE SERIOUSLY ADDRESS THIS ISSUE.

Response by [REDACTED] on 10/19/2017 at 3:39 PM

This is issue has already been addressed by GEO and actions have been taken to prevent this from happening again.

Above: Grievance #2,243,648

Relatedly, in the below, Tacoma Police Department files trace their involvement in a case which, for unknown reasons, ICE never documented, despite being clearly aware of the allegations. Indeed, TPD records report multiple conversations with NWDC officials about the case:

- On July 17, 2016, the Tacoma Police were dispatched to St. Joseph's Hospital where a man detained at the NWDC had been taken after reporting he had been raped by another detainee. TPD's Incident Report and Supplemental Reports trace the TPD's investigation of the case, from the initial officer's report upon interviewing the man at the hospital to multiple conversations with NWDC personnel regarding the alleged victim's credibility, the availability of video evidence of the assault, and other possible explanations for what occurred, to the collection and analysis of the rape kit performed at the hospital. Although these reports suggest there was no evidence to

corroborate the alleged victim's claim, the TPD forwarded the case to Pierce County Prosecutor's Office, who declined to file charges, and the case was closed. It is unclear why ICE did not report the case as required.

Similarly, ICE often failed to respond to calls for help through the two agency hotlines to which people detained at the NWDC were specifically directed for purposes of reporting assaults. For example, according to ICE's records, its DRIL hotline received nine reports of sexual abuse/assault at the NWDC from January to September 2019, yet *none* of these were documented in the records from ICE's SEN system released to UWCHR, or in records of the NWDC personnel's communications with the Tacoma Police Department from the same period.

For example:

- On June 3, 2019, a Honduran man detained at the NWDC called the DRIL hotline to complain not only that he had been sexual assaulted the month before, but that facility guards and, separately, his ICE Deportation officer, had failed to respond when he attempted to report the assault. He reportedly asked for an investigation to review facility videos, believing they would corroborate his account, but the investigator walked into his dorm and spoke loudly about his sexual assault complaint, violating his privacy in front of others.^[27] The DRIL hotline operator flagged the report as "Urgent: Action Required," coding its topic as "Afraid of, or Report of, Sexual Abuse" as well as "ICE/Facility personnel misconduct." But there is no mention of the case in records from ICE's SEN system, despite clear policies mandating such notification.
- On June 27, 2019, a detained man within the NWDC called ICE's DRIL hotline and reported that he was being repeatedly sexually harassed, verbally, by a group of other detained men. Reportedly at the instigation of a night shift officer in his unit, a group of five other detained men began to mock him and make comments about his perceived sexual orientation; he said that he was afraid and wanted this to stop. The phone log described the topic of the call as "Afraid of, or Report of, Sexual Abuse" and with a secondary topic "ICE/Facility Personnel misconduct;" it was flagged as "Critical" in priority level. Despite this, it is unclear with whom, if anyone, this report was shared; if ICE personnel in Seattle or Tacoma were notified at all, they failed to register this through ICE's Significant Event Notification system as would have been required within two hours of an incident coming to their attention.

Similarly, calls to the OIG were often responded to in ways that defy regulations:

- On July 14, 2017, a man detained at the NWDC called the DHS Office of the Inspector General to report that he had been a victim of sexual abuse by another detained person. The Office of the Inspector General did not notify ICE officials in Seattle of this report until August 9; ICE's Seattle office, in turn, did not inform GEO personnel at the NWDC until August 15. At this point, NWDC's SA-API committee^[28] conducted an investigation, finding the claim "Unfounded" on the basis of the lack of video evidence. Yet it is worth noting that according to ICE's SEN documentation of this incident, "GEO also reviewed video of the unit from August 15th 2017 at 1600 hrs to August 16th 2017 at 0900 hrs and did not witness any horseplay or inappropriate touching"; given that the alleged incident occurred in July, it seems unclear how video from August would be useful to the investigation.

It is particularly troubling to find evidence that cases may have been ignored or dismissed after being reported through mechanisms specifically promoted to encourage reporting; even if such cases were investigated and found to be unsubstantiated, rules governing ICE and GEO conduct specifically mandate that all cases be documented prior to any attempt to investigate. In the absence of such documentation, it appears that, to put it bluntly, calls for help from within the NWDC have gone nowhere.

Investigation

As noted above, PREA standards require that all reports of abuses must be taken seriously. Prior to initiating an investigation or assessing the credibility of the claim, the alleged victim must be separated from the alleged perpetrator, for example, and all those reporting abuse should be offered a forensic medical evaluation to gather evidence.

^[29] Standards further mandate that facilities "shall attempt to make available to the victim a victim advocate from a rape crisis center;"^[30] in the case of the NWDC, while two auditors' reports note that local rape crisis center Rebuilding Hope is available to support survivors,^[31] the organization's Executive Director clarified that while the organization provided feedback to GEO and ICE about the conditions necessary for the organization to offer meaningful support to survivors within the facility—for example, requiring confidentiality and interpretation—these conditions have not been met.^[32]

Once these immediate steps are taken, the standards envision a two-track investigation system, emphasizing the importance—first—of full cooperation with criminal investigations by law enforcement agencies, in this case the Tacoma Police Department.^[33] Once the criminal investigation is complete, in cases where the investigation found the incident substantiated,^[34] or in cases where no criminal investigation was completed, an in-house administrative investigation is ordered to be conducted.^[35] (The purpose of this sequencing is, according to the PBNDS, “to ensure that the criminal investigation is not compromised by an internal administrative investigation.”^[36]) These investigations must be written up in detail^[37], and their findings and any resultant actions must be communicated to ICE Field Office Director, who will in turn communicate them up the chain to ICE headquarters.^[38]

Once again, the records reviewed by UWCHR suggest that in multiple cases these investigations did not proceed as envisioned under the standards. For example:

- On March 11, 2015, Tacoma Police Department records show a call from an NWDC detention supervisor reporting allegations made by a man detained at the facility that his cell mate had repeatedly exposed his penis and touched him on his leg and buttocks through his clothing, while making threatening statements. According to the TPD incident report, the alleged victim was taken to the medical clinic “as a precaution, but all tests and statements were negative to any sexual assault.” The GEO employee reported that neither the alleged victim nor perpetrator would be allowed in the same holding area, but that deportation was pending for them both. The report concludes, “Nothing further.” There was no documentation of this reported event in ICE’s SEN system. The case is puzzling; it’s unclear why medical tests would have been expected to prove an assault occurred when the alleged abuse involved verbal statements and unwanted touching through clothes. And it appears that whatever internal determination was made at the facility colored the police investigation, precisely in the way the PBNDS and DHS PREA regulations seek to prevent by mandating that criminal investigations precede internal facility determinations.^[39] Lastly, it is unclear whether GEO failed to report the event to ICE, or ICE failed to document it in SEN, but ICE procedures were not followed.
- On February 1, 2017, the Tacoma Police Department documented a call from the NWDC that was coded in TPD’s log as reporting “sexual/lewd conduct.” The CAD

incident inquiry reads, “Supervisor called stated possible inmate assault another prisoner via pushed a victim [sic]. They have not checked the cameras or interviewed the suspect. The supervisor said they would call us back if there is any evidence of a crime then we can do the report.” Yet no documentation of this case appears in records from ICE’s SEN system released to UWCHR; it is unclear whether GEO personnel reported the incident to TPD but not to ICE, or whether ICE officials were notified, but failed to document the report according to policy. Further, the very language of the police records would appear to confirm that the intended sequencing of investigations was inverted, with an administrative investigation (the review of videos and interview of suspect) determining whether a criminal investigation would occur or not—the opposite outcome from that intended under policy.

Post-investigative review

In addition to investigations into the incident itself, the NWDC is required to conduct a review “following every investigation of sexual abuse or assault... to assess whether changes to facility policy or practice could better prevent, detect, or respond to sexual abuse and assault.”^[40] The facility is then tasked with implementing the recommendations generated by this review process, or, if it declines to do so, with documenting the reason for its decision in a written response. Both the review itself and the facility’s response must be forwarded to ICE’s Field Office Director for transmission to the ICE PSA Coordinator.^[41] Furthermore, all investigations and reviews are to be compiled and evaluated once per year in an annual review process.^[42]

Each of these steps, of course, should generate a written record. It is therefore particularly troubling that in a recent letter responding to UWCHR’s FOIA request for copies of such documents, ICE claimed that no such records exist. The below case provides an example of why this is worrisome.

- On October 9, 2015, a detained man reported being forcibly held down by his bunkmates while they pulled down his pants and touched his penis and butt. ICE’s Significant Incident Report shows that a GEO supervisor initially concluded that this was “not a SAAPI reportable event.” The NWDC’s SAAPI committee reviewed the case the next week and disagreed, deciding to investigate further. When video and

eyewitness testimony wound up corroborating the victim's account, the committee decided on November 6, 2015 to treat the incident as a SAAPI case and report it to the Tacoma Police Department. TPD's call log summarizes a call with the NWDC officer who contacted the police: "The facility is preparing reports regarding the incident. They are not completed at this time. No need for a response. Two of the subjects involved have been deported. The witness and Victim are still here. Once the reports are completed [the GEO employee] will email to me and I will write report under this case." Records show the Tacoma Police Department followed up on November 9 and again on November 13 seeking copies of the NWDC's investigation; by the time they received a response early January of the following year, the NWDC reported that all parties involved had left the facility, rendering further investigation impossible.

Records of this investigation completed by ICE and GEO at NWDC were included in the Tacoma Police Department file. They reveal that upon investigation, the NWDC determined the event to have been substantiated. Yet if no sexual abuse incident review was conducted in this case, as ICE alleges in the aforementioned letter to UWCHR, this not only violates the PBDNS, DHS PREA Standards, and ICE SAAPI rules on their faces, but also demonstrates why such reviews are necessary, since they aim to identify missed opportunities and improved practices for the future.

Facility audits

In addition to the general audits of the facility mandated by private certification standards, ICE rules, and the NWDC contract, rules governing sexual abuse/assault mandate separate audits focusing only on compliance with PREA standards. The NWDC has had two PREA audits, its first in March 2017, by Nakamoto Group^[43] and a second in December 2019 by Creative Corrections. The facility passed both audits. Yet these audits did not detect the flaws mentioned above, which constitute important breaches of safety protocols. Given published studies' prior conclusions that audits of ICE detention facilities "do not lead to sustained compliance or systemic improvements,"^[44] this may not be a surprising discovery; as Tina Vasquez has noted, Nakamoto Group advertises to detention facilities that it will "ensure your federal funding is not jeopardized due to PREA deficiencies," suggesting that the motivation for the PREA audit may be less about

identifying areas for improvement than maintaining income.^[45] But it lends further credence to ICE employees' own assertion to the DHS OIG that such audits are "useless" and "very, very difficult to fail."^[46]

UWCHR investigated the extent to which the NWDC's system of facility audits produces useful outcomes in 2020; we concluded that four factors render the system a sham. First, auditors have a financial incentive to overlook abuses; second, audits rely on reviews of records our own research has shown to be inaccurate; third, grievances and other mechanisms by which detained people express concerns are routinely ignored; and fourth, there is often no consequence to receiving a critical audit.

In this report, we do not pretend to revisit this topic, only to note that this research reveals that PREA audits, much like the others reviewed in our prior research, have failed to detect serious problems at the facility.

Other concerns

In our review of the documents, other concerns emerged as well, though the documentation of these issues is not sufficient to permit an assessment of how systematic such problems might be.

For example, records suggest that the likely deportation of victims or plaintiffs may have been a factor influencing the decision to investigate a case. In many cases, investigations that were found to be substantiated were apparently truncated by the deportation of witnesses, perpetrators, or victims. ICE's standards specifically prohibit this: "The departure of the alleged abuser or victim from the employment or control of the facility shall not provide a basis for terminating an investigation," the PBNDS cautions.^[47] Yet if key informants are no longer available, any investigation will inevitably be weakened.

It is unclear, for example, the extent to which the Tacoma Police Department's decision to investigate is influenced by ICE's statements that the victim or perpetrator has been deported or will be soon, but the frequency of such notes in their records suggest that decisions may in fact be shaped by the ability to rely on victim or witness participation.

Since ICE is permitted to remove or transfer people from the NWDC at will and without explanation, there is a danger that they could do so—or indicate to the Police that they had done so, whether or not this was true—as a way to cover up troubling cases.

One example of this could be the October 9, 2015 case referenced above, in which GEO officers initially decided a sexual assault did not require investigation, but later discovered witnesses and video that corroborated the victim's account. By the time the relevant information was shared with the Tacoma Police, all relevant individuals were no longer in custody. While we have no evidence that this was a case of retaliatory deportation, such practices have indeed been reported in other cases, including at the NWDC.^[48] The problem this reveals is not one that can be solved by further investigations or audits; the problem is that the agency has total control over detained people's location, well-being, and access to the outside world, and there is no effective oversight—neither by federal or local governments, nor the courts—to ensure this power is wielded without abuse.

Conclusion

At first glance, the proliferation of documents describing PREA standards may appear to offer a system whereby intentional redundancy promises rigorous adherence to the rules. Unlike many other concerns about conditions in detention, where standards may be unclear or shifting, in the case of sexual assault the rules are rooted in federal law; and a raft of no-cost mechanisms to report violations are openly advertised on facility walls and in documents made available to all. Multi-layered, multi-institutional reporting requirements are spelled out in DHS regulations, ICE directives, the PBNDS, GEO corporate policy, *and* a contract which explicitly binds these various levels of rulemaking to facility funding as the bottom line.

On the other hand, this research shows that in the cases examined, this same proliferation of rules, institutions, and responsible parties often fails. What use is elaborate mandated postering to advertise an abuse hotline, if the calls go nowhere? Of what benefit is a multi-layered, multi-institutional investigatory process, if cases are

closed when victims are deported? And what use are sexual abuse-specific audits, if their content focuses on the existence of hotlines, guidebooks, and grievance procedures but fails to examine the extent to which such mechanisms lead to improved practices?

GEO's contract with ICE to operate the NWDC states, "The detainee and the public are the ultimate recipients of the services identified in this Agreement."^[49] If so, then why are we—the ultimate recipients—denied access to the most basic information about the functioning of these services?

The PREA rules, in their delineation of ICE roles from GEO roles, allow the federal government to claim it has high standards, yet offload responsibility for any breaches onto the companies who actually operate the facilities^[50]—while itself failing to set up any effective mechanisms for oversight and accountability, thus perpetuating those breaches. Unfortunately, the NWDC's failures are hard-wired into the system that created it.

Notes

[1] In 2019, GEO Group and ICE began referring to the facility as the Northwest ICE Processing Center (NWIPC), and/or the Tacoma ICE Processing Center. To avoid confusion, we refer here to the facility under the name it has been most consistently called.

[2] See for example: EFE, "Inmigrantes denuncian abusos sexuales en un centro de detención de Florida," *Los Angeles Times*, August 26, 2021; and Aoife Burke, "US activists call for ICE detention centres to release trans detainees," *GCN*, March 29, 2021; and #Not1More, "ICE Allows Rape of Transgender Woman at Eloy Detention Center: Free Marichuy!".

[3] See for example: Alice Speri, "Detained, then Violated," *The Intercept*, April 11, 2018; and Tina Vasquez, "In Search of Justice: How DHS PREA Standards Don't Necessarily Protect Immigrants From Assault", *Rewire News Group*, March 13, 2019; Emily Kassie, "Sexual

Assault Inside ICE Detention: 2 Survivors Tell Their Stories," *New York Times*, July 17, 2018; and Adolfo Flores, "An Immigrant Says She And Two Others Were Raped Inside An ICE Detention Cell Right Before Being Deported," *Buzzfeed*, May 27, 2020.

[4] See for example: Mexican American Legal Defense Fund, "Complaints Regarding Sexual Abuse of Women in DHS Custody at Karnes County Residential Center," September 30, 2014; and Human Rights Watch, "US Records Show Physical, Sexual Abuse at Border," October 21, 2021; and Emily Kassie, "Sexual Assault Inside ICE Detention: 2 Survivors Tell Their Stories," *New York Times*, July 17, 2018.

[5] See for example: Lomi Kriel, "ICE Guards 'Systemically' Sexually Assault Detainees in an El Paso Detention Center, Lawyers Say," *ProPublica*, August 14, 2020.

[6] Freedom for Immigrants, "Women at Florida Immigration Detention Center File Federal Complaint Over Sexual and Medical Abuse, Toxic Chemical Spray, and Racist Treatment," August 26, 2021.

[7] See for example, Tina Vásquez, "Lawsuit alleges three women were raped in ICE custody before being deported," *Prism*, June 3, 2020; and Victoria López and Sandra Park, "ICE Detention Center Says It's Not Responsible for Staff's Sexual Abuse of Detainees," ACLU, November 6, 2018.

[8] See for example, this letter sent to DHS in December 2017 by over 70 Congresspeople demanding an investigation into sexual abuse in immigration detention. It is not clear whether this triggered any response.

[9] For example, when Congress mandated that ICE provide information about its compliance with PREA as part of the Appropriations process in 2018, the agency issued this report, which details the rules but not their impact.

[10] The PBNDS defines sexual abuse as follows: "Sexual abuse of a detainee by another detainee

includes any of the following acts by one or more detainees who, by force, coercion, or intimidation, or if the victim did not consent or was unable to consent or refuse, engages in or attempts to engage in: a. Contact between the penis and the vulva or anus and, for purposes of this subparagraph, contact involving the penis upon penetration, however

slight; b. Contact between the mouth and the penis, vagina, or anus; c. Penetration, however slight, of the anal or genital opening of another person by a hand or finger or by any object; d. Touching of the genitalia, anus, groin, breast, inner thighs or buttocks, either directly or through the clothing, with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person; or e. Threats, intimidation, or other actions or communications by one or more detainees aimed at coercing or pressuring another detainee to engage in a sexual act. Sexual abuse of a detainee by a staff member, contractor, or volunteer includes any of the following acts, if engaged in by one or more staff members, volunteers, or contract personnel who, with or without the consent of the detainee, engages in or attempts to engage in: a. Contact between the penis and the vulva or anus and, for purposes of this subparagraph, contact involving the penis upon penetration, however slight; b. Contact between the mouth and the penis, vagina, or anus; c. Penetration, however slight, of the anal or genital opening of another person by a hand or finger or by any object that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire; d. Intentional touching of the genitalia, anus, groin, breast, inner thighs or buttocks, either directly or through the clothing, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire; e. Threats, intimidation, harassment, indecent, profane or abusive language, or other actions or communications aimed at coercing or pressuring a detainee to engage in a sexual act; f. Repeated verbal statements or comments of a sexual nature to a detainee; g. Any display of his or her uncovered genitalia, buttocks, or breast in the presence of a detainee; or h. Voyeurism, which is defined as the inappropriate visual surveillance of a detainee for reasons unrelated to official duties. Where not conducted for reasons relating to official duties, the following are examples of voyeurism: staring at a detainee who is using a toilet in his or her cell to perform bodily functions; requiring a detainee to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a detainee's naked body or of a detainee performing bodily functions." (PBNDS p. 144-145).

[¹¹] DHS' Office of the Inspector General has described Significant Event Notification (SEN) as "the system ICE uses to document the narrative of any significant events that occur on duty in a Significant Incident Report." See p. 5 in OIG-18-76, "Assaults on CBP and ICE Law Enforcement Officers," September 4, 2018.

[12] PBNDS p. 416.

[13] See Contract Number HSCEDM -10 – D – 00015, p. 45: “The contractor shall perform all services in accordance with ICE 2011 Performance-Based Detention National Standards (PBNDS) optimal and enhanced recreation, Prison Rape Elimination Act (PREA), American Correctional Association (sic) (ACA) Standards for Adult Local Detention Facilities (ALDF) and Standards Supplement, Standards for Health Services in Jails, latest edition, National Commission on Correctional Health (NCCHC), and state and local laws on firearms at all times.”

[14] For more on PREA audits, see “Auditor Certification Process,” PREA.

[15] For example, GEO standards are referenced in the March 2017 and December 2019 PREA audit reports.

[16] PBNDS p. 133.

[17] PBNDS p. 134.

[18] According to the PREA audit reports, GEO policy 3.1.1 also requires this posting. See Creative Corrections, PREA Audit Report, December 2019, p. 12.

[19] See ICE’s website which states that ICE requires PREA posters to be displayed in ICE detention facilities, PREA pamphlets to be available to all detained people, and for all detained people to be given a copy of the Detainee Handbook.

[20] PBNDS p. 133.

[21] See p. 11 of the National Detainee Handbook, which contains standardized language about ICE procedures and offices for replication in facility-specific Detainee Handbooks. Regarding DRIL, see also this ICE flyer: one of the advertised reasons for which “ICE stakeholders”—defined as “including the public, family members, attorneys, faith-based leaders, and non-governmental organizations” are encouraged to call DRIL is to report “an incident of sexual or physical assault or abuse in detention.”

[22] According to audits of the NWDC, GEO policy 3.1.1 requires that “allegations are reported immediately to on-site ICE staff.” See also PBNDS p. 128: “All allegations of sexual abuse or assault shall be immediately reported to ICE/ERO, and any other required

entities based on the nature of the allegation.” And PBNDS p. 140: “Staff members who become aware of an alleged assault shall immediately follow the reporting requirements set forth in the written policies and procedures.”

[23] See PBNDS p. 138: “It is the facility administrator’s responsibility to ensure that the incident is promptly referred to the appropriate law enforcement agency having jurisdiction for investigation (if the incident is potentially criminal) and reported to the Field Office Director, who shall report it to the OPR Joint Intake Center.”

[24] See Creative Corrections, PREA Audit Report, December 2019, p. 7.

[25] The PBNDS is very clear on this point. See p. 136: “Staff shall take seriously all statements from detainees claiming to be victims of sexual assaults, and shall respond supportively and non-judgmentally. Any detainee who alleges that he/she has been sexually assaulted shall be offered immediate protection and separation from the assailant and shall be referred for a medical examination and/or clinical assessment for potential negative symptoms. Staff members who become aware of an alleged assault shall immediately follow the reporting requirements set forth in the written policies and procedures.”

[26] UWCHR reviewed 21 grievances alleging sexual abuse/assault at NWDC, but only 20 of these correspond to the time period for which we also have access to reports from the SEN system; one is from 2013, and therefore cannot be cross-checked against other documentation in our possession.

[27] This is specifically prohibited under the PBNDS, which requires that, “Information concerning the identity of a detainee victim reporting a sexual assault, and the facts of the report itself, shall be limited to those who have a need-to-know in order to make decisions concerning the victim’s welfare, and for law enforcement/investigative purposes.” PBNDS p. 155.

[28] The SAAPI acronym refers to ICE Directive 11062.2, Sexual Abuse and Assault Prevention and Intervention (SAAPI).

[29] See PBNDS p. 139: "Where evidentiarily or medically appropriate, at no cost to the detainee, and only with the detainee's consent, the facility administrator shall arrange for an alleged victim to undergo a forensic medical examination by qualified health care personnel, including a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) where practicable. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified health care personnel."

[30] PBNDS p. 136.

[31] See p. 2 of 2017 audit: "The auditor also confirmed that the facility has a Memorandum Of Understanding (MOU) with the Sexual Assault Center of Pierce County – Rebuilding Hospital [sic] to provide victim advocate services." and p. 7 of 2020 audit: "NWIPC has a Memorandum of Understanding (MOU), dated 2013 with no sunset date, with Rebuilding Hope to provide valuable expertise and support in the areas of crisis intervention and counseling to most appropriately address detainee victims' needs. This local community advocate provides victim services following incidents of sexual abuse. The Auditor spoke with the Director of Rebuilding Hope, who confirmed her trained advocates provide emotional support, crisis intervention, information, and referrals."

[32] April 28, 2022 interview between Carlyn Sampson and Angelina Godoy, via Zoom.

[33] See for example, PBNDS p. 128: "The facility shall ensure that each allegation of sexual abuse or assault is investigated by an appropriate criminal or administrative investigative entity, and shall cooperate with all investigative efforts to ensure a thorough and objective investigation."

[34] Definitions of substantiated and unsubstantiated are as follows: "Substantiated allegation means an allegation that was investigated and determined to have occurred. Unsubstantiated allegation means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred." (PBNDS p 139)

[35] DHS PREA Standard (included in NWDC Contract), p. 203; see also PBNDS p. 139: "Upon conclusion of a criminal investigation where the allegation was substantiated, or in instances where no criminal investigation has been completed, an administrative investigation shall be conducted. Upon conclusion of a criminal investigation where the

allegation was unsubstantiated, the facility shall review any available completed criminal investigation reports to determine whether an administrative investigation is necessary or appropriate.”

[36] PBNDS p. 140.

[37] PBNDS p. 139-40: “Documentation of each investigation [will be] by written report, which shall include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.”

[38] See PBNDS p. 140: “Following an investigation conducted by the facility into a detainee’s allegation of sexual abuse, the facility shall notify the Field Office Director of the results of the investigation and any responsive actions taken so that the information can be reported to ICE headquarters and to the detainee.”

[39] See, for example, from p. 140 of the PBNDS: “Such procedures shall govern the coordination and sequencing of administrative and criminal investigations... to ensure that the criminal investigation is not compromised by an internal administrative investigation. The departure of the alleged abuser or victim from the employment or control of the facility shall not provide a basis for terminating an investigation.” See also p. 203 of NWDC contract, 115.71 (2): “Upon conclusion of a criminal investigation where the allegation was substantiated, an administrative investigation shall be conducted. Upon conclusion of a criminal investigation where the allegation was unsubstantiated, the facility shall review any available completed criminal investigation reports to determine whether an administrative investigation is necessary or appropriate. Administrative investigations shall be conducted after consultation with the appropriate investigative office within DHS, and the assigned criminal investigative entity.”

[40] PBNDS p. 128.

[41] PBNDS p. 141.

[42] See PBNDS p. 141: “Each facility shall conduct an annual review of all sexual abuse investigations and resulting incident reviews to assess and improve sexual abuse intervention, prevention and response efforts. If the facility has not had any reports of sexual abuse during the annual reporting period, then the facility shall prepare a negative

report. The results and findings of the annual review shall be provided to the facility administrator, Field Office Director or his or her designee, for transmission to the ICE PSA Coordinator.”

[43] The 2017 Nakamoto Audit does not specify the period of time for which documents were reviewed, but per the PREA Auditor’s Handbook, p. 36, auditors are required to cover a year’s time: 115.401(g)—“The audits shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period.”

[44] See OIG-18-67, “ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements,” June 26, 2018.

[45] See Tina Vasquez, “In Search of Justice: How DHS PREA Standards Don’t Necessarily Protect Immigrants From Assault.”, *Rewire*, March 13, 2019

[46] See p. 7 of OIG-18-67 “ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements,” June 26, 2018.

[47] PBNDS p. 161.

[48] See, in particular, the experience of Saja Tunkara at the NWDC: Melissa Hellmann, “Did ICE Retaliate Against a Detainee Over Seattle Weekly Report?,” *Seattle Weekly*, November 5, 2018; nationally, see also Sofia Jarrin, “A Culture of Retaliation: Whistleblower Deportations Reveal Moral Rot at ICE,” *Nonprofit Quarterly*, November 18, 2020; and Kate Morrissey, “Complaint alleges retaliation at immigration detention facilities after protests over conditions,” *San Diego Union Tribune*, August 30, 2021.

[49] Quality Assurance Surveillance Plan, p. 5 (p. 128 of GEO Group’s contract with ICE for the NWDC).

[50] See, for example, this case in which ICE claims it does not bear responsibility for facility operations: ACLU, “E.D. v. Sharkey,” July 1, 2019.

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