



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Florida

Katie Blankenship | Deputy Legal Director
American Civil Liberties Union Foundation of Florida
4343 W. Flagler Street, Suite 400, Miami, FL 33134
kblankenship@aclufl.org
www.aclufl.org

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Office of Inspector General/MAIL STOP 0305
Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528-0305
dhs-oig.officepublicaffairs@oig.dhs.gov

DHS ICE Office of Professional Responsibility
PO Box 14475
Pennsylvania Avenue NW
Washington, DC 20044

Lt. Brad R. Harvey
DOJ Certified PREA Auditor
Baker County Detention Center
1 Sheriff's Office Drive
Macclenny, Florida 32063

Peter Mina,
Officer for Civil Rights and Civil Liberties
Compliance Branch, Dept. of Homeland Security/Mail Stop #0190
2707 Martin Luther King, Jr. Avenue, SE
Washington, DC 20528-0190
CRCLCompliance@hq.dhs.govPeter.Mina@hq.dhs.gov

RE: PREA Complaints on Behalf of the Female Detained Individuals at Baker County Detention Center

Dear Office of the Inspector General and ICE Office of Professional Responsibility:

Please accept this letter as a formal submission of a Prison Rape Elimination Act (“PREA”) Complaint on behalf of female immigrants detained at the Baker County Detention Center (“Baker”). As set forth in letters and grievances submitted by the women in ICE detention at Baker, attached hereto as collective Exhibit A, there is a pattern of unlawful voyeurism and cross-gender viewing at Baker that specifically targets female immigrants.

As set forth in the PREA Prison and Jail Standards, sexual abuse includes “[v]oyeurism by a staff member, contractor, or volunteer,” which is defined as:

[A]n invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate’s naked body or of an inmate performing bodily functions.¹

ICE’s National Detention Standards, which Baker is subject to per the Intergovernmental Service Agreement between ICE and Baker County Sheriff’s Office, also include voyeurism as sexual abuse and assault and similarly define it as:

[T]he 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 an inmate 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.²

In addition, the PREA Standards require detention facilities to “implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks.”³ The purpose

¹ Prison Rape Elimination Act, Prisons and Jail Standards, 28 C.F.R. § 115.6.

² 2019 ICE National Detention Standards II(B)(2)(h).

³ Prison Rape Elimination Act, Prisons and Jail Standards, 28 C.F.R. § 115.15(d).

of this section is to “enable bodily privacy for both male and female inmates in order to prohibit abuse and trauma that might arise from that contact or viewing.”⁴

The events described herein constitute voyeurism and violate the limits imposed by PREA on cross-gender viewing. These abuses are ongoing and require immediate attention, intervention, and redress.

I. Background

An initial incident of voyeurism in May 2022 prompted a PREA complaint by a woman detained at Baker. However, neither the complaint nor subsequent investigation adequately addressed this issue or put an end to ongoing patterns of unlawful voyeurism. Since then, female immigrants have reported waking up to officers taking photos in their cell while they were wearing only their undergarments, officers watching them shower and change clothes, and a continued pattern of officers watching female immigrants use the bathroom.

A. Hyacinth Bailey

The initial events concerned Ms. Hyacinth Bailey, a 60-year-old immigrant from Jamaica. Earlier this year, an ICE officer engaged in voyeurism by effectively forcing Ms. Bailey to use the bathroom while he watched from outside the doorway. On May 27, 2022, Officer Ward visited Ms. Bailey’s cell to speak to her cellmate.⁵ Ms. Bailey needed to use the restroom and accordingly closed the cell door for privacy, but Officer Ward—a male officer—demanded that she keep her cell door open.⁶ He did not move and continued staring directly at her as she removed her clothing.⁷ Ms. Bailey was forced to use the bathroom while Officer Ward watched.⁸ As her medical records confirm, Ms. Bailey reported the incident to Baker staff, stating that it had made her feel “violated” and “so ashamed,” particularly since she has been “raped in the past.”⁹ The staff observations note that she was “sobbing” as she described what happened and that she continued to “experienc[e] severe distress” days later.¹⁰

Another detained individual witnessed the incident and told Officer Ward at the time that his behavior violated PREA, at which point he quickly left the women’s housing unit. Ms.

⁴ National PREA Resource Center, Standard in Focus, <https://www.prearesourcecenter.org/sites/default/files/library/115.15.pdf>.

⁵ See Ex. A, Letter from Hyacinth Bailey (Sept. 30, 2022) (detailing PREA abuses at Baker County Detention Center) (hereinafter “Hyacinth Bailey Letter”).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Ex. B; Hyacinth Bailey Medical Records, Bailey, H. Chart, p. 37, 63 (June 3, 2022) (hereinafter “Hyacinth Bailey Medical Records” or Ex. B).

¹⁰ *Id.* at p. 37, 63.

Bailey's medical records confirm that the incident was initially treated as a "PREA crisis" and reported it to the facility's PREA coordinator.¹¹ However, to the extent that Baker conducted any internal investigation, it appears to have concluded that Ms. Bailey was lying. Ms. Bailey notes that an ICE officer subsequently told Ms. Bailey that she "told a lie" about Officer Ward's presence,¹² despite the fact that a witness substantiated the account and Mr. Ward's presence and actions in the pod that day could easily be confirmed by video footage.¹³

About a month later, Ms. Bailey was asked to sign paperwork closing the PREA allegations, but she refused because she did not believe Baker made accurate or adequate findings. Ms. Bailey reported to the mental health counselor that she felt "defeated by the system and hopeless because she is a detainee."¹⁴

B. Bobbeth Morgan

Ms. Bobbeth Morgan notes that while she was asleep, a male Baker officer entered her cell, without announcing himself, and began taking pictures.¹⁵ Ms. Morgan was in bed and only wearing a bra and her undergarments.¹⁶ Despite her state of undress, the officer continued taking photos in her housing pod.¹⁷ Because of her discomfort and anxiety regarding the incident, she asked to speak to a mental health counselor.¹⁸ The counselor spoke to Ms. Morgan in the women's housing unit in front of other detained individuals and without any privacy or confidentiality.¹⁹ Ms. Morgan wrote a grievance about the incident to which Baker staff responded by simply denying Ms. Morgan's version of the events.²⁰ On multiple occasions, Ms. Morgan has noticed officers staring at her while changing or walking from the shower back to her bed in the cell, when she is dressed only in her undergarments.²¹

¹¹ *Id.* at 37.

¹² Ex. A, Hyacinth Bailey Letter; Ex. B at p. 62-3.

¹³ The ACLU of Florida submitted a public records request to BCSO on August 17, 2022 that included a request for video footage from May 27, 2022. BCSO has failed to respond to these requests, and has specifically refused to provide the requested video footage, alleging that these records are only available via a FOIA request to the U.S. Immigration and Customs Enforcement, despite the fact that such video footage is created, recorded, and maintained by BCSO and such public record requests are commonly made to and received from state agencies and entities.

¹⁴ Ex. B at p. 71.

¹⁵ Ex. A, Letter from Bobbeth Morgan to the ACLU of Florida, (Sept. 3, 2022) (detailing PREA abuses at Baker County Detention Center) [hereinafter Bobbeth Morgan Letter].

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

C. Reports of Continued Voyeurism Impacting Female Detained Immigrants at Baker

As set forth in collective Exhibit A, many of the female immigrants detained at Baker have reported concerns about continuous and ongoing voyeurism and cross-gender viewing while they shower, change clothes, and use the restroom. The women report that during a recent trip to Baker, staff from the DHS Office of Civil Rights and Civil Liberties told the female detained immigrants that the cameras in the security control room were positioned in a way that clearly captures the toilets inside the cells, even when the cell doors are closed.²² The toilets and showers are located along the back wall of the cells; accordingly, the women understood that Baker officers can view the entire cells, including the areas where they undress.²³ The women also confirm that male guards often work in the control room and monitor the cameras, as it is often a male voice on the loudspeaker from the control room making announcements and giving directives. This violates the PREA Standards, which prohibit male officers from monitoring cameras that capture the women using the toilets or showers or otherwise in a state of undress.²⁴

The women report that CRCL inquired about the camera placement and that BCSO staff falsely stated that the women are given privacy curtains.²⁵ This is not true. Women who have been detained at Baker for more than a year confirm that they have never been provided privacy curtains, and there were no privacy curtains up at the time of CRCL's visit. Indeed, women have been threatened with solitary confinement if they attempt to cover their cell windows with a blanket for privacy.

The women detained at Baker report that after CRCL's visit, that ICE ERO Assistant Field Office Director, Cardell C. Smith ("Officer Smith") visited the women's housing unit to assess the situation. The women state that Officer Smith attempted to demonstrate that the control room cameras could not see the women when they use the bathroom when the cell doors are closed. However, the women state that when Officer Smith sat down on one of the toilets himself, he discovered that from his position on the toilet he could clearly see the camera in the housing unit. Officer Smith even asked one of the women to stand directly under the camera in the housing unit to see if she could still see him on the toilet with the cell door closed. Both

²² Ex. A, *Marlissa Joseph grievances* (Oct. 8, 2022) (writing "I was not aware . . . that the camera AND the staff control room had FULL access to viewing me while I was using the toilet or when I was getting dress, this really disturbs me that my PREA rights were violated and that no one acknowledged this issue at that time, and the fact that it was just recently acknowledged when the inspectors from Washington came 09-21-2022").

²³ *Id.*

²⁴ See National PREA Resource Center, Standard in Focus ("To the extent that cameras are focused on an area in which inmates are likely to be undressed or toileting, such as showers, bathrooms, and individual cells, the cameras should only be monitored by officers or nonmedical administrators of the same gender as the inmates viewed through the camera.").

²⁵ *Id.*

Officer Smith and the woman confirmed they could still clearly see one another. The women report that Officer Smith then informed the women that ICE would look into the issue further, including by trying to secure privacy curtains.

However, even after this incident, Baker has not provided privacy curtains. Instead, ICE and BCSO responded by moving the women housed in the middle housing pods (B, C, F, and G), which are directly in view of the camera, to cells A, E, D, and H. ICE and BCSO told the women that cells A, E, D, and H were outside the view of the cameras, though the women report they can still be seen undressing in cell H.

ICE and BCSO's response to these PREA violations is untenable. As a result of the move, the women are now crowded into cells A, E, D, and H. Several cells are housing three or four women when the cells are intended and built for a maximum of two individuals. This forces some women to sleep on the floor without appropriate bedding. ICE and BCSO have also failed to share any long-term remedy, including a plan for when and if ICE detains additional women at Baker. Without changes to the camera placement, staffing, or availability of privacy curtains, ICE and BCSO would not be able to house such women without violating the PREA Standards.

Below are two graphs of the women's housing unit. The first depicts where the women were housed prior to ICE and BCSO moving women out of cells B, C, F, and G. The women in those cells were all subject to cross-gender viewing from the control room. The second graph depicts where the women are presently housed after the move, and illustrates that the remaining cells in the women's unit are unsustainably overcrowded.

Graph 1: Women's Housing Unit Prior to the Move

<u>E</u> Empty	<u>F</u> ²⁶ Empty	<u>G</u> Angelina Lopez Lopez	<u>H</u> Unknown Jocelyn Gomez
<u>A</u> Marlissa Joseph Raquel Cuevas	<u>B</u> Samantha Lindsay Roselene Noel	<u>C</u> Hyacinth Bailey Bobbeth Morgan	<u>D</u> Delimar Sandoval Arianny Vega

²⁶ All cells in yellow represent the cells where the camera can allegedly see women use the restroom and change clothes. They are also the cells that ICE and BCSO recently emptied, creating overcrowding in the women's housing unit.

Graph 2: Women’s Housing Unit Today

<u>E</u> Roselene Noel Unknown Unknown	<u>F</u> Empty	<u>G</u> Empty	<u>H</u> Arianny Vega Jocelyn Gomez Delimar Sandoval
<u>A</u> Marlissa Joseph Angelina Lopez Lopez Raquel Cuevas Unknown	<u>B</u> Empty	<u>C</u> Empty	<u>D</u> Hyacinth Bailey Bobbeth Morgan Samantha Lindsay

ICE and BCSO’s failure to adequately ensure that women detained at Baker can shower, change clothes, and use the restroom in private, especially out of the gaze of male guards, violates PREA standards and the NDS. ICE and BCSO’s decision to move the women instead of providing privacy curtains further violates the rights of the women in ICE custody at Baker and violates the NDS by forcing them to overcrowd and sleep on the floor without appropriate beds or bedding.²⁷ Not only that but forcing the women to overcrowd in cells is inhumane, unhygienic, and exposes the women to greater risk of COVID-19 infection.

II. Recommendations

These accounts by multiple detained immigrants at Baker County Detention Center add to the long record of complaints of abusive and violative treatment at Baker. The ACLU of Florida urges ICE and OIG to recommend the **immediate and permanent termination** of the IGSA that allows Baker County Sheriff’s Office to house immigrants in ICE custody. Our

²⁷ See NDS Standard 1.1 (I)(1) (ensuring appropriate facility conditions, including “detainee living space” and noting that overcrowding can only be done in emergency situations, for a limited amount of time, and must certify to ICE/ERO “that required medical, mental health, and security staffing are available to properly support the additional detainee population. The facility must stay within overall emergency capacity limits and ensure all local fire safety requirements are met.”); see also *id.* at Standards 2.9(I)(H) (“Ordinarily, the number of detainees confined to each cell or room may not exceed the capacity for which it was designed. Under exigent circumstances, before approving any additional cell occupancy on a temporary basis, the facility administrator shall consult with ICE/ERO, who shall consult with ICE/ERO legal counsel. If a decision is made to approve such additional cell occupancy, a report of the action shall be filed with the facility and with the ICE/ERO Field Office Director.”); see also *id.* at Standard 2.9(I)(O) (confirming that a bed and appropriate bedding can only be denied “for medical or mental health reasons if his or her possession of such items raises concerns for detainee safety and/or facility security.”).

investigations, which are ongoing, raise significant concerns that BCSO has a pervasive pattern of PREA violations that are ongoing and which BCSO is either unwilling or unable to adequately remedy. Individuals have filed many internal grievances and come forward publicly to draw attention to the egregious conditions at the facility. BCSO has refused to address and remedy these violations.

We further urge ICE and OIG to consider providing victim services and advocates at no charge to the female detained immigrants where applicable.²⁸ Where consistent with its Victim-Centered Approach policy, ICE should treat these women's allegations as indicia or evidence of potential crimes, and, where applicable, coordinate with law enforcement agencies and USCIS to facilitate their access to U visas. The U-visa program provides temporary immigration status for victims of certain crimes, including "abusive sexual contact" and "sexual exploitation,"²⁹ which can include voyeurism.³⁰ Furthermore, especially given repeated instances of sexual misconduct at the facility, ICE should exercise its prosecutorial discretion by releasing the women currently in ICE custody at Baker, not only to facilitate access to justice and victims-based benefits but also for their safety.³¹ At minimum, we ask that CRCL and OIG conduct a comprehensive investigation of the abuses at Baker through unannounced inspections, interviews with detained individuals, and a thorough review of medical records, video surveillance footage, and any other evidence relevant to the complaints raised in this letter.

I remain available to provide any additional information that may be required or helpful.

Sincerely,



Katie Blankenship
Deputy Legal Director

²⁸ *Victim Resources*, ICE, <https://www.ice.gov/detain/prea> (last visited Oct. 21, 2022).

²⁹ 8 C.F.R. § 214.14(a)(9).

³⁰ See U Visa Law Enforcement and Certification Resource Guide, Department of Homeland Security at 13, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.dhs.gov/xlibrary/assets/dhs_u Visa_certification_guide.pdf; see also Fla. Stat. § 810.14(1)(b) ("A person commits the offense of voyeurism when he or she, with lewd, lascivious, or indecent intent . . . [s]ecretly observes another person's intimate areas in which the person has a reasonable expectation of privacy, when the other person is located in a public or private dwelling, structure, or conveyance.").

³¹ See U Visa Law Enforcement and Certification Resource Guide.