

September 25th, 2019

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Assistant Director for ICE Health Services Corps.
Enforcement and Removal Operations
Immigration and Customs Enforcement
Department of Homeland Security
Washington, DC 20528

Mr. Matthew Albence
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U.S. Immigration and Customs Enforcement
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Mr. Mark A. Morgan
Acting Commissioner
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Washington, DC 20528

Ms. Cameron Quinn
Officer for Civil Rights and Civil Liberties
Office for Civil Rights and Civil Liberties
Department of Homeland Security
Washington, DC 20528

Mr. Joseph V. Cuffari
Inspector General
Office of Inspector General
Department of Homeland Security
Washington, DC 20528

RE: Failure to provide adequate medical and mental health care to LGBTQ people and people living with HIV in immigration detention facilities

Dear Dr. Smith, Mr. Albence, Mr. Morgan, Ms. Quinn, and Mr. Cuffari:

We, the undersigned organizations, file this complaint on behalf of current and formerly detained lesbian, gay, bisexual, transgender, and queer individuals and people living with HIV (LGBTQ, PLWHIV) in immigration detention facilities. This complaint details recent accounts of Immigration and Customs Enforcement's (ICE) and Customs and Border Protection's (CBP) provision of egregiously inadequate medical and mental health care, jeopardizing the health, safety, and lives of individuals in federal custody while they exercise their legal right to pursue their immigration claims and seek protection in the United States. ICE and CBP's continued failure to provide such basic care is in clear violation of the U.S.

Constitution, statutory law, and applicable detention standards.¹ This failure has led to the deaths of multiple LGBTQ, PLWHIV migrants, and continues to cause irreparable harm.

In light of the substantial evidence of ICE's inability to safely house and adequately care for LGBTQ, PLWHIV individuals in its custody, we call for ICE to exercise its parole authority and release all LGBTQ, PLWHIV individuals on their own recognizance. We also urge the Office of Inspector General (OIG) to work with the Office for Civil Rights and Civil Liberties (CRCL) to immediately conduct a systemic investigation into the provision of medical and mental health care to LGBTQ, PLWHIV individuals in ICE and CBP custody. We call on ICE to comply with the OIG's January 29, 2019 recommendation and use its contracting tools to hold accountable those detention facilities that fail to meet the applicable standards of care by ending their contracts and imposing financial penalties. Finally, we call on DHS to strengthen its oversight of all facilities to identify and promptly remedy abuses and medical neglect within these centers.

The Abuse of LGBTQ, PLWHIV Individuals in DHS Custody Is Well-Documented

The widespread abuse and mistreatment of LGBTQ, PLWHIV individuals in ICE custody is well-documented. The Department of Homeland Security (DHS) has already received countless reports of LGBTQ, PLWHIV individuals' experiences with verbal, sexual and physical violence, medical negligence, inhumane housing conditions, and overuse of solitary confinement in both public and private detention centers.² Rather than being confined to a few detention centers, these reports are widespread and consistent, demonstrating the systemic inability of DHS to meet even basic standards of care for LGBTQ, PLWHIV migrants.

For example, just two months prior to Johana Medina's death, a complaint was sent to DHS detailing the rampant discrimination and violence inflicted on LGBTQ individuals at Otero County Processing Center, the detention center where Johana Medina died as a result of the substandard care she received in DHS custody.³ Even after this complaint was received and after Johana Medina's death, ICE continues to deny transgender women and gay and bisexual men at Otero basic health care and provides misinformation on how to access hormone therapy. In fact, an investigative report published in 2018 demonstrated that DHS has received more than 200 complaints of abuse and mistreatment from individuals housed at Otero

¹ The United States is additionally obligated under international law to provide adequate health care for detained immigrants. Namely, the United States is a signatory to the International Covenant on Economic, Social, and Cultural Rights, which guarantees everyone a right to physical and mental health. United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, Art. 12, December 16, 1966, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

² See National Immigrant Justice Center, Submission of Civil Rights Complaints Regarding Mistreatment and Abuse of Sexual Minorities in DHS Custody, available at <http://www.immigrantjustice.org/sites/immigrantjustice.org/files/OCRCL%20Global%20Complaint%20Letter%20April%202011%20FINAL%20REDACTED.pdf>; Sharita Gruberg, "Dignity Denied: LGBT Immigrants in U.S. Immigration Detention," (Center for American Progress 2013) available at <https://www.americanprogress.org/wp-content/uploads/2013/11/ImmigrationEnforcement.pdf>; Human Rights Watch, "Do You See How Much I'm Suffering Here? Abuse Against Transgender Women in US Immigration Detention," (Human Rights Watch 2016) available at https://www.hrw.org/sites/default/files/report_pdf/us0316_web.pdf; Letter from Rep. Kathleen Rice to DHS Secretary Kirstjen Nielsen (May 30, 2018)(available at https://kathleenrice.house.gov/uploadedfiles/2018.05.30_lgbt_immigrants_in_ice_detention_letter_to_sec_nielsen.pdf).

³ ACLU New Mexico, Santa Fe Dreamers Project, and Las Americas: Immigrant Advocacy Center; Detention Conditions Impacting the Safety and Well-Being of LGBTQ Immigrants in the Otero County Processing Center, https://www.aclu-nm.org/sites/default/files/field_documents/advance_copy_of_3.25.2019_las_americas_santa_fe_dreamers_project_aclu-nm_letter_to_dhs_re_otero.pdf

County Processing Center, and yet, Otero continues to operate today and DHS has failed to take adequate actions to improve conditions at the facility.⁴

Another complaint filed by the American Immigration Council (Council) and the American Immigration Lawyers Association (AILA) in 2018 detailed the lack of access to basic medical care and mental health care at the Denver Contract Detention Facility in Aurora, Colorado.⁵ DHS failed to meaningfully address the concerns raised in the complaint, and one year later, in June 2019, the Council and AILA supplemented the complaint with additional evidence of inadequate medical and mental health care.⁶ Specifically, the complaint includes the case of a transgender woman who reported she was denied access to hormone treatment, and was subjected to serious sexual and verbal harassment by facility guards and other detained individuals.

On July 9th, 2019, twenty-nine transgender women and non-binary individuals held at Cibola County Correctional Center in New Mexico called for an investigation into poor medical services—including HIV care—and mistreatment at the facility.⁷ In April, 2019, seven organizations, including the American Civil Liberties Union, investigated Cibola and reported that the center had inadequate medical and mental health care, abuses related to solitary confinement, discrimination and verbal abuse, and inappropriate meals, among other issues.⁸

The OIG’s own investigation of five ICE facilities, including Santa Ana City Jail where the previous transgender housing pod was located and Otero County Processing Center, “identified problems that undermine the protection of detainees’ rights, their humane treatment, and the provision of a safe and healthy environment” and “potentially unsafe and unhealthy detention conditions.”⁹ In an earlier inspection of the Essex County Correctional Facility, the OIG noted the “serious issues” it identified “not only constitute violations of ICE detention standards but also represent significant threats to detainee health and safety.”¹⁰

Rather than take effective action to address the numerous complaints of abuse and mistreatment of LGBTQ, PLWHIV individuals in detention, DHS has focused on subjecting an increasing number of people to these horrific conditions. The number of individuals in immigration detention is at a historical

⁴ Craig, Nathan, and Margaret Brown Vega. “‘Why Doesn’t Anyone Investigate This Place?’: Complaints Made by Migrants Detained at the Otero County Processing Center, Chaparral, NM Compared to Department of Homeland Security Inspections and Reports.” El Paso, TX: Detained Migrant Solidarity Committee (DMSC) and Freedom for Immigrants (FFI), 2018.

⁵ Failure to provide adequate medical and mental health care to individuals detained in the Denver Contract Detention Facility, https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_demands_investigation_into_in_adequate_medical_and_mental_health_care_condition_in_immigration_detention_center.pdf

⁶ SUPPLEMENT—Failure to Provide Adequate Medical and Mental Health Care to Individuals Detained in the Denver Contract Detention Facility, https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_supplement_failure_to_provide_adequate_medical_and_mental_health_care.pdf

⁷ Laura Gomez, “Migrants held in ICE’s only transgender unit plead for help, investigation in letter,” *AZ Mirror*, July 9, 2019 <https://www.azmirror.com/2019/07/09/migrants-held-in-ices-only-transgender-unit-plea-for-help-investigation-in-letter/>.

⁸ Detention Conditions Impacting the Safety and Well-Being of Immigrants in the Cibola County Correctional Center in Milan, New Mexico. April, 2019 https://www.aclu-nm.org/sites/default/files/field_documents/2019_04_15_nm_stakeholders_letter_to_crcl_re_cibola_county_correctional_center.pdf

⁹ OIG-18-32

¹⁰ OIG-19-20

high and keeps rising, despite the fact that many of these individuals are eligible for release. By the department's own count, 300 individuals who identify as transgender have been in the custody and supposed care of ICE since October of 2018 alone. This is the highest number of transgender migrants in the care of the U. S. government ever recorded. At the same time, DHS has failed to take measures to ensure the basic health and safety of this population. It is unjustifiable for the U.S. Government to subject an increasing number of individuals, including those qualified as vulnerable populations such as LGBTQ, PLWHIV individuals, to these dangerous conditions.

DHS Has Consistently Demonstrated It Is Incapable of Providing Adequate HIV Care

The stories included in this complaint shed light on the effects of growing roadblocks in access to basic healthcare as well as lifesaving HIV care in detention due to chronic, systemic medical neglect and lack of oversight in detention. While ICE has adopted three sets of detention standards, including PBNDS 2011, it does not require contractors to adopt any recent standards when it enters into new contracts or contract extensions. The result is a “patchwork system in which facilities are subject to differing standards and some are subject to no standards at all”¹¹, and people are outright denied access to care, delayed in receiving medical attention, and are left in conditions that exacerbate their physical and mental health ailments.

The risks that accompany substandard HIV care are serious, and they arise from the inconsistent or delayed access to treatment. This is why 2011 PBNDS standards have aimed—without success—to secure uninterrupted access to HIV/AIDS medication for people in detention.

The U. S. government recognizes that poor adherence to HIV treatment is associated with less effective viral suppression. The U. S. Department of Health and Human Services underscores that strict adherence to antiretroviral therapy is key to sustained HIV suppression, reduced risk of drug resistance, and survival, as well as decreased risk of HIV transmission.¹² An unsuppressed viral load may risk the immediate health of HIV positive individuals and it will also risk creating treatment resistance. If patients fail to respond to their given drug regimen, they are moved to second line drugs, which may be more expensive or difficult to manage.^{13,14}

Evidence has shown that individuals with HIV who keep adherence to HIV medicine as prescribed can stay virally suppressed and thus have effectively no risk of transmission. In fact, the Centers for Disease Control and Prevention's (CDC) HIV Treatment as Prevention Technical Fact Sheet reports a 96% reduction in HIV transmission risk among heterosexual mixed-status couples where the HIV-positive partner started antiretroviral therapy (ART) immediately versus those delaying ART initiation.¹⁵ Far too

¹¹ <https://immigrantjustice.org/research-items/toolkit-immigration-detention-oversight-and-accountability>

¹² US Department of Health and Human Services, “Guidelines for the use of antiretroviral agents in HIV-1-infected adults and adolescents”. Revised July 2019. <https://aidsinfo.nih.gov/guidelines/html/1/adult-and-adolescent-arv/>

¹³ Kenneth L. Schaecher, Addressing Adherence Challenges Associated With Antiretroviral Therapy: Focus on Noninfectious Diarr, The Importance of Treatment Adherence in HIV, September 29, 2013. https://www.ajmc.com/journals/supplement/2013/a472_sep13_hiv/a472_sep13_schaecher_s231

¹⁴ Jane Mwangi, CDC Kenya (Centers for Disease Control and Prevention), Our Research in Kenya: Finding Ways to Improve HIV Treatment Access and Outcomes, <https://blogs.cdc.gov/global/2012/07/26/our-research-in-kenya-finding-ways-to-improve-hiv-treatment-access-and-outcomes/>

¹⁵ Centers for Disease Control and Prevention CDC, Evidence of HIV Treatment and Viral Suppression in Preventing the Sexual Transmission of HIV. HIV Treatment as Prevention Technical Fact Sheet. <https://www.cdc.gov/hiv/pdf/risk/art/cdc-hiv-art-viral-suppression.pdf>

many people in detention are outright denied access to HIV-related care or experience significant delays. This delay of treatment is cruel, counterintuitive to ending HIV transmission, and causes irreparable harm.

Reports of Deficient Medical and Mental Health Care for LGBTQ, PLWHIV Individuals

Below are multiple accounts of medical negligence and mistreatment of LGBTQ, PLWHIV individuals in detention centers across the country. This by no means represents all of the stories of abuse and mistreatment, but rather provides a glance at the systemic harms and inadequate care provided to LGBTQ, PLWHIV individuals under the care of DHS and CBP. There are many stories not included here for fear of reprisal.

Detention Centers Managed by CoreCivic

Cibola County Correctional Center - Milan, New Mexico

A. is a transgender woman from El Salvador who has been detained in Cibola County Detention Center for almost 20 months. A.'s medical records indicate she suffered from advanced syphilis and, according to a pro bono medical evaluation, her medical records indicate that her condition has progressed to neurosyphilis, increasingly affecting her cognitive abilities. Despite this evidence and her counsel's advocacy, ICE has continuously failed to provide her penicillin, a well-known and easily accessible medication. ICE has also repeatedly refused to release A. from detention so she can get the medical treatment she requires.

Otay Mesa Detention Center - San Diego, California

G. is a 34-year-old HIV positive Salvadoran trans woman and activist who worked to advance trans rights in Latin America and the Caribbean prior to applying for asylum and was detained in male housing for more than 6 months in Otay Mesa in 2017. During this time, her HIV medication was withheld. Additionally, she was misdiagnosed with tuberculosis. Rather than treating her HIV, she was over-medicated in attempts to treat tuberculosis she did not have.

Otay Mesa Detention Center - San Diego, California

Y.E. is a transgender woman from Mexico. She was brutally raped, tortured, beaten and kept hostage by the cartels for months because she dressed as a woman. Again and again she was gang raped. The rapes caused tears in her anus and rectum. The rapes also resulted in her contracting HIV. After she presented herself at the border, lawfully asking for asylum, she was placed in a detention center and was taken off medication for HIV for a significant amount of time. In addition to requesting treatment for HIV, she repeatedly asked for help with the tears in her anus/rectum. The medical staff at the detention center refused to address it because the tearing did not happen at the facility and because they believed it to be too invasive. Because no treatment was given, she caught an infection that resulted in anal bleeding. She was held in custody for months before finally being released on parole.

Otay Mesa Detention Center - San Diego, California

S.A.G.C. is an HIV positive transgender woman who has been repeatedly abused and raped because of anti-transgender bias in her home country of El Salvador. The severity of the abuse in her country was such that during the credible fear interview both the asylum officer and the translator needed a moment because of the horrors she described. Although her health was deteriorating in detention and she felt harassed for being a transgender woman in an all-male pod, she was kept in custody until she was granted a \$2500 bond—even though she had letters of support from her sponsor and the community that would be

accepting her. That bond amount was prohibitive to SA.G.C. and it was only after a bond fund paid for her release that she was able to get out of detention.

Otay Mesa Detention Center- San Diego, California

B.C.H. is an asylee from El Salvador. He fled El Salvador after his life was threatened by gangs on account of his sexual orientation and political opinion. B.C.H. entered Otay Mesa Detention Center in May of 2018 weighing 220 pounds. When he was released in September of 2018, he weighed only 190 pounds. B.C.H. required serious psychological support due to his traumatic history of sexual abuse and assault. While at Otay Mesa, he mentioned to Al Otro Lado that he was seeing a psychologist, but at one point, despite the threat of imminent death should he return to El Salvador, he was certain he wanted to stop fighting his case and return to El Salvador due to the conditions at Otay Mesa. We are unsure what, if any, psychological treatment he was receiving, and his unaddressed trauma combined with his extreme weight loss raised serious red flags regarding the adequacy of medical care at the facility. Despite his severe weight loss and mental trauma, his parole bond was set at \$10,000, an amount impossible for him to pay.

Otay Mesa Detention Center- San Diego, California

S.Y.M.M. is a 47-year-old gay man from Honduras. He is blind in one eye and suffers from a myriad of health conditions, including hypertension and the growth of a cyst on his head. S.Y.M.M.'s ICE Medical Records indicate that the pain in his head resulting from the cyst on his scalp worsened significantly while detained. Additionally, at one point, one of his teeth became severely infected, and he was never treated for that ailment. S.Y.M.M.'s parole request was denied, and he was only able to leave the facility when Al Otro Lado submitted a new request. Even so, his bond was set at a prohibitively high \$5,000. He was only released when a community organized to pay his bond.

Otay Mesa Detention Center- San Diego, California

R.E.P.L. is a transgender woman from Guatemala who was sexually abused by her father and her uncles. When she tried to escape the constant sexual abuse of the men in her family, local police tracked her down, assaulted her, and returned her to them. When she finally escaped her family, R.E.P.L. was taken in by a woman who was affiliated with the 18th Street Gang. This woman forced her under duress to be a sex worker, and R.E.P.L. was held captive for two years. Police gang-raped R.E.P.L. when she tried to escape that woman's house and she had no choice but to flee Guatemala to seek protection in the United States. En route to the United States, R.E.P.L. was again violently gang-raped while in Mexico and believes she contracted HIV. R.E.P.L. requested asylum in January of 2019 and was subsequently detained at Otay Mesa Detention Center. She expressed her concern to staff at the facility that she was HIV positive, making countless requests in writing for an HIV test. Al Otro Lado staff reached out on numerous occasions to R.E.P.L.'s deportation officer to ensure she received the necessary testing but never received a response. While R.E.P.L. was detained at Otay, there was an outbreak of several infectious diseases, including mumps and chicken pox. Therefore, it was critical for her to know whether she had HIV or not, as her immune system may have been severely compromised. The lack of any initiative by the facility to ensure she was tested for HIV put her health at serious, life-threatening risk. Despite her traumatic past and serious health concerns, the immigration judge refused to grant her release on her own recognizance and set a bond in the amount of \$1,500. She was only released after a community organized to pay her bond.

Cibola County Correctional Center- Milan, New Mexico

C.L. is a transgender woman from Peru who was in detained for nearly five years. She was transferred from Santa Ana Jail in California to Cibola County Correctional Center when Cibola first opened its

transgender unit. While in Cibola, she repeatedly requested medical care for Hepatitis C, which she'd been denied at Santa Ana, and continued to be denied treatment after the transfer. She was in need of urgent medical care several times while in detention, and recalls once being in the hospital for two weeks. She was shackled by her ankles and her wrists and two guards were posted outside her door. She wondered why they would do this when she was in no condition to escape.

Otay Mesa Detention Center- San Diego, California

Y is a transgender HIV-positive woman from Mexico. Upon her arrival at the border, Y was detained in San Ysidrio, where immigration officials confiscated her HIV medicine and kept her in a freezing room for nine days. Y asked three times for her HIV medication back and was denied each time. Y was later transferred to Otay Mesa Detention Center, where she was once again denied her life-saving medication for an entire month. Furthermore, the Otay Mesa medical staff refused to provide adequate treatment for the injuries Y suffered during a brutal sexual assault in Mexico. In Otay Mesa, Y was housed with the male population and was harassed by two detained men and an ICE official. When she tried to make complaints about the harassment to the facility manager, the manager dismissed her by referring to her complaint as "gossip."

Otay Mesa Detention Center - San Diego, California and Hudson County Correctional Facility - Kearny, New Jersey

E is a gay man from Honduras. Upon arrival to the United States, E was detained at the Otero County Processing Center and, later, at the Hudson County Correctional Facility. E faced continuous harassment in both detention facilities from guards and other detained individuals because of his sexual orientation. In Hudson, the officers and other individuals in detention constantly referred to E as "gay" instead of his name or other appropriate forms of address. E also had serious dental problems while he was in Hudson. However, the medical staff refused to provide E with the necessary medical treatment, in contradiction to the applicable Performance-Based National Detention Standards.

Otay Mesa Detention Center- San Diego, California

P is a 38-year old Honduran citizen and transgender woman living with HIV. She entered without inspection at the southern border in California on February 2, 2019, and was detained at Otay Mesa for about 6 months. In Honduras, local police stopped P because she was dressed in women's clothes and then they raped her. P's employer in Honduras continuously harassed and threatened her until one day they hired people to beat her up in front of several witnesses who came forward. While she was detained at Otay Mesa, her HIV medication was delayed and she never received hormone therapy. As a result, her mental and physical health deteriorated.

Detention Centers Managed by GEO Group, Inc.

Adelanto Detention Center - Adelanto, California

J. is a transgender man from El Salvador who has been detained in Adelanto Detention Center for about nine months. Before being detained, J. had been receiving gender-affirming hormone therapy for many years. Since he has been detained, however, J. has not received gender-affirming hormone treatment despite numerous requests. J.'s mental and physical health have significantly deteriorated as a result.

Adelanto Detention Center - Adelanto, California

J. is a gay man, a national of Mexico, and a Franco-Gonzalez class member, who was deemed -- by an immigration judge -- as non-competent to represent himself during his removal proceedings due to his mental health. J. was diagnosed with the following mental health disorders: major neurocognitive disorder

due to multiple etiologies with behavioral disturbance; amphetamine-type substance use disorder, severe, in a controlled environment; major depressive disorder, recurrent, severe with psychotic symptoms; unspecified neurodevelopmental disorder (history of a learning disability). Due to signs of his deteriorating health, in January 2018 his legal representative requested HIV testing for J. Despite being court ordered, the HIV test was not performed for more than seven months. J.'s medical records indicate that in August of 2018 he received a positive HIV diagnosis, and that GEO medical staff began antiretroviral treatment, over eight months after his legal representative first requested it.

Adelanto Detention Center - Adelanto, California

I.S.I identifies as LGBTQ and has a diagnosis of bipolar disorder. She has been in ICE custody since September of 2018. Despite complications with her mental health, she was found competent by an immigration judge and denied a free appointed immigration attorney. Since then, she has attempted to die by suicide at least four times. Her attorney at the Los Angeles LGBT Center was unable to locate her client for over two weeks during one of these periods. She is not safe in ICE Custody and does not feel safe. She reports that the medical care she is receiving is not helping her.

South Texas Detention Facility - Pearsall, Texas

A. is an HIV+ transgender woman asylum seeker who has been detained at the South Texas Detention Center ("STDC") since December 2014. A. has suffered from severe medical problems and improper treatment since her arrival at STDC. She has lost more than 25 pounds (and is now severely underweight at 89 pounds) since the start of detention, and has been suffering from insomnia, nausea, and loss of appetite because of the side effects of her medication, and possible incompatibility of her hormone therapy and antiretroviral drugs administered by the detention center. She only gets 3 hours of sleep each night, or sometimes none at all. Because of the symptoms from her medication, she struggles to consume and retain food, and relies on vitamins purchased with her own funds from the commissary to obtain nutrition and sustenance.

Although A receives nutritional shakes to supplement her meals, she continues to experience nausea, and the underlying problems of her medication possibly interfering with each other, or mis-prescribed medication has yet to be sufficiently addressed.

In June and July, 2019, she experienced two incidents where she fainted and lost consciousness for hours. In the first incident, other individuals in detention asked the guards for medical help, but either because of a delay in dispatch or response, medical services providers did not reach A. until hours later. In the second incident, which occurred in the late morning, she was taken to an outside facility, where she was told that her lungs were swollen and that she had a sinus infection, and merely given acetaminophen and returned to the facility in the afternoon. Unfortunately, even though A has raised these issues with the facility and with ICE, her medical issues have not been comprehensively addressed, and she continues to rapidly lose weight as a result of her nausea and lack of sleep, and her health continues to deteriorate. She expresses a fear of dying at STDC.

Aurora Detention Facility - Aurora, Colorado

L.M. is a transgender woman who was detained for six months in Aurora, where she was detained with men and was harassed on a regular basis. Soon after her arrival, she reported to detention center staff that she needed to continue the hormone treatment she had been receiving. Staff responded that she would be put on a list to see a doctor. However, L.M. did not receive a doctor's appointment for over two months. At the appointment, the medical provider told her they would need to consult her medical records to find her hormone prescription, and if they could not find it, would need to refer her to a specialist. She did not

receive any updates for another two months, at which point she received an appointment with a specialist, which was then canceled. L.M. finally received the appointment and her prescription the day before her release but never received the hormones.

Due to the abrupt end to her treatment, L.M. experienced nausea, difficulty sleeping, lack of appetite, mood changes, and depression during the six months she was detained. Due to the harassment she faced for being a transwoman detained with men, she reported these incidents to the detention center guards but their only response was to put her in solitary confinement, claiming it was for her own safety. She was put in solitary confinement several times for up to a month at a time, a practice that can rise to the level of inhuman and degrading treatment and even torture.

Detention Facilities Managed by LaSalle Corrections

Irwin County Detention Center- Ocilla, Georgia

S. is a bisexual woman from Jamaica who is HIV positive and has been residing in the U.S. since she was four years old. She was abandoned and became homeless when she was around ten years old and was sexually exploited throughout her teenage years. Given her prostitution-related charges, she has been forced to remain in ICE custody throughout the pendency of her proceedings. Since being detained, she has frequently gone days without her HIV medication. She has to write a letter to the warden every month to receive her HIV medicine and if she does not write the letter, she does not receive her refill. Occasionally, she receives the wrong brand of HIV medication. The head of medical at the facility has also made it difficult for S. to receive blood work, leaving S. unable to monitor her levels. In addition, a nurse disclosed S.'s HIV status to the guards.

Irwin County Detention Center- Ocilla, Georgia

C, an east Asian trans man, has been held in immigration detention for almost two years. For the first 19 months, he was held in solitary confinement solely because he is a transgender man. While in solitary, his health suffered due to inadequate medical care, including not receiving his blood pressure medicine, being given the wrong treatment for a severe illness which led to weeks of extreme stomach pain, and being fed food that made his diabetes worse. At one point while he was getting a hormone shot, the person giving it to him was so incompetent that the syringe broke while inside his leg. Further, C has also been identified and confirmed to be a victim of trafficking by federal law enforcement. In fact, federal law enforcement confirmed that his convictions were tied to human trafficking but still, ICE refuses to release him because of his convictions. C was recently transferred out of Irwin Detention Center, but is still being held in immigration detention, despite ICE's awareness of his victim status.

Detention Centers Managed by ICE

Krome Service Processing Center- Miami, Florida

D. is a gay, HIV positive man from Russia. He had already applied for asylum, when he was unjustly detained in a Florida detention facility in 2017, while returning from a trip to the U.S. Virgin Islands. He went multiple days without access to antiretroviral medication and developed an opportunistic infection. Because he has a compromised immune system, this was life threatening. When he asked to see a doctor, D. was forced to spend multiple days in a freezing waiting room. ICE refused to release him until the Associated Press ran a story about his mistreatment.

DHS is Violating Legal Standards by Refusing Medical Treatment and Delaying Care

The inhumane and punitive conditions described above are in direct contravention of established law and norms. It is the responsibility of DHS to hold the detention facilities under its purview to the legal requirements and to appropriately penalize them when they continuously harm migrants in their care.

Constitutional Protections

The Fifth Amendment Due Process Clause of the U.S. Constitution protects substantive rights of “all persons” present in the United States, including detained immigrants.¹⁶ As such, people in detention are entitled to, at a bare minimum, adequate medical care, as well as adequate food, shelter, clothing, and reasonable safety.¹⁷

Immigration detention is civil, not criminal, in nature.¹⁸ Unlike criminal detention, civil detention cannot be punitive and any restriction on a person’s liberty must be rationally related to a legitimate governmental goal.¹⁹ In the context of criminal detention, the Eighth Amendment clearly prohibits “deliberate indifference” on the part of the detention staff to a detained individual’s “serious medical need[s].”²⁰ Courts have held that people in civil detention are entitled to a standard of care greater than – or at the very least, equal to – the standard of care afforded to people in criminal detention.²¹ Indeed, the Ninth Circuit has held that, unlike people in criminal detention, civilly confined individuals need not prove “deliberate indifference” to demonstrate a violation of their Constitutional rights.²²

The accounts of abuse and neglect detailed above describe profoundly deficient physical and mental health care, including the denial of life-saving HIV medication. As such, ICE and CBP have violated the higher Eighth Amendment standard, showing deliberate indifference to serious medical needs and failing to provide critical care. These failures on the government’s part, which have caused detained immigrants to endure debilitating pain, suffer serious injury and have placed them in mortal danger, amount to Constitutionally prohibited punishment. It is clear that LGBTQ, PLWHIV immigrants cannot be housed safely in detention and therefore should be released.

¹⁶ *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

¹⁷ *See Youngberg v. Romeo*, 457 U.S. 307, 315-16, 324 (1982) (finding civil detainee entitled to adequate food, shelter, clothing, medical care and reasonable safety under the Fourteenth Amendment).

¹⁸ *Zadvydas*, 533 U.S. at 690 (acknowledging that immigration detention is civil).

¹⁹ *Bell v. Wolfish*, 441 U.S. 520, 535-539 (1979).

²⁰ *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (“prison official’s deliberate indifference to an inmate’s serious medical needs is a violation of the Eighth Amendment’s prohibition against cruel and unusual punishment”).

²¹ *Jones v. Blanas*, 393 F.3d 918, 931-34 (9th Cir. 2004), *cert denied*, 546 U.S. 820 (2005) (a civilly detained person is entitled to “‘more considerate treatment’ than his criminally detained counterparts. . . . Therefore, when a [civil] detainee is confined in conditions identical to, similar to, or more restrictive than those in which criminal counterparts are held, we presume that the detainee is being subjected to ‘punishment.’” (internal citations omitted)); *see also Youngberg v. Romero*, 457 U.S. 307, 321-32 (1982) (“Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.”).

²² *Jones* 393 F.3d at 934; *see also Hydrick v. Hunter*, 500 F.3d 978, 994 (9th Cir. 2007) (“[T]he Eighth Amendment provides too *little* protection for those whom the state cannot punish.” (emphasis in original, citations omitted)).

Statutory Law

Various federal and state statutes also protect detained immigrants. For instance, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 provide protections from discrimination and mandate access to adequate and reasonable accommodations for LGBTQ, PLWHIV immigrants with physical and mental disabilities who are detained by ICE and CBP.²³ Likewise, the Prison Rape Elimination Act imposes national standards for the prevention, reduction, and punishment of prison rape, including standards for the provision of physical and mental health services to individuals who have been the victim of sexual abuse.²⁴ The stories above illustrate that not only are detention centers failing to provide even the most basic care to LGBTQ, PLWHIV after experiencing sexual violence, they are placing people in inhumane segregation leading to a further deterioration of physical and mental health. This has forced many LGBTQ, PLWHIV individuals to abandon viable claims for asylum and return to the violent conditions from which they fled in the first place. This is the very outcome asylum protections were created to prevent.

Detention Standards

In addition to these legal obligations, ICE and CBP must comply with their own set of standards, which are designed to protect detained immigrants. Notably, as currently applied, these standards have failed to translate into adequate physical and mental health care for LGBTQ, PLWHIV individuals due to inconsistent application, insufficient oversight and lack of accountability. In other words, ICE and CBP are failing to comply with their own standards.

The most comprehensive of these standards, the 2011 Performance-Based National Detention Standards (2011 PBNDS), updated in 2016, set forth extensive medical care requirements for ICE. For instance, the 2011 PBNDS require appropriate physical, dental, and mental health care as well as pharmaceutical services, 24-hour access to emergency care, and timely responses to medical complaints for all detained people.²⁵ They also require language services for individuals with limited English proficiency during any physical or mental health appointment, treatment, or consultation.²⁶ The stories above illustrate that far too many LGBTQ, PLWHIV individuals are flat out denied access to care or are left waiting for months on end for treatment.

For PLWHIV, the facility has more specific requirements. For example, it must provide medical care consistent with national recommendations and guidelines disseminated through the U.S. Department of Health and Human Services, the CDC, and the Infectious Diseases Society of America, and must provide access to all medications for the treatment of HIV currently approved by the FDA.²⁷ Moreover, adequate supplies of such medications must be kept on hand to ensure newly detained individuals are able to

²³ Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990), http://library.clerk.house.gov/reference-files/PPL_101_336_AmericansWithDisabilities.pdf;
Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (1973),
<https://www.gpo.gov/fdsys/pkg/STATUTE-87/pdf/STATUTE-87-Pg355.pdf>.

²⁴ 6 C.F.R. §§ 115.81 - 115.83 (2014).

²⁵ U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011, 257-81 (2016), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

²⁶ *Id.* at 264.

²⁷ *Id.* at 263.

continue with their treatments without interruption.²⁸ Detained immigrants are entitled to request an HIV test at any time.²⁹ Clearly, this is not happening.

The 2011 PBNDS also mandate that special consideration be given to people at risk of sexual assault, including individuals who have self-identified as members of the LGBTQ community.³⁰ With specific regard to transgender individuals, the 2011 PBNDS require that those individuals who were receiving hormone therapy when taken into ICE custody, maintain continued access to such therapy.³¹ The guidelines further demand that detained transgender people have access to “mental health care, and other transgender-related health care and medication based on medical need.”³² Once again, this complaint and others demonstrate that DHS is failing to meet these standards and transgender people are experiencing immense suffering as a result.

The other two national ICE standards — the National Detention Standards (NDS), issued in 2000 and the 2008 PBNDS – while less comprehensive than the 2011 PBNDS, also provide guidelines to ensure the health and safety of detained immigrants. These guidelines include provisions that establish access to health services,³³ mental health screenings and treatment plans,³⁴ and suicide prevention protocols.³⁵ These standards also require detention facilities to provide medical treatment to PLWHIV.³⁶

In addition to these generalized detention standards, ICE also issued a memorandum concerning the care of detained transgender immigrants in 2015. The memorandum sets forth guidance to ensure the safety of transgender immigrants in ICE’s custody. More specifically, the memorandum includes contract modifications for facilities to ensure access to adequate healthcare, including access to hormone therapy. The memorandum also states that during initial processing or risk classification assessment of an

²⁸ *Id.*

²⁹ *Id.* at 263.

³⁰ *Id.* at 135.

³¹ *Id.* at 273.

³² *Id.* at 274.

³³ U.S. Immigration and Customs Enforcement, Detention Operations Manual: Medical Care (2000), <https://www.ice.gov/doclib/dro/detention-standards/pdf/medical.pdf>; U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards: Medical Care, 1 (2008), https://www.ice.gov/doclib/dro/detention-standards/pdf/medical_care.pdf.

³⁴ U.S. Immigration and Customs Enforcement, Detention Operations Manual: Medical Care, 3 (2000), <https://www.ice.gov/doclib/dro/detention-standards/pdf/medical.pdf>; U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards: Medical Care, 13-14 (2008), https://www.ice.gov/doclib/dro/detention-standards/pdf/medical_care.pdf.

³⁵ U.S. Immigration and Customs Enforcement, Detention Operations Manual: Suicide Prevention and Intervention (2000), <https://www.ice.gov/doclib/dro/detention-standards/pdf/suciprev.pdf>; U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards: Suicide Prevention and Intervention, 1-2 (2008), https://www.ice.gov/doclib/dro/detention-standards/pdf/suicide_prevention_and_intervention.pdf.

³⁶ U.S. Immigration and Customs Enforcement, Detention Operations Manual: Medical Care, 7 (2000), <https://www.ice.gov/doclib/dro/detention-standards/pdf/medical.pdf>; U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards: Medical Care, 7-8 (2008), https://www.ice.gov/doclib/dro/detention-standards/pdf/medical_care.pdf.

individual, the detention facility staff should inquire about a person's gender identity³⁷ and make an individualized placement determination to ensure person's safety, including whether detention is warranted. Where feasible and appropriate, ICE should house transgender immigrants in facilities that are equipped to care for transgender people.³⁸ ICE also has a Directive on Gender Dysphoria and Transgender Detainees which applies to all IHSC personnel and requires an IHSC medical provider to complete a physical examination for transgender individuals within two business days of intake and that a behavioral health provider must also perform a mental health evaluation for transgender patients within the same timeframe.³⁹ Furthermore, IHSC "must initiate and/or continue hormone therapy for [gender dysphoria] detainees as clinically indicated and in accordance with the IHSC Clinical Guidelines for the Treatment of GD."

Similarly, CBP has a set of standards to provide for the health and safety of individuals in its custody. These standards require CBP officials to inspect detained people for "any signs of injury, illness, or physical or mental health concerns . . . ,"⁴⁰ and in cases of emergency, CBP officials must immediately call medical services.⁴¹ The standards also note that individuals known to be on life-sustaining or life-saving medical treatment, LGBTQ people, and individuals with mental or physical disabilities may require additional care and oversight.⁴² Additionally the standards require that during transportation of a detained person, CBP officials must be on alert for signs of medical symptoms, and provide or seek medical care in a timely manner.⁴³

While the strength of protections accorded by different detention standards varies, even the weakest standards set minimum requirements for the health and safety of detained people. Unfortunately, however, as the experiences of LGBTQ, PLWHIV individuals detailed in this letter demonstrate, ICE and CBP routinely fail to comply with the most basic requirements.

DHS Cannot Safely House LGBTQ, PLWHIV Individuals and Must Fix the Broken Oversight System that Allows These Offenses to Continue with No Accountability

ICE and CBP blatantly disregard the health of LGBTQ, PLWHIV individuals and repeatedly fail to not only meet legally required standards of care but even their own detention standards. The countless reports of outright denial of medical treatment and the continuous maltreatment clearly demonstrate that DHS cannot house LGBTQ, PLWHIV individuals safely. Furthermore, there is no reason to keep LGBTQ, PLWHIV people in detention in the first place.

Further, DHS is failing to meet their responsibility of oversight. DHS's own reports demonstrate that contracted agencies who are responsible for investigations do not take their responsibilities seriously. What's more, even when medical neglect and mistreatment is substantiated, DHS rarely uses its authority

³⁷ U.S. Dep't. of Homeland Security, *Further Guidance Regarding the Care of Transgender Detainees*, 2 (June 19, 2015)

<https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf>.

³⁸ *Id.*

³⁹ IHSC Directive: 03-25 effective March 15, 2017.

⁴⁰ U.S. Customs and Border Protection, *National Standards on Transport, Escort, Detention, and Search*, 14 (Oct. 2015), <https://www.cbp.gov/sites/default/files/assets/documents/2017-Sep/CBP%20TEDS%20Policy%20Oct2015.pdf>.

⁴¹ *Id.* at 17.

⁴² *Id.* at 19.

⁴³ *Id.* at 6.

to implement penalties and address the conditions that led to the harm in the first place. For example, in a report looking at 2018 and 2019 inspection reviews of ICE detention facilities, the OIG concluded that ICE's monitoring systems do not ensure adequate oversight or systematic improvements in detention conditions, with some deficiencies remaining unaddressed for years.⁴⁴ Further, the OIG found that ICE did not adequately hold detention facility contractors accountable for their lack of compliance with performance standards because they failed to use contracting tools to hold them accountable.⁴⁵

With this in mind, we demand that:

- First and foremost, ICE release all LGBTQ, PLWHIV people that are currently detained on their own recognizance.
- ICE comply with the OIG's January 29, 2019, recommendation and use its contracting tools to hold accountable those detention facilities that fail to meet these standards for care by imposing financial penalties and cancelling contracts for facilities that consistently fail to meet the standards.
- The DHS OIG work with the CRCL to immediately conduct a systemic investigation into the provision of medical and mental health care to LGBTQ, PLWHIV individuals in ICE custody
- DHS must strengthen its oversight of facilities and improve its audits of facilities, ensure timely cooperation of components with OIG and CRCL investigations, increase its use of unannounced inspections, and improve grievance procedures and take meaningful measures to end retaliation against individuals in custody who exercise their right to file a grievance.
- DHS must ensure that all people in detention are aware of their legal rights through developing and disseminating information that details the medical care that they are entitled to.
- Ensure that people are not held in CBP longer than the minimal amount of time it takes for processing, no longer than 24 hours.
- Ensure that CBP provide all persons in custody with timely medical screenings by a licensed health professional and require an EMT or other certified health professional to be on-duty and available to give medical attention at all times in CBP processing and holding stations. Ensure that the health professionals are competent on transgender and HIV related health care.
- Create a thorough, independent, and regular investigation process and standards to ensure that CBP is meeting designated standards and to document incidents of neglect and abuse. Develop specific policies that detail penalties for CBP facilities with documented cases of abuse and medical neglect.

Conclusion

We were deeply saddened and angered to learn of the death of Johana Medina Leon, who died on June 1st, 2019 after spending seven weeks in ICE custody. Her death came almost a year to the day of the death of Roxsana Hernandez, another transgender woman who should not have been detained and who died while in ICE custody. Both of these women experienced medical neglect and the stories in this complaint demonstrate that, tragically, the circumstances around their deaths are not outliers but in fact the norm for the treatment of transgender, as well as lesbian, gay, bisexual, and people living with HIV in ICE and CBP custody. The well-documented mistreatment of LGBTQ, PLWHIV individuals demonstrates that ICE and CBP are unable to adequately care for LGBTQ, PLWHIV people, or really any individuals, in their care.

⁴⁴ Office of Inspector General (OIG), ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements, <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>

⁴⁵ OIG, ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards, <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>

Despite the frequent and ongoing complaints made to DHS, poor oversight and lack of accountability allows these conditions to continue. Neither DHS nor the detention centers that the department is responsible for overseeing are above the law and should receive appropriate consequences for these egregious offenses.

If you have any questions about the above information, please contact Ash Stephens at Ash@transgenderlawcenter.org or Sharita Gruberg at sgruberg@americanprogress.org.

Sincerely,

Transgender Law Center
Black LGBT Migrant Project
Familia Trans Queer Liberation Movement
Al Otro Lado
Las Americas Immigrant Advocacy Center
Center for American Progress
Los Angeles LGBT Center
Freedom for Immigrants
Santa Fe Dreamers Project
Southern Poverty Law Center
Immigration Equality
Center for Victims of Torture
National Immigrant Justice Center
National Center for Transgender Equality