

Via electronic mail

Hon. Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
301 7th Street SW
Washington, DC 20024

Mr. Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street SW
Washington, DC 20536

June 16, 2021

Re: The Abuse of Transgender and HIV-Positive People in Detention

Dear Secretary Mayorkas and Acting Director Johnson:

As you know, transgender and HIV-positive people are severely suffering in U.S. immigration detention facilities. Those who do not perish from mortally deficient medical negligence are regularly mistreated, isolated, and sexually assaulted. For years, the Department of Homeland Security (“DHS”) has attempted to create conditions of confinement that are safe for these historically disenfranchised minorities. This has been a fool’s errand. Under both Democrat and Republican leadership, DHS has wasted millions of taxpayer dollars attempting to overcome a simple and inevitable truth: it is not possible for the U.S. government to house transgender and HIV-positive asylum seekers safely. Every progressive policy, every well-meaning protocol, and every specialized facility has utterly failed. This has to stop. It is in your exclusive power to put an end to this ongoing human rights atrocity.

What makes this situation even more intolerable, is that the vast majority of the transgender and HIV-positive people suffering in immigration detention fled to the U.S. to escape persecution and torture. To these asylum seekers, the U.S. is more than a symbol of liberty. It is one of the few places in the world where they may hope to build a safer future. And yet, by detaining trans and HIV-positive people in such inhumane and unsafe conditions, the U.S. government is subjecting them to some of the same kinds of mistreatment they sought to escape.

Given this context and background, in January, stakeholder organizations presented DHS with a pathway to release all transgender and HIV-positive people. However, despite the long and well-documented history of abuse, DHS has not taken any comprehensive action, proposing instead to resume the status quo of reviewing individual cases on an ad hoc basis.

The status quo is intolerable and is killing our communities. A case-by-case approach is doomed to fail as it has in the past. DHS must act to immediately and meaningfully reform its policies or

transgender and HIV-positive people will continue to be mistreated, sexually assaulted, and killed. DHS has the tools. What it appears to lack is the will to take action. Transgender and HIV-positive asylum seekers do not have time to wait for incremental changes in policy. DHS must act immediately to:

1. Require Immigration and Customs Enforcement (“ICE”) and Customs and Border Protection (“CBP”) to immediately release all transgender and HIV-positive people in their custody;
2. Review its system for identifying transgender and HIV-positive individuals, and work with stakeholders to ensure that it is effective and safe; and
3. Create a policy that deems all transgender and HIV-positive individuals non-detainable.

While the suffering of transgender and HIV-positive people in detention should be well known to DHS, we nevertheless summarize for you some of the cases we have previously brought to the agency’s attention in the attached addendum, as well as new examples of abuse. All of the tragic deaths and instances of mistreatment presented in this letter were preventable. However, due to the government’s inaction, several asylum seekers lost their lives, and the rest were subjected to severe abuse and trauma. Sadly, these accounts are merely a representative sample of the abuse and neglect that is rampant in immigration detention facilities.

For years, immigrants’ rights organizations have warned DHS that throwing asylum seekers in prisons is dangerous and irresponsible. Numerous reports have documented the types of inhumane detention conditions described below. In response, the government has implemented ineffective half-measures over time that were destined to fail. No amount of tinkering will reform the carceral system that is fundamentally at odds with protecting vulnerable populations. The only logical solution is to release transgender and HIV-positive asylum seekers from immigration detention altogether. The past tragedies cannot be undone. However, DHS can make sure they are not repeated in the future.

Respectfully,

Center for Victims of Torture
Familia: Trans Queer Liberation Movement
Immigration Equality
Mijente
National Center for Lesbian Rights
National Immigrant Justice Center
Santa Fe Dreamers Project
Transgender Law Center

Addendum to June 16, 2021 Letter to Secretary Mayorkas and Acting Director Johnson

Preventable Deaths and Medical Malpractice

Detention centers routinely provide deficient medical care to transgender and HIV-positive non-citizens. This jeopardizes their physical wellbeing and results in preventable deaths. Advocates have put DHS on notice repeatedly by calling attention to persistent and widespread failures in the immigration detention healthcare system.¹ DHS has had years to remedy the problem, but has failed to do so.

For instance, in 2016, several immigrants' rights organizations co-authored a report analyzing the deaths of eight detained people in ICE custody between 2010 and 2012. One of the cases discussed was the death of an HIV-positive man who died in ICE custody from an infection associated with immunosuppression.² The report concluded that the detention facilities' failure to comply with ICE medical standards contributed to these deaths.³ Yet, follow-up inspections revealed that ICE did not hold the detention facilities accountable, and allowed them to continue to operate.⁴

A later study found that between 2012 and 2015, one third of deaths in immigration detention facilities were attributable at least in part to inadequate medical care.⁵ Still, DHS continues to entrust custody and care to facilities where incompetence, negligence, and cruelty have proven deadly.

Even given the generally abysmal state of healthcare in detention facilities, reports and complaints show that transgender and HIV-positive individuals are at heightened risk. For instance, in a 2019 complaint letter, twenty-nine transgender women and non-binary individuals detained at Cibola County Correctional Center ("Cibola") called for an investigation into substandard HIV care and

¹*E.g.*, Letter from Transgender Law Center et al., to Dr. Stewart Smith Assistant Director for ICE Health Service Corp. et al (Sept. 25, 2019), <http://transgenderlawcenter.org/wp-content/uploads/2019/09/Complaint-on-LGBTQ-PLHIV-DHS.pdf> ("TLC Letter"); "Immigrant Rights Advocates Demand Investigation And Meeting With Ice And Elected Officials To Address Mistreatment Of Gay Men And Transgender Women In Otero County Processing Center," American Civil Liberties Union, News Release (Mar. 22, 2019), <https://www.aclu-nm.org/en/press-releases/immigrant-rights-advocates-demand-investigation-and-meeting-ice-and-elected-officials>; Letter from Santa Fe Dreamers Project et al., to ICE Interim Field Office Director Dianne Witte (Mar. 26, 2020), <https://static1.squarespace.com/static/55131b32e4b068878aeb8c07/t/5e7cf949907b0148aa6c11e3/1585248586671/March+26+2020+Winn+Conditions+Letter.pdf>; Immigration Equality, Complaint to Office of Civil Rights and Civil Liberties Re HIV Care in Detention Facilities (Mar. 23, 2020), <https://immigrationequality.org/wp-content/uploads/2020/09/Complaint-to-Office-of-Civil-Rights-and-Civil-Liberties-Re-HIV-Care-in-Detention-Facilities.pdf>.

² *Fatal Neglect: How ICE Ignores Deaths in Detention*, ACLU, Detention Watch Network, NIJC, at 20-21 (Feb. 2016), https://www.aclu.org/sites/default/files/field_document/fatal_neglect_acludwnnijc.pdf.

³ *Id.* at 3.

⁴ *Id.* at 5, 22.

⁵ *Systemic Indifference: Dangerous and Substandard Medical Care in U.S. Immigration Detention*, Human Rights Watch at 30 (May 2017), https://www.hrw.org/sites/default/files/report_pdf/usimmigration0517_web_0.pdf.

other medical deficiencies.⁶ Further reporting on Cibola, including a leaked DHS document, revealed alarming incidents of medical negligence and abuse. For example, after telling medical staff that she was bleeding from the rectum, an HIV-positive transgender woman had to wait 13 days to receive medical attention.⁷ Other transgender women “sometimes waited up to 17 days for urgently needed medical care, were exposed to poor sanitation and quarantine practices during a chickenpox and mumps outbreak, and didn’t get medications as directed by a doctor for illnesses such as diabetes, epilepsy, and tuberculosis.”⁸

In a separate 2019 complaint, the Transgender Law Center (“TLC”), along with other advocacy organizations, documented appalling medical neglect and abuse of transgender and HIV-positive non-citizens in various immigration detention facilities throughout the country.⁹ Yet, DHS did not meaningfully address TLC’s concerns. The risk posed to transgender people in immigration detention even prompted 45 U.S. Congressmembers to demand that ICE release transgender immigrants in its custody.¹⁰

Moreover, ICE’s response to the COVID-19 pandemic was wholly inadequate. Indeed, ICE proved itself incapable of protecting the people in its custody, routinely ignoring CDC guidelines and ICE’s own Pandemic Response Requirements.¹¹ For HIV-positive immigrants, detention centers

⁶ Laura Gomez, “Migrants Held in ICE’s Only Transgender Unit Plea for Help, Investigation in Letter” AZ Mirror (Jul. 10, 2019), <https://www.azmirror.com/2019/07/09/migrants-held-in-ices-only-transgender-unit-plea-for-help-investigation-in-letter/>.

⁷ Hamed Aleaziz, “A Secret Memo Revealed How A Transgender Immigrant Bleeding From Her Rectum Waited 13 Days for Care While Jailed by ICE,” BuzzFeed News (Mar. 4, 2020), <https://www.buzzfeednews.com/article/hamedaleaziz/transgender-immigrant-detainees-medical-care-memo>; *see also* Murat Oztaskin, “The Harrowing, Two-Year Detention of a Transgender Asylum Seeker,” The New Yorker (Oct. 31, 2019), <https://www.newyorker.com/news/dispatch/the-harrowing-two-year-detention-of-a-transgender-asylum-seeker>.

⁸ *Id.* Moreover, staff at Cibola took longer than 30 days to arrange visits with infectious disease specialists for HIV-positive people. Mica Rosenberg, Ted Hesson, “Exclusive: Serious Health Care Lapses found in U.S. Detention Center Housing Transgender Migrants,” Reuters (Mar. 2, 2020), <https://www.reuters.com/article/us-usa-immigration-transgender-exclusive/exclusive-serious-health-care-lapses-found-in-u-s-detention-center-housing-transgender-migrants-idUSKBN20P1OT>. A visit by stakeholder organizations to Otero County Processing Center revealed that medical requests there went unanswered for weeks at a time and staff denied transgender women hormone treatment, while telling them “This isn’t your home.” “Immigrant Rights Advocates Demand Investigation And Meeting With Ice And Elected Officials To Address Mistreatment Of Gay Men And Transgender Women In Otero County Processing Center,” American Civil Liberties Union, News Release (Mar 22, 2019), <https://www.aclu-nm.org/en/press-releases/immigrant-rights-advocates-demand-investigation-and-meeting-ice-and-elected-officials>.

⁹ Letter re: “Detention Conditions Impacting the Safety and Well-Being of LGBTQ Immigrants in the Otero County Processing Center” (Mar. 25, 2019), https://www.aclu-nm.org/sites/default/files/field_documents/advance_copy_of_3.25.2019_las_america_santa_fe_dreamers_project_aclu-nm_letter_to_dhs_re_otero.pdf (letter from advocacy organizations detailing medical neglect).

¹⁰ Tim Fitzsimons, “Democratic Lawmakers Call on ICE to Release Transgender Migrants,” NBC News (Jan. 16, 2020), <https://www.nbcnews.com/feature/nbc-out/democratic-lawmakers-call-ice-release-transgender-migrants-n1116621>.

¹¹ *E.g.*, Physicians for Human Rights, “Praying for Hand Soap and Masks: Health and Human Rights Violations in U.S. Immigration Detention during the COVID-19 Pandemic,” (Jan. 12, 2021), https://phr.org/our-work/resources/praying-for-hand-soap-and-masks/?utm_content=homepage_hero.

have often failed to provide uninterrupted access to HIV medication.¹² Disruptions in HIV treatment can lead to drug resistance and cause HIV treatment to fail.¹³ As a result of poor HIV care in detention centers, the COVID-19 pandemic exposed HIV-positive asylum seekers to risks of serious illness or death. In March of 2020, Immigration Equality filed a complaint with the Office of Civil Rights and Civil Liberties highlighting substandard HIV care and ICE’s reckless refusal to release a number of HIV-positive asylum seekers amid the pandemic. Immigration Equality was never informed whether an investigation was conducted, and so we presume that no investigation took place.

The following are summaries of all-too-common reports gathered by stakeholder organizations over the past several years describing the negligent and dangerous medical care routinely faced by transgender and HIV-positive people in detention facilities.

- In 2018, Roxsana Hernandez, a transgender asylum seeker, died of HIV-related complications while in ICE custody. Upon arriving to the United States, the immigration authorities locked Roxsana in a freezing jail cell for close to a week.¹⁴ Later, Roxsana was transferred to Cibola, where she received negligent HIV care.¹⁵ An independent autopsy also revealed that prior to her death, Roxsana was severely dehydrated over multiple days and that her body showed signs of physical abuse.¹⁶ The forensic evidence indicated that Roxsana was handcuffed for the majority of the time she was in the hospital. Medical staff repeatedly asked for the handcuffs to be taken off because it delayed medical treatment. Roxsana was also unconscious for part of this time, unable to move.¹⁷
- Johana Medina León was a transgender nurse from El Salvador. Johana lived with HIV. In 2019, she requested asylum and was detained by ICE. Her health was deteriorating in ICE custody, so Johana advocated for her own medical care. Johana recognized that she needed IV fluids, but the detention staff denied her access. Johana then asked for water, sugar, and

¹² Human Rights Watch, “Chronic Indifference: HIV/AIDS Services for Immigrants Detained by the United States,” (Dec. 5, 2007), <https://www.hrw.org/report/2007/12/05/chronic-indifference/hiv/aids-services-immigrants-detained-united-states>; Amir M. Mohareb, et. al., “Correcting the Contradictions: Immigration Policy and HIV,” (Nov. 8, 2019), <https://www.healthaffairs.org/doi/10.1377/hblog20191108.169361/full/>.

¹³ U.S. Dep’t. of Health and Human Services, “HIV Treatment Adherence,” (last reviewed Sep. 28, 2020), <https://aidsinfo.nih.gov/understanding-hiv-aids/fact-sheets/21/54/hiv-treatment-adherence>.

¹⁴ Carla Green, “Transgender Honduran Woman’s Death in U.S. ‘Ice Box’ Detention Prompts Outcry,” *The Guardian* (May 31, 2018), <https://www.theguardian.com/us-news/2018/may/31/roxana-hernandez-transgender-honduran-woman-dies-us-ice-box>.

¹⁵ Transgender Law Center, “Notice of Wrongful Death Tort Claim,” (Nov. 19, 2018), transgenderlawcenter.org/wp-content/uploads/2018/11/2018_11_19-Tort-Claim-Notice-Final.pdf.

¹⁶ Sandra E. Garcia, “Independent Autopsy of Transgender Asylum Seekers Who Died in ICE Custody Shows Signs of Abuse,” *NYT* (Nov. 27, 2018), <https://www.nytimes.com/2018/11/27/us/trans-woman-roxsana-hernandez-ice-autopsy.html>.

¹⁷ Transgender Law Center, “Notice of Wrongful Death Tort Claim,” (Nov. 19, 2018), transgenderlawcenter.org/wp-content/uploads/2018/11/2018_11_19-Tort-Claim-Notice-Final.pdf.

salt in order to treat herself.¹⁸ Detention staff refused to honor her request and denied Johana again. Johana died shortly thereafter as a result of detention staff's refusal to assist her. Her death was entirely preventable.

- “A” is a transgender woman from El Salvador who was detained in Cibola for almost 20 months. A’s medical records indicated that she suffered from advanced syphilis. According to a medical evaluation, her records showed that her condition had progressed to neurosyphilis, increasingly affecting her cognitive abilities. Despite this evidence and her counsel’s advocacy, ICE continuously failed to provide her penicillin, a well-known and easily accessible medication routinely used to treat syphilis. ICE also repeatedly refused to release A from detention, so she could get the medical treatment she required.
- “G” is a 34-year-old HIV-positive Salvadoran trans woman and activist. She worked to advance trans rights in Latin America and the Caribbean prior to applying for asylum. In 2017, she was detained at Otay Mesa Detention Center (“Otay Mesa”) in male housing for over 6 months. During this time, her HIV medication was withheld. Additionally, she was misdiagnosed with tuberculosis. Rather than treating her HIV, the healthcare staff overmedicated her in an attempt to treat the tuberculosis she did not have.
- “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 and was denied each time. Y was later transferred to Otay Mesa, where detention staff once again denied her life-saving medication for an entire month. 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.”
- “R” is a transgender woman from Guatemala, who suffered repeated sexual abuse in her country of origin. When she traveled to the United States through Mexico, gang members violently raped R. She believes she contracted HIV as a result of the attack. R requested asylum in January of 2019 and was subsequently detained at Otay Mesa. She expressed her concern to the Otay Mesa staff that she was HIV positive and made multiple written requests for an HIV test. R’s legal representatives contacted her deportation officer on numerous occasions to ensure she received the necessary testing, but the deportation officer never responded. While R was at Otay Mesa, the facility had an outbreak of several infectious diseases, including mumps and chickenpox. Therefore, it was critical for R to know whether she had HIV, since her immune system may have been severely compromised. Detention staff’s failure to ensure R received an HIV test put her life at risk.
- “P” is a 38-year old Honduran citizen and transgender woman living with HIV. She entered the United States in February 2019, and was detained at Otay Mesa for about 6 months.

¹⁸ Sam Levin, “Trans Woman Who Died After Illness in U.S. Custody Had Asked to Be Deported, Family Says,” *The Guardian* (Jun. 12, 2019), <https://www.theguardian.com/us-news/2019/jun/12/trans-woman-death-us-custody-ice-deportation>.

While detained, P's HIV medication was delayed and she never received hormone therapy. As a result, her mental and physical health deteriorated.

- “J” is a transgender man from El Salvador who was detained in Adelanto Detention Center for approximately nine months. Before being detained, J had been receiving gender-affirming hormone therapy for many years. However, J was not provided hormone treatment in detention, despite numerous requests. J's mental and physical health significantly deteriorated as a result.
- “G” is living with HIV and was detained at Winn Correctional Facility (“Winn”) between 2019 and 2020. G went for days at a time without receiving HIV medication. Winn staff also gave G his medication at inconsistent times each day, potentially leading to serious side effects, including the kidney problems he experienced. One of G's urine analysis showed that his urine contained blood. G's HIV medication was changed while in detention, but G had no indication that the proper resistance testing was done before making the switch. G was not told what his new medication was. G waited months to be seen by an HIV specialist, and when he finally saw the specialist, he was not provided an interpreter and could not communicate with the provider.
- “R” is an asylum seeker who was persecuted on account of his sexual orientation, political opinion, and HIV-positive status. R experienced numerous interruptions to his HIV regime in detention. Upon his entry to the U.S. in May 2019, R told immigration authorities he was HIV positive. However, despite several requests for treatment while in detention, the facility did not provide him with medication until approximately 3 months later, when he was transferred to Richwood Correctional Center (“Richwood”). At Richwood, R had at least two interruptions in his HIV antiretroviral regime (the first for 4 days and the second for 7 days), when he did not receive any medication at all. When R asked why he was not receiving his medication, staff told him that it had “run out.”
- “J” is a gay asylum seeker who was persecuted on account of his sexual orientation, political opinion, and HIV status. J was detained at La Palma Correctional Center (“La Palma”) and reported not receiving his HIV medication at the facility for approximately one month when he first arrived. When J finally started receiving HIV medication, it was different from the medication he was on prior to detention and caused serious side effects. When J asked a doctor in detention to be switched to his previous medication, the doctor said that medication was too expensive.
- “A” is a transgender asylum seeker who was persecuted on account of their sexual orientation, gender identity, and HIV status. A presented at the border and was held for approximately three weeks in a CBP facility. Although A requested HIV medication during this period, they were told that the facility was not equipped to perform lab tests and could not prescribe medication. A was eventually transferred to Cibola where they saw a doctor who performed testing. The results showed that A's CD4 count was at a dangerously low level of 69 and that their condition had progressed to AIDS. The doctor explained that A would have to see an HIV specialist to have medication prescribed. Terrified for their life, A made several requests to Cibola officials to see a specialist. However, A did not see the

specialist until approximately 6 weeks later. While A was awaiting treatment, they showed serious signs of illness including fevers, headaches, shortness of breath, vomiting, weight loss, and boils. A was also kept in a pod with extremely cold temperatures. A received the first dosage of HIV medication more than 2 ½ months after their first entry into the U.S., despite their HIV having progressed to AIDS.

- “M” is a gay asylum seeker who was persecuted on account of his sexual orientation, HIV status, and political opinion. When M presented at the border, his HIV medications were confiscated and he received no medication for approximately one month. M was detained at Otay Mesa where he was placed in a cell by himself and staff wrote the words “GAY, HIV, SICK,” in chalk on the door. M asked the guards why he was being singled out. They told him: “This is the procedure. Get used to it.” As a result, he was mistreated by other detained individuals, who ridiculed him on the basis of his sexual orientation and HIV status.
- In June 2020, “D,” a transgender migrant detained at Aurora ICE Processing Center (“Aurora”), reported being made to clean her dormitory with a chemical that burned her. A picture revealed that the chemical was HALT, an industrial disinfectant made by Spartan Chemical Company. D said, “It causes extreme nausea, allergies, inflammatory allergic responses on the skin, prolonged nosebleeds, bloodshot and burning eyes, and severe headaches.” Officials at ICE made transgender detainees spray their own dorm and would not stay in the room while this was done, “There were three officers in the control area at this time and one of them directed us to spray it on surfaces, including tables, sinks, toilets, and chairs. The officers immediately left after we received the liquid.” Safety equipment was denied to the women, “Last night the other transgender women who remained in the dormitory with me sprayed the chemical. We asked the officials for gloves for her to wear while using the chemical, and the officers refused to give her gloves.” D reported that her requests for medical attention for chemical burns were not acted on immediately. She said that “We have not been given any information from GEO Group about this chemical.”
- “D” is a transgender man who fled persecution in Cuba. In the spring of 2021, he was detained in a Louisiana facility with his partner, a lesbian who also seeks asylum. Prior to being placed in immigration detention, D was taking hormones. However, ICE refused to continue his hormone therapy when he was taken into custody. D felt desperate and depressed. He was heartbroken to escape police persecution in Cuba, only to end up detained in the United States – a country that he believed was safe for people like him. Out of desperation, D tried to take his life by cutting his wrists. Fortunately, he survived. When D tried talking about his feelings to a psychologist in detention, she threatened that D and his partner would be separated if they caused any more “trouble.”

Sexual Assault

Transgender people routinely experience sexual assault in immigration detention, and DHS is well aware of this fact. Indeed, DHS has known for over a decade that sexual assault is rampant in immigration detention. In 2009, the National Prison Rape Elimination Commission Report advised that individuals in immigration detention are especially vulnerable to sexual assault.¹⁹ However, DHS failed to enact meaningful reforms to protect people in its custody, and those failures persist today.

Transgender asylum seekers have experienced first-hand the consequences of inaction. The available data corroborates that immigration detention is a highly dangerous environment for transgender people. In 2013, the U.S. Government Accountability Office reported that one in five incidences of substantiated sexual abuse was against transgender individuals in immigration detention.²⁰ A 2018 report by the Center for American Progress (“CAP”) stressed that although LGBTQ people were only 0.14% of the detained population, they accounted for 12% of the victims of sexual abuse. In other words, LGBTQ people in immigration detention are 97 times more likely to experience sexual victimization than non-LGBTQ people.²¹

In 2016, Human Rights Watch published a report documenting harrowing experiences of transgender women in various immigration facilities.²² One woman recounted how two other detained people raped her in a detention center.²³ Another woman detained in a men’s facility reported that a man sexually assaulted her while she was in the shower.²⁴ A third woman reported that a man repeatedly masturbated in front of her while she was in the shower. The guards saw him but did not intervene.²⁵ Several women interviewed by Human Rights Watch also said they were sexually harassed and abused by male guards at the facilities.²⁶

This abuse is persistent. An April 2021 report detailing mistreatment of noncitizens detained at Otay Mesa disclosed that the detention facility had “an average of more than one confirmed sexual assault per month.”²⁷

¹⁹ *National Prison Rape Elimination Commission Report* at 177-81 (June 2009), <https://www.hivlawandpolicy.org/sites/default/files/NPREC%20Report.pdf>.

²⁰ U.S. Gov’t Accountability Office, GAO-14-38, *Immigration Detention: Additional Action Could Strengthen DHS Efforts to Address Sexual Abuse* at 60 (2013), <https://www.gao.gov/products/GAO-14-38>.

²¹ Sharita Gruberg, “ICE’s Rejection of Its Own Rules Is Placing LGBT Immigrants at Severe Risk of Sexual Abuse,” Center for American Progress (May 30, 2018) <https://www.americanprogress.org/issues/lgbtq-rights/news/2018/05/30/451294/ices-rejection-rules-placing-lgbt-immigrants-severe-risk-sexual-abuse/>.

²² “Do You See How Much I’m Suffering Here?” *Abuse Against Transgender Women in U.S. Immigration Detention*, Human Rights Watch (Mar. 2016), https://www.hrw.org/sites/default/files/report_pdf/us0316_web.pdf.

²³ *Id.* at 20.

²⁴ *Id.* at 20-21.

²⁵ *Id.* at 21.

²⁶ *Id.* at 21-22.

²⁷ Monica Y. Langarica, et. al., *CoreCivic’s Decades of Abuse: Otay Mesa Detention Center*, ACLU Foundation of San Diego and Imperial Counties at 28 (Apr. 2021), https://www.aclusandiego.org/sites/default/files/field_documents/2021_04_21_final_corecivics_decades_of_abuse_issue_brief.pdf.

Below are recent examples of sexual abuse that asylum seekers have shared with immigrants' rights organizations over the last five years. These types of abuses have been the status quo for years. DHS has failed time and again to stop these atrocities. The status quo has allowed this sexual violence to continue unabated despite various policies and programs aimed at quelling the abuse. DHS cannot protect transgender people from rape and sexual assault, and so transgender people cannot be detained.

- “M” is a transgender woman from El Salvador. M informed a nurse at Winn Correctional Center that she identified as a transgender woman. However, the nurse said that since M did not have a gender-affirming surgery, she had to be classified as a gay man. As a result, M was housed with men. While in ICE custody, M was sexually abused by a detained man. When M reported to ICE that she was sexually abused, she was placed in solitary confinement for her “protection.” As a result, she suffered trauma and other mental health issues.
- “B” is a transgender woman from Guatemala. She was detained in a male housing unit for over 15 months and was released at the end of 2020. During this time, she faced repeated sexual advances from a male guard in the facility. He told her and other transgender women in the facility that they were "delicious," and he levied sexually-explicit language at them. Multiple times he touched B inappropriately while she was sleeping. The abuse culminated when the guard forced her to perform oral sex on him in an office with the threat of segregation if she did not comply. She felt that she had no one to report this abuse to, and feared no one would believe her if she tried.
- “J” is a transgender woman from El Salvador seeking asylum in the U.S. In March 2020, ICE detained J in Nevada Southern Detention Center, where she was confined with a male population. In April 2020, a detained man sexually assaulted J. During subsequent investigation, J was diagnosed with HIV. J believes she contracted HIV as a result of the sexual assault. In May 2020, J reported that while she was prescribed HIV medication, she had not yet received the medication. J’s attorneys made multiple release requests because living with HIV made J particularly vulnerable to health complications if she contracted COVID-19. Furthermore, J was patently unsafe in detention. The detention staff locked J in solitary confinement on multiple occasions, further exacerbating her trauma. In October 2020, J suffered another attack at the hands of a detained man. In November 2020, J was finally released from custody. She spent close to a year being abused in ICE custody. This abuse could have been easily avoided, had J been promptly released.

Solitary Confinement

The guidelines adopted by the U.N. General Assembly define solitary confinement as “the confinement of prisoners for 22 hours or more a day without meaningful human contact.”²⁸ Solitary confinement has devastating, life-altering psychological and physiological effects, including “persistent and heightened state of anxiety and nervousness, headaches, insomnia, lethargy or chronic tiredness, nightmares, heart palpitations, fear of impending nervous breakdowns and higher rates of hypertension and early morbidity.”²⁹ Prolonged solitary confinement can also result in confused thought processes, chronic depression, and suicidal ideation.³⁰ Yet asylum-seekers and other detained people, who often experienced severe psychological trauma in their countries of origin, are subjected to this practice with alarming frequency.

A report by the Project on Government Oversight on the use of solitary confinement in immigration detention centers found that between January 2016 and May 2018, ICE had 6,559 records of a detained person being placed in solitary confinement.³¹ Approximately 40% of the people placed in solitary had mental illness.³² Over 4,000 of these records showed that the noncitizen was in solitary confinement for 15 days or more, which amounts to torture.³³ Available ICE data for FY 2017 also showed that 1 in 8 transgender people in ICE custody is placed in solitary confinement.³⁴ An International Consortium of Investigative Journalists found that ICE’s solitary confinement practices repeatedly targeted transgender people.³⁵ For example, Dulce Rivera, a transgender woman, was forced to spend close to a year in solitary confinement during her detention at Cibola and the El Paso Service Processing Center.³⁶

²⁸ Andrew Gilmour, “The Nelson Mandela Rules: Protecting the Rights of Persons Deprived of Liberty,” United Nations, <https://www.un.org/en/un-chronicle/nelson-mandela-rules-protecting-rights-persons-deprived-liberty>; “United States: Prolonged Solitary Confinement Amounts to Psychological Torture, Says U.N. Expert,” U.N. Human Rights Office of the High Commissioner (Feb. 28, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25633>.

²⁹ “Solitary Confinement: Torture in U.S. Prisons,” Center for Constitutional Rights (updated Mar. 2017), <https://www.ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/torture-use-solitary-confinement-us-prisons>.

³⁰ *Id.*

³¹ *Isolated: ICE Confines Some Detainees with Mental Illness in Solitary for Months*, The Project on Government Oversight (Aug. 14, 2019), <https://www.pogo.org/investigation/2019/08/isolated-ice-confines-some-detainees-with-mental-illness-in-solitary-for-months>.

³² *Id.*

³³ *Id.*

³⁴ Sam Hananel, “Release: LGBT Immigrants in Detention Centers at Severe Risk of Sexual Abuse, CAP Analysis Says,” Center for American Progress (May 30, 2018), <https://www.americanprogress.org/press/release/2018/05/30/451380/release-lgbt-immigrants-detention-centers-severe-risk-sexual-abuse-cap-analysis-says/>.

³⁵ Spencer Woodman and Ben Hallman, “Solitary Confinement in US Immigration Facilities, Explained,” International Consortium of Investigative Journalists, (May 21, 2019), <https://www.icij.org/investigations/solitaryvoices/solitary-confinement-in-us-immigration-facilities-explained/>.

³⁶ *Id.*

Being confined to a cell for 22 hours each day and deprived of all human contact is a devastating experience. Vulnerable asylum seekers, who have often experienced psychological trauma and might suffer from mental health illnesses, should never be placed in solitary confinement.

Over the past five years, many transgender people have reported painful experiences in solitary confinement to advocates. Some of these accounts are included below.

- “LM” is a transgender woman who was detained for six months in Aurora. There, she was housed with men and harassed on a regular basis for being transgender. LM reported these incidents to the detention center guards. They responded by locking LM in solitary confinement, claiming it was for her own safety. The detention staff placed LM in solitary confinement several times for up to a month at a time.
- “C” is a trans man who was held in immigration detention for almost two years. For the first 19 months, he was held in solitary confinement in Irwin County Detention Center 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 administering the shot was so incompetent that the syringe broke while inside his leg. Further, C was identified and confirmed to be a victim of trafficking by federal law enforcement, and ICE still refused to release him.
- “J” is a transgender woman from Mexico. J was taken into ICE custody after a DUI arrest. She was detained in Boone County. There, she was kept in solitary confinement for over two months, causing her mental health to deteriorate to such a degree that she was unable to communicate during a Master Calendar hearing. In response, her Immigration Judge scheduled an individual hearing and ordered her to be brought to Chicago in order to get her out of the detention facility. J was transferred to a different detention center, where she experienced verbal harassment by other detained people and guards. She eventually won asylum, but J was diagnosed with PTSD stemming from her solitary confinement.
- “Y” is a transgender woman, who was detained in Irwin County Detention Center, Georgia. Y was housed in a high-security housing unit for two months, purportedly to protect her from other detained people. Y’s confinement conditions were virtually identical to solitary confinement. She could only leave her cell one hour each day and spent the rest of the time in complete isolation. Being in isolation took an extreme psychological toll on Y. Moreover, despite being in maximum security, Y was still a victim of sexual abuse at the hands of a man who delivered food to Y’s cell, and was housed in the high security unit with her.
- “R” is a transgender woman who was detained at Imperial Regional Detention Facility for close to two years. R was detained with men, who frequently threatened her with violence. The staff at Imperial also denied R access to hormone therapy for several months. R was

suffering from depression, and as a result, she tried to commit suicide. Instead of showing her compassion, Imperial staff placed R in solitary confinement for 15 days.

- In July 2020, “B,” a transgender migrant detained at Nevada Southern Detention Center, reported, “[d]etainees who have returned from medical care have reported that it is more like punishment than care. When people are suspected of having COVID, they are isolated in a cell with no shower and little medical attention. I, like others in the dorm, feel concerned about even mentioning that I am not feeling well for fear of receiving this type of isolation punishment.”

Physical Assault and Other Abuse

While in detention centers, transgender and HIV-positive asylum seekers have persistently been the victims of assault, threats, and verbal abuse. Transgender and HIV-positive people are forced to share living space with individuals who do not understand or respect their identities, and view them as targets for aggression. Moreover, this type of abuse is widespread and difficult to curtail because it is a byproduct of deeply entrenched homophobic and transphobic attitudes. Once again, the only sensible and humane solution is to end immigration detention of transgender and HIV-positive asylum seekers.

The following summarize various types of abuse transgender and HIV-positive people have suffered in ICE custody over the past five years:

- “R” is a transgender woman from Nicaragua, who was detained in a male housing unit for more than two years. During this time, R has faced relentless threats of sexual and physical abuse. About a year ago, she and another trans woman were attacked by a group of detained men, who targeted them because of their gender identity. After the attack, R was taken to an emergency room to treat her wounds. When she returned to the detention center, she was placed in segregation for two weeks without explanation.
- “D,” a transgender woman who was detained at Winn, reported that a man threatened to fight her for being trans. After that, she did not go outside for recreation for fear she would be assaulted. Eventually, Winn staff forced her to go outside to play soccer with the men. Once on the field, and far removed from the play, the man who previously threatened D tackled her and broke her leg. An immigration officer refused to take a report of how D’s leg was broken. After breaking her leg, a doctor told D that she was losing muscle in her leg and was in danger of losing her ability to walk. D was prescribed physical therapy and given an elastic band for resistance training. However, officers at Winn confiscated the resistance band, thus denying D her prescribed treatment.
- “A” is a transgender man from Honduras. He began coming out as trans while detained. A and his lawyer advocated with ICE and Pulaski County Detention Center for him to begin HRT. He eventually began receiving testosterone, but was required to take his testosterone shots in public. The shots were administered in his buttocks and required him to lower his pants while in the housing area, which was humiliating to A. Further, two guards physically

assaulted A. They dragged him by his hair and handcuffed him behind his back overnight. He was released pursuant to a successful habeas petition, after being detained for over 15 months.

- A medical provider at Winn strongly discouraged a transgender woman detained there from beginning hormone replacement therapy. The medical provider expressed concern that once the hormones took effect, the trans woman would suffer further, more-severe harassment from detained men due to the changes in her physical appearance.
- In March 2020, transgender women detained at Winn Correctional Center reported developing urinary tract infections because, out of fear of assault, they were forced to hold off from urinating for prolonged periods of time.
- Winn Officers ordered transgender women to “walk like men, not faggots” when they were escorted around the detention center. A cisgender female officer once walked pass a group of transgender women, instructed them to look at her buttocks, and stated “this is how a real woman walks.”