



“No Human Being Should Be Held There”

The Mistreatment of LGBTQ and HIV-Positive People
in U.S. Federal Immigration Jails

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THE MISTREATMENT OF LGBTQ AND HIV POSITIVE PEOPLE IN U.S. FEDERAL IMMIGRATION JAILS

EXECUTIVE SUMMARY

Asylum in the United States is a lifesaving necessity for LGBTQ and HIV-positive people. For decades, many have fled to the United States to seek refuge from persecution and torture. However, the United States subjects hundreds of thousands of people yearly, including LGBTQ and HIV-positive people, to its massive network of jails and prisons. These jails, run by U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), are infamous for their inhumane and abusive conditions. For LGBTQ and HIV-positive people, these conditions routinely include high rates of physical and sexual violence, improper and prolonged solitary confinement, and inadequate medical care among other forms of systemic abuse and neglect.

For this report, Immigration Equality, the National Immigrant Justice Center (NIJC), and Human Rights First (HRF) surveyed 41 LGBTQ and HIV-positive immigrants who were detained by CBP and ICE. This survey revealed:

- Approximately one third of survey participants (18 out of 41) reported sexual abuse, physical assaults or sexual harassment in immigration detention due to their LGBTQ identity;
- Nearly all of the participants (35 out of 41), reported being targets of homophobic, transphobic, xenophobic, racist, or other verbal and nonverbal abuse in ICE and CBP jails that included threats of violence and assault;
- A majority of participants (28 out of 41) reported receiving inadequate medical care or asking for medical care and not receiving it while in ICE or CBP detention.
- Nearly half of participants (20 out of 41) interviewed reported new or increased mental health symptoms while in detention, including hives, panic attacks, mental health crises, flashbacks, and self-harm;

- Roughly half of participants (20 of 41) were subject to solitary confinement;
- Nearly half of participants (18 of 41) reported having their sexual orientation, gender identity, HIV status or other confidential medical information disclosed in custody without their consent;
- More than a quarter of survey participants (12 out of 41) reported that ICE or CBP separated them from their loved ones, whether a partner, spouse, or sibling;
- Survey participants routinely struggled to access their attorneys or find one, while in ICE or CBP detention;
- The majority of survey participants living with HIV (13 out of 17 participants) reported medical neglect or denial of medical HIV treatment.

“No human being should be held there.”

—
Zoe,
a transgender asylum seeker and survey
participant reflecting on her time
in CBP and ICE custody.

The executive branch and Congress can take steps to end this unnecessary suffering and protect the rights of LGBTQ/H individuals. These include steps to apply parole authority, issue guidance on vulnerable populations, support legislative action and phase out immigration detention. Read our full report [here](#).

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About the Authors

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ABOUT IMMIGRATION EQUALITY:

For 30 years, Immigration Equality has promoted justice and equality for LGBTQ and HIV-positive immigrants and families through direct legal services, policy advocacy, and impact litigation. Each year, Immigration Equality's in-house attorneys and nationwide network of pro bono partners directly represent more than 700 refugees and asylum seekers who are LGBTQ or living with HIV, and provide free legal help to thousands more. Since 2009, Immigration Equality has maintained a dedicated immigration detention advocacy program that supports a detention hotline, provides direct representation to detained people, and fights for systemic reform.

ABOUT NIJC:



NIJC is dedicated to ensuring human rights protections and access to justice for immigrants, refugees, and asylum seekers. Headquartered in Chicago, NIJC provides legal services to more than 10,000 individuals each year, including many asylum seekers, torture survivors, and unaccompanied children who have entered the United States by crossing the U.S.-Mexico border. NIJC's legal services team includes the LGBTQ Immigrant Rights Initiative (LGBTQ Project), which provides legal services through in-house and pro bono representation to detained and non-detained LGB/Queer/Trans people as well as those living with HIV/AIDS. The LGBTQ Project's work largely focuses on litigating protection-based claims across the country, advocating for detention release, and defending detained transgender people from deportation. Many of these individuals have overcome unimaginable persecution and torture in their home countries and journeyed to the United States in hopes of finding a better future. Since its founding more than three decades ago, NIJC uniquely blends individual client advocacy with broad-based systemic change, including policy reform, impact litigation, and public education.

ABOUT HUMAN RIGHTS FIRST:



Human Rights First works to create a just world in which every person's intrinsic human rights are respected and protected, to build societies that value and invest in all their people. To reach that goal demands assisting victims of injustice, bringing perpetrators of abuse to justice, and building institutions that ensure universal rights. The organization has, since its earliest days, worked with major law firms to provide pro bono legal representation to refugees seeking asylum in the United States, and advocated for U.S. asylum, migration and refugee policies that uphold international refugee and human rights law. Many of our pro bono asylum clients fled persecution due to their sexual orientation or gender identity. Human Rights First is a nonprofit, nonpartisan international human rights organization based in Los Angeles, New York, and Washington D.C.

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Glossary

CBP – Customs and Border Protection is an entity within the U.S. Department of Homeland Security. CBP is tasked with controlling the United States borders, including inspecting visas and other travel documents, short-term detention, and some elements of the deportation process. CBP agents are typically the first U.S. immigration officials that asylum seekers and other migrants encounter when they arrive at the United States border.

CFI – A Credible Fear Interview is a screening interview conducted by an asylum officer to determine whether there is a significant possibility that the individual can win their asylum claim. People who request asylum at the United States border typically must undergo a CFI and receive a positive determination to be able to apply for asylum. If a person does not pass their CFI, they will most likely be deported.

DHS – The Department of Homeland Security is a federal agency responsible for immigration enforcement, customs and border management, and immigration services such as naturalization. The agency includes many component sub-agencies with wide-ranging missions that are sometimes entirely unrelated to immigration such as the Secret Service, FEMA, and the Coast Guard. CBP, ICE, and USCIS are part of DHS.

Gender identity – A person's internal, deeply held sense of being a man, woman, non-binary person, or somewhere else on the gender spectrum. Gender identity does not necessarily correspond to a person's sex assigned at birth, and people can become aware of their gender identity at various stages throughout their life.

ICE – Immigration and Customs Enforcement operates in the interior of the United States. It is responsible for most aspects of the deportation process. ICE is the primary agency that detains asylum seekers and other migrants for extended periods of time during their immigration proceedings. ICE also has the discretionary authority to release people from custody at any time.

Jail staff – ICE and CBP employees, contractors, and subcontracted personnel who work for private prison companies or jails, including medical and other personnel, working at ICE and CBP detention facilities.

LGBTQ/H – Umbrella acronym to refer to people with diverse sexual or gender identities, including, lesbian, gay, bisexual, transgender, intersex, queer, non-binary, gender non-conforming people, as well as people who are living with HIV. The authors generally use the term "people living with HIV" where possible. However, for brevity, we sometimes use the alternative terminology "HIV positive." The authors use the terms "transgender" and "trans" interchangeably.

LGBTQ harassment – Unwelcome speech or conduct that is based on a person's sexual orientation, gender identity, or HIV status.

Medical neglect – The provision of insufficient, inadequate, substandard, or delayed health care, or a failure to provide care altogether.

Obstruction of access to counsel – Systemic and structural barriers that prevent detained individuals from looking for attorneys, communicating with attorneys, and/or meaningfully engaging with their attorneys to prepare their immigration case. This includes blocking physical access to facilities by attorneys, requiring detained people to pay for telephone calls, limiting time when people can access the phone, limiting library access, failing to provide private spaces to communicate with counsel, and hostility by staff, among other obstacles.

Physical abuse – Intentional bodily contact that is non-sexual in nature and is meant to physically harm another person.

Sexual abuse – Unwanted contact, including through clothing, penetration, or indecent exposure by the perpetrator against the victim, with the intent to humiliate, harass, degrade, arouse or gratify the sexual desire of any person. Sexual abuse may include verbal harassment of the detained person that is sexual in nature.

Sexual assault – Sexual assault is an unwanted sexual behavior or contact to which the victim has not consented. Examples of sexual assault can include, but are not limited to, penetration of the victim's body or forcing the victim to penetrate the perpetrator's body, attempted rape, or unwanted sexual touching.

Sexual orientation – A person's emotional, physical and/or sexual attraction to others, often based on the gender(s) to whom they are attracted.

Solitary confinement – The United Nations defines solitary confinement as "confinement of prisoners for 22 hours or more a day without meaningful human contact."¹ ICE refers to solitary confinement as "segregation." ICE further divides the types of solitary confinement it uses into "disciplinary" (punitive) and "administrative" (non-punitive) segregation. CBP refers to solitary confinement housing as being placed in a "single-occupancy hold room."² In the report, the authors refer to all types of segregation used by ICE and CBP as solitary confinement.

Verbal abuse – Homophobic, transphobic, racist, and xenophobic slurs and other comments intended to humiliate, disparage, maliciously single out, or cause emotional harm to another person.



I. Introduction

For decades, LGBTQ people and people living with HIV have fled to the United States to seek refuge from persecution and torture. The U.S. government has granted many of those individuals permanent safe haven. However, since the 1980s, the United States has built a massive network of jails and prisons used to detain immigrants.³ While pursuing their often strong claims for humanitarian protection, LGBTQ and HIV-positive immigrants are among hundreds of thousands jailed yearly by U.S. immigration authorities.

As we detail in **Section II**, the United States' current legal framework makes detention a common response to people arriving at the Southwest border seeking safety.⁴ LGBTQ people and people living with HIV who seek refuge in the United States are subject to a dehumanizing detention system of holding facilities, jails, and prisons run by the Department of Homeland Security (DHS). For over a decade, reporting has shown that LGBTQ and HIV-positive people are particularly vulnerable to abuse in immigration detention, experiencing high rates of physical and sexual violence, improper and prolonged solitary confinement, and inadequate medical care among other forms of systemic abuse and neglect.⁵

Throughout this report, we use “LGBTQ” as an umbrella term to be read as inclusive of people with diverse sexual or gender identities, including, lesbian, gay, bisexual, transgender, intersex, queer, non-binary, and gender non-conforming people. We use LGBTQ/H to refer to LGBTQ people together with people who are living with HIV. See the Glossary for additional terms used throughout.

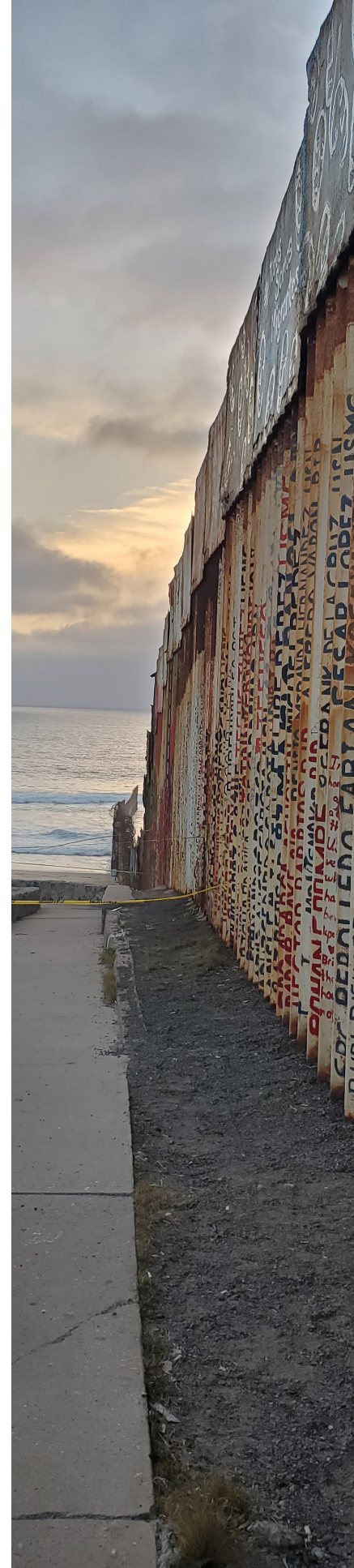
I. INTRODUCTION

For this report, Immigration Equality, the National Immigrant Justice Center (NIJC), and Human Rights First (HRF) surveyed 41 LGBTQ and HIV-positive immigrants who were formerly detained or who, at the time of the survey, were detained by U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) (**Section III**). As detailed in our findings (**Section IV**):

- Approximately one-third of survey participants (18 out of 41) reported sexual abuse, physical assaults or sexual harassment in immigration detention due to their LGBTQ identity;
- Nearly all of the participants (35 out of 41) reported being targets of homophobic, transphobic, xenophobic, racist, or other verbal and nonverbal abuse in ICE and CBP jails that sometimes included threats of violence and assault;
- A majority of participants (28 out of 41) reported receiving inadequate medical care or asking for medical care and not receiving it while in ICE or CBP detention;
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- More than a quarter of survey participants (12 out of 41) reported that ICE or CBP separated them from their loved ones, whether a partner, spouse, or sibling;
- Survey participants routinely struggled to access their attorneys or find one, while in ICE or CBP detention;
- The majority of survey participants living with HIV (13 out of 17 participants) reported medical neglect or denial of medical HIV treatment.

In the words of Saïd, a survey participant and a gay man who lived in the United States since he was a child:⁶ **“I will never forget what I experienced in ICE custody and how I was treated. I now know that I’m a ‘them,’ I’m not an American. It was drilled into me.”**

Jailing immigrants is not a requirement or necessity; it is the U.S. government’s choice. In **Section V**, we detail recommendations the executive branch and Congress can take to end this unnecessary suffering and protect the rights of LGBTQ/H individuals. These include steps to apply parole authority, issue guidance on vulnerable populations, support legislative action and phase out immigration detention.





II. Understanding the Context

OF U.S. IMMIGRATION DETENTION AND HOW IT IMPACTS LGBTQ/H PEOPLE

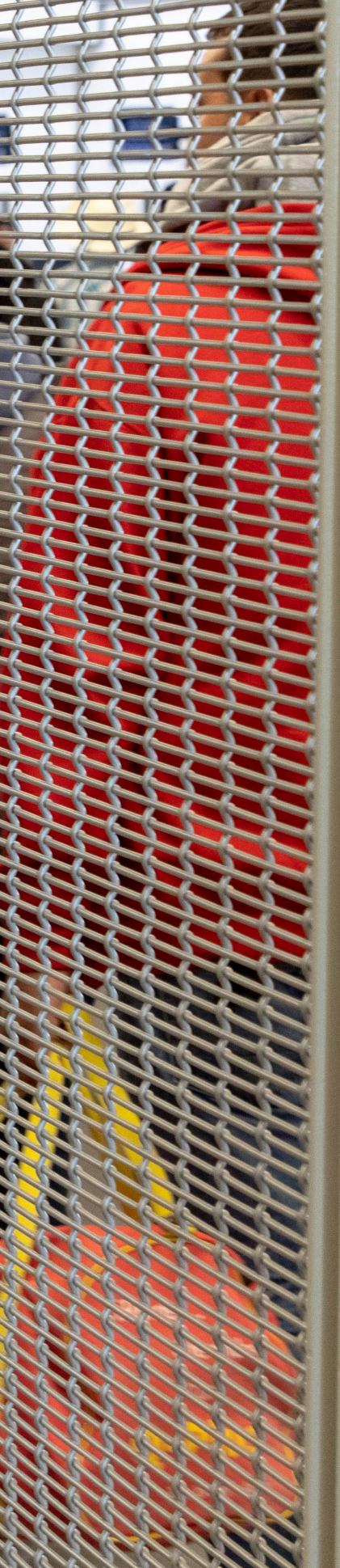
The U.S. immigration detention system is relatively new and anomalous in relation to the rest of U.S. history and most of the world. Two sub-agencies of DHS — CBP and ICE — have grown this system quickly since the 1980s, with scant oversight and abhorrent conditions. This growth has been driven by private prison lobbying⁸ and a misguided commitment by administrations of both parties to the theory that punitive border policies will deter people from attempting to migrate to the United States—overlooking evidence that even the worst mistreatment, such as family separation or family detention, is ineffective in stopping migration.⁹ This deterrence model has not stopped LGBTQ/H people from seeking safety in the United States, forcing them to endure devastating harm in jail while they await humanitarian relief.

A. WHY LGBTQ/H PEOPLE SEEK ASYLUM

Asylum in the United States is a lifesaving necessity for LGBTQ/H people. Same-sex activity between consenting adults is subject to criminal punishment in approximately 67 countries¹⁰ and it is fundamentally unsafe to be LGBTQ in many more.¹¹ Twelve countries allow the death penalty for consensual same-sex sexual activity.¹² Fourteen countries target gender identity through “cross-dressing” or “impersonation” laws.¹³

“I am a human being. I’m just asking for an opportunity to stay in the United States and to be free and be safe.”

—
Maura Martinez,
trans woman detained by
ICE for over two years.⁷



II. UNDERSTANDING THE CONTEXT

These laws are not historical artifacts: for example, in 2023, Uganda adopted new penal code provisions that criminalize same-sex sexual acts, which are punishable by death in certain circumstances.¹⁴ Similarly inhumane and draconian laws are now under consideration in Ghana and Kenya.¹⁵ In 2023, Russia's Supreme Court declared that the LGBTQ "movement" is an extremist organization, giving Russian authorities the greenlight to persecute anyone they consider part of the movement.¹⁶ Even in countries where anti-LGBTQ laws are not regularly enforced, having such laws on the books terrorizes the LGBTQ community and leads to serious human rights abuses.

In addition to criminalization, LGBTQ people are targets of high levels of violence throughout the world, including sexual assault, forced conversion therapy and "corrective" rape, physical abuse, kidnapping, torture, and murder.¹⁷ This violence is perpetrated by private actors, such as family and community members, as well as by police and other government actors.¹⁸ Impunity for LGBTQ-hate crimes and under-reporting is a chronic problem, as authorities routinely perpetrate the persecution. LGBTQ individuals are often terrified that going to the police will result in retaliation in the form of rape, beatings, or murder.¹⁹

Extreme anti-LGBTQ bias and stigmatization in many countries also prevents queer and transgender people from meaningfully participating in everyday life such as obtaining education, employment, housing and healthcare. LGBTQ people are often stripped of family or parental rights, and denied access to politics or power.²⁰ Because there are so many places in the world where LGBTQ/H people live in mortal danger, they flee to the United States to escape persecution and torture.

For LGBTQ/H people who have fled their homes to find safety, arrival at the U.S. border marks the beginning of another series of challenging processes and experiences likely to exacerbate past trauma. U.S. federal law requires that every person arriving at the border be able to access the asylum system — regardless of whether they present themselves at a port of entry or between ports of entry. In other words, seeking asylum at the border is legal. It is a right guaranteed by U.S. law that helps to save the lives of LGBTQ/H people.²¹ In recent years, however, the U.S. government has implemented measures to block or restrict access to asylum at the U.S.-Mexico border.²² For example, on May 11, 2023, the Biden administration initiated a new bar on asylum through its Circumvention of Lawful Pathways rule ("asylum ban") that denies asylum, with highly limited exceptions, to non-Mexican people who enter the United States at or between U.S.-Mexico border ports of entry without appointments.²³ Since its implementation, the asylum ban and related practices have harmed LGBTQ/H people and other asylum seekers.²⁴ These deterrence and punitive policies render this right elusive for some and contingent on suffering for others. Key to these policies is the U.S. insistence on detaining immigrants and asylum seekers, a relatively recent development rooted in racial and anti-LGBTQ/H bias.

II. UNDERSTANDING THE CONTEXT

B. WHY DOES THE UNITED STATES DETAIN IMMIGRANTS?

Most of the world,²⁵ including the United Nations, has recognized that jailing people based on their immigration status should never be the norm in response to people fleeing harm.²⁶ The United States did, too, in 1954, when it shifted away from detention and closed its last immigrant prison — a move that then-Attorney General Herbert Brownell, Jr., described as a “step forward toward humane administration of the immigration laws.”²⁷

The presumption of liberty for immigrants remained until the 1980s. **The United States’ systematic use of immigration detention was first spurred by anti-Black racism and discrimination against people living with HIV,**²⁸ with the United States disparately jailing Haitian asylum seekers fleeing the brutal Duvalier dictatorship.²⁹ Although the United States passed landmark legislation protecting the right to refuge in 1980, it refused to protect tens of thousands of Haitian refugees fleeing political persecution.³⁰ Instead, the United States proceeded to build sprawling detention sites — first offshore, in Guantanamo Bay, Cuba, and then domestically.

Over the course of the 1990s, the same policies and political rhetoric that resulted in the mass incarceration of Black and Brown communities in U.S. jails and prisons fueled the expansion of immigrant detention into the system we see today.³¹ In 2024, Congress appropriated \$3.4 billion for ICE’s current detention budget, sufficient to jail approximately 41,500 people on any given day.³² This marked a significant increase from the previous year, which had already seen more than 270,000 people detained.³³ These numbers are particularly alarming given promises made by President Biden on the campaign trail to end the use of for-profit immigration detention entirely.³⁴

The systemic invisibility of queer and trans people in ICE custody

ICE’s published detention statistics report that there are 39 transgender people in ICE custody as of May 2024, but this is likely an undercount because of failures of ICE’s reporting mechanisms, and because transgender people do not always self-identify themselves to ICE, often due to safety concerns.³⁵ The authors regularly represent transgender people who are not reflected in ICE statistics. ICE does not publicly report statistics on the number of lesbian, gay, bisexual, or queer people detained. One of the survey participants, a trans woman named Zora, conveyed her experience, noting, “They always forget about the trans women.”

For an overview of ICE and CBP standards of care for people in immigration detention, see Appendix A.

Memorial to three people detained by ICE who died from complications related to HIV. Photo credit: Michael Lavers



C. WHAT CONDITIONS DO DETAINED PEOPLE FACE UPON ARRIVING IN THE UNITED STATES?

Responsibility for preliminary processing of people arriving at the border falls to CBP. CBP's own standards limit the agency's detention to "the least amount of time required for their processing" and generally not longer than 72 hours, but these standards are not codified in law and are regularly flouted by the agency.³⁶ As recently as this past summer, CBP was reported to be regularly holding people for periods of 10 days or longer.³⁷ In March 2024, the DHS Office of Inspector General corroborated this report of prolonged detention as well as conditions of overcrowding upon visiting CBP facilities in the Rio Grande Sector.³⁸

Conditions in CBP custody are infamously³⁹ abusive,⁴⁰ dehumanizing,⁴¹ and sometimes life-threatening,⁴² including recent reports⁴³ that migrants have been held for a period of hours up to days in open air detention sites in remote desert areas near the border wall as well as between two parallel border walls, largely without access to food, water, sanitation, shelter, and medical services beyond aid provided by volunteers. Opacity is a hallmark of CBP detention; neither journalists⁴⁴ nor lawyers are permitted access to CBP facilities.⁴⁵ There is no online database or other equivalent method to determine whether or where a person is being held in CBP custody. The United Nations Working Group on Enforced or Involuntary Disappearances transmitted general allegations to the United States based on grave concerns raised by civil society organizations that custody conditions in CBP could amount to short-term enforced disappearances of migrants and asylum seekers under international law.⁴⁶

Like CBP, the conditions in ICE detention are dangerous and punishing, as documented by watchdog agencies, the press, and civil society for decades. **Recently revealed inspection reports written by DHS's own experts are among the latest examples of independent findings of "unsafe and filthy" conditions, racist abuse and harassment of people in ICE detention, negligent medical and mental health care, and "barbaric" punishments leveled, often, against those with mental health disorders.**⁴⁷ More than 90% of those detained by ICE are in facilities owned or operated by private prison companies.⁴⁸

DHS has the discretion to release individuals out of CBP or ICE custody while they pursue their case before the U.S. Citizenship and Immigration Services (USCIS) or the immigration court. Alternatively, DHS can use its discretion to place individuals in a summary removal process called "expedited removal," which allows DHS officers to order certain individuals deported without further review and largely occurs while individuals are in custody.⁴⁹ However, Congress enacted specific protections — the credible fear screening — within the law for asylum seekers. Individuals subject to expedited removal who express an intent to seek asylum or fear of return to their country of nationality must be referred for a preliminary fear screening (a Credible Fear Interview or "CFI") by a USCIS asylum officer. During CFIs, people are forced to recount the trauma they fled within days or weeks of arriving in the United States, while enduring the punitive and often abusive⁵⁰ conditions of ICE or CBP⁵¹ custody and the vast majority of individuals have not had the opportunity to consult with or retain counsel to represent them. These crucial screenings typically are conducted over a telephone from the ICE detention center or CBP holding cell, adding to the difficulty for the person to recount highly sensitive and often traumatic accounts. **Many LGBTQ individuals are afraid to reveal their sexual orientation or gender identity to a USCIS asylum officer in such a short period of time and under such stressful conditions. Because this information is often central to the successful presentation of an asylum claim, such rushed time frames often result in wrongful deportations back to harm.**



II. UNDERSTANDING THE CONTEXT

Once a person passes a CFI, their case will most likely be transferred to an immigration court for asylum proceedings. Some people's asylum proceedings move extremely quickly, raising significant due process concerns and risk of wrongful deportation back to harm (known as *refoulement*).⁵² Other cases move slowly, forcing people to remain in detention for months or years while their cases are completed. Individuals spend an average of 54 days in ICE custody, but some people are detained far longer.⁵³ More than 1,800 people in ICE custody today have been there for longer than six months.⁵⁴

D. WHAT DO WE KNOW ABOUT THE SPECIFIC HARMS LGBTQ/H PEOPLE FACE IN U.S. IMMIGRATION JAILS?

Years of reports and investigations have revealed that LGBTQ/H people endure compounded and complex harms in immigration detention.

SEXUAL ABUSE

In 2018, the Center for American Progress (CAP) analyzed data released by the federal government and found that although LGBTQ people were only 0.14% of the population detained by ICE, they accounted for 12% of the victims of sexual abuse.⁵⁵ In other words, LGBTQ people in immigration detention were 97 times more likely to experience sexual victimization than non-LGBTQ people. Recent reporting and complaints by LGBTQ advocates to DHS demonstrate that sexual harassment and violence against LGBTQ individuals is ongoing.⁵⁶ For instance, in April 2024, service providers filed a complaint on behalf of transgender and nonbinary people jailed in ICE custody. In the complaint, a transgender woman, who was detained with the male population, reported that a man repeatedly masturbated in front of her. Others had to report the same behavior before the jail staff took action.⁵⁷

SOLITARY CONFINEMENT

Despite DHS guidance mandating that solitary confinement only be used as a last resort when no other viable housing options exist, ICE and its contractors regularly resort to the use of solitary confinement when unable to protect LGBTQ individuals from

abuse.⁵⁸ In a 2019 report, the International Consortium of Investigative Journalists found that ICE's solitary confinement practices frequently targeted LGBTQ people and other vulnerable populations sometimes as a so-called protective mechanism, leading to prolonged solitary confinement.⁵⁹ **In one example, a transgender woman attempted suicide after a month in solitary confinement. She was sent to the hospital after the attempt, but upon her return was placed back into solitary where she remained for most of the next year.**⁶⁰ A recent 2024 report from Physicians for Human Rights confirms the continued improper, overuse of solitary confinement against LGBTQ individuals and others.⁶¹

“You cannot be making money off of people wanting to seek a better life.”

—
Andrea Loya,
executive director of Casa de Paz⁶⁸

YEARS OF FAILURE TO PREVENT ICE JAIL STAFF'S ABUSE OF TRANSGENDER PEOPLE

Despite DHS being put on notice of these ongoing issues, policies designed to address widespread and systemic abuses against LGBTQ individuals in ICE custody have failed. For instance, ICE opened transgender housing units referred to as “pods” at facilities in Santa Ana, California and Cibola, New Mexico.⁶² While ICE justified this isolation as “protecting” trans people in their custody, both pods were shut down after reports of rampant abuse including humiliating and abusive strip searches by jail staff, prolonged and punitive solitary confinement, medical neglect, and other mistreatment.⁶³

Roxsana Hernandez Rodriguez, a transgender woman seeking asylum in the U.S., died of HIV related complications while in ICE custody at Cibola.⁶⁴ When the Cibola trans pod closed in January 2020, about half of the pod was transferred to a new trans pod at the Denver Contract Detention Facility in Aurora, Colorado. However, serious abuses have also been reported at that facility, where three detained people have died since 2012.⁶⁵

II. UNDERSTANDING THE CONTEXT

In 2015, ICE issued a “**Transgender Care Memorandum**” providing standards of care for detained transgender people to supplement existing detention standards. The Memorandum provides limited protections including guidelines for housing and bathroom facilities, gender identity screening, limitations on the use of segregation, and provision of gender affirming health care.⁶⁶ However, the Memorandum’s protections are vague, ambiguous, and lack an independent oversight mechanism to ensure their implementation. Further, many of the protections outlined in the Memorandum are only mandatory for a facility if it has incorporated the provisions into its contract. As of 2020, Reuters reported that no facility had modified its contract to adopt the 2015 guidance although some facilities had adopted the guidance “informally.”⁶⁷ As of the date of this report, the authors do not know exactly which facilities have incorporated the Memorandum into their contracts because ICE does not post its contracts publicly in a consistent manner.

Even when it is incorporated in ICE facilities, the Memorandum provides insufficient protections and preserves a carceral and inhumane approach — focusing on the isolation of transgender people, which prolongs detention, exacerbates trauma, and punishes people on the basis of their gender identity. For more information on the Memorandum, see Appendix A.

MEDICAL NEGLECT

Medical neglect among detained LGBTQ/H people is also widely documented.⁷² In a 2019 DHS Office of Civil Rights and Civil Liberties (CRCL) complaint, advocacy organizations detailed medical neglect and abuse of transgender and HIV-positive immigrants in various detention facilities throughout the country.⁷³ In March 2020, Immigration Equality filed a CRCL complaint highlighting substandard HIV care and ICE’s refusal to release a number of asylum seekers living with HIV at the outset of the COVID-19 pandemic.⁷⁴ Authors routinely receive reports of medical neglect and inadequate care from detained clients and have reported these concerns through individualized complaints to ICE, CRCL, the DHS Office of Inspector General (OIG), and the DHS Office of the Immigration

Detention Ombudsman (OIDO). The risk posed to transgender people in immigration detention has also prompted members of Congress to demand that ICE release transgender immigrants in its custody.⁷⁵

In addition to abuse in ICE facilities, advocates also receive reports regarding rampant mistreatment and medical neglect in CBP custody. However, given that detained people are in CBP facilities for shorter periods and often are not certain of the details of confinement, such as the location of the CBP facility in which they were held, reporting on such abuses has been limited.

Vicky, represented by NIJC, is a transgender woman seeking safety in the U.S. after fleeing violence in Honduras.

Until recently, Vicky was held in ICE detention without a hearing for more than two years, highlighting the mistreatment of transgender individuals and negligent care in private detention facilities. Vicky was detained in Pine Prairie,⁶⁹ an ICE facility in Louisiana that purportedly incorporated the Transgender Care Memorandum, before being transferred to the Denver Contract Detention Facility (Aurora), operated by a private prison company, GEO Group. Vicky filed a civil rights complaint detailing the culture of transphobia, harassment, and medical negligence she endured while detained at Pine Prairie, and one related to the mistreatment of transgender detained people in Aurora’s trans pod.⁷⁰

Vicky’s mistreatment illustrates that ICE routinely fails to follow its own memorandum, even when incorporated, and continues to subject trans women to horrific conditions.⁷¹



III. Survey Methodology and Participant Demographics

Between July 2023 and December 2023, the authors interviewed 41 detained or formerly detained LGBTQ/H individuals for this survey. These 41 individuals (collectively referred to as “survey participants” or “participants” throughout) included three who were detained at the time of interview and 38 who had previously been detained by ICE and/or CBP. Concurrently, the authors interviewed seven organizations who regularly provide services to or advocate on behalf of LGBTQ/H people in CBP or ICE detention.

A. METHODOLOGY

Individual participants were recruited through outreach to organizations that provide legal and social services to LGBTQ/H immigrants. The 41 participants were interviewed by a staff member of one of the organizations that authored this report who asked questions guided by a survey tool.

The goal of the interviews was to collect quantitative and qualitative information on experiences of confinement for LGBTQ/H individuals. All interviews were conducted either in person, by video call, or standard telephone call in languages that the participants were fluent in. Interviews lasted approximately one to three hours. Participation was voluntary, and all participants provided informed consent to take part in the survey. Interviews were based on a questionnaire (see Appendix B).⁷⁶

In addition, the authors conducted eight interviews with representatives from legal and social services non-profit organizations that serve or advocate on behalf of LGBTQ/H immigrants, including: the American Civil Liberties Union (ACLU) of New Mexico, the Florence Immigrant & Refugee Rights Project (the Florence Project), Las Americas Immigrant Advocacy Center (Las Americas), American Friends Service Committee

III. SURVEY METHODOLOGY AND PARTICIPANT DEMOGRAPHICS

(AFSC), New York Lawyers for the Public Interest (NYLPI), and Rocky Mountain Immigrant Advocacy Network (RMIAN). These interviews were conducted to gather additional context and information on conditions of confinement from the perspective of legal representatives and social service providers working with LGBTQ/H immigrants. These interviews were conducted via video conference by authors during the same time frame as the individual participant interviews.

B. DEMOGRAPHIC INFORMATION ABOUT SURVEY PARTICIPANTS

All survey participants identified as LGBTQ. All survey participants were 18 years of age or older. Thirteen are transgender women, one is a transgender man, two identified as gender non-conforming, and one identified as non-binary. With respect to sexual orientation, six are bisexual, three are lesbians, 17 are gay and one is pansexual. One participant identified as LGBTQ, but did not further specify their identity. Seventeen participants are living with HIV. Twenty-five participants were from Latin and Central America, seven were from Caribbean countries, five were from Eastern Europe, one from West Asia, and one from an African country. Two other participants identified as Indigenous. **The vast majority of survey participants were Black, Brown or Indigenous, leading to intersecting forms of harm between race, Indigeneity, and LGBTQ/H status.**

All participants were immigrants pursuing humanitarian relief in the form of asylum, withholding of removal, or relief pursuant to the Convention against Torture (although they may have also been pursuing other relief as well). At the time of their interview, 13 participants had been granted immigration relief, one had been deported, and 27 had cases still pending. After the interviews, authors learned that two other participants were deported and another was granted relief.



The interviews covered participant experiences in both ICE and CBP custody as further specified below:

- Twenty-nine participants were detained by both ICE and CBP; seven participants were detained exclusively by ICE; and five were detained exclusively by CBP.
- Eighteen participants were detained during 2022-2023; twenty-one during 2018-2021; one participant was detained in 2014; and one was detained in 2009-2010.
- One participant was detained for two years; sixteen were detained for between six months and two years; fifteen were detained between one and six months; three were detained between two weeks and one month; and six were detained for less than two weeks.
- Participants detained by CBP were jailed in facilities in Arizona, California, and Texas.
- Eight participants were not certain where they were jailed.
- Participants were jailed in ICE prisons located in Arizona, California, Colorado, Florida, Georgia, Guam, Louisiana, Mississippi, Nevada, New Jersey, New Mexico, Texas, and Virginia, including the following facilities: Adams County Correctional Center, Adelanto ICE Processing Center, Baker County Facility, Central Arizona Florence Correctional Center, Central Louisiana ICE Processing Center, Denver Contract Detention Facility, Eloy Detention Center, El Paso Service Processing Center, Florence Correctional Center, Folkston ICE Processing Center, Imperial Regional Detention Facility, Jackson Parish Correctional Center, Karnes County Immigration Processing Center, La Palma Correctional Center, Otay Mesa Detention Center, Richwood Correctional Center, San Luis Regional Detention Center, South Louisiana ICE Processing Center, South Texas ICE Processing Center, Stewart Detention Center, Tallahatchie County Correctional Facility, Val Verde Correctional Facility, and Winn Correctional Center.⁷⁷



IV. 41 LGBTQ/H survey participants describe widespread abuse in ICE and CBP jails.

Below we outline specific findings related to (A) sexual and physical abuse; (B) homophobic, transphobic, xenophobic, and racist harassment; (C) the denial of medical care or rampant medical neglect; (D) substandard or nonexistent mental healthcare and alarming use of solitary confinement; (E) violations of privacy rights; and (F) obstruction of access to counsel in ICE and CBP jails.

A. APPROXIMATELY ONE-THIRD OF SURVEY PARTICIPANTS REPORTED EXPERIENCING SEXUAL ABUSE, PHYSICAL ASSAULTS, AND/OR SEXUAL HARASSMENT DUE TO THEIR LGBTQ IDENTITY IN IMMIGRATION DETENTION.

As described in Section II above, sexual and physical violence directed at detained LGBTQ immigrants is an ongoing and persistent issue, with little oversight or accountability. The security mechanisms ICE has in place are woefully inadequate at protecting LGBTQ people from harm. As a result, LGBTQ immigrants continue to experience sexual abuse and physical assault in detention. Moreover, LGBTQ

“It was completely disgusting. My first impression of the democratic country United States is that asylum seekers are treated as second class.”

—
Nikolai,
gay man and survey
participant reflecting on
his time in CBP custody.

immigrants frequently fall victim to physical and sexual violence in their countries of origin due to their LGBTQ identities. In ICE custody, some of them have to relive these traumatic events.

Eighteen out of 41 participants reported being sexually or physically assaulted or abused, or witnessing another LGBTQ person being physically assaulted in ICE custody. Specifically, eight people reported being sexually assaulted or abused; another eight reported being physically assaulted; and two participants witnessed other LGBTQ detained people being assaulted.⁷⁸ Another transgender woman also reported that an officer sexually harassed her verbally. Some participants stated that they were scared to report abuses to the detention staff because they feared being placed in solitary confinement “for protection.” Others did not report abuse because they believed that detention staff would ignore them or retaliate against them.



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Below are examples of sexual and physical abuse and assault experienced by survey participants:

Karina, a trans woman detained by ICE in Nevada in the male detention unit, was sexually assaulted by a detained man while in the shower. She states that after the assault, she was taken to a hospital “to see if she was really raped.” The male immigration security officer who brought her to the hospital remained present during the medical examination and she was forced to undress in front of him. After being returned to the detention facility, Karina experienced a mental health crisis and was subsequently placed in solitary confinement.

Leona is a trans woman who was detained in a Florida ICE facility in the male detention unit. She shared a cell with a man who continually sexually harassed and abused her. She reported the man to immigration officials and asked to be moved, but her requests were ignored. One night, the man got on top of Leona and attempted to rape her. She screamed for help, and the people in the neighboring cells made noise, which drew the attention of officers who eventually stopped the assault. Leona still suffers psychologically from the incident.

David is a gay man who was detained by ICE in Virginia. He was a target of homophobic verbal harassment from a detained man who called him names like “faggot” and “pussy boy.” David reported the man to the facility staff and was transferred to a different housing unit. However, David’s abuser was later moved to the same unit as him. The man then physically assaulted David, pulling him off of the top bunk and severely beating him. David tried to defend himself and was placed in solitary confinement for approximately 20 days as a result. His attacker was placed in the opposite cell. ICE refused to move David away from his assailant, even when there were other empty cells available. David experienced continued verbal abuse from his attacker after the assault. He also started suffering from panic attacks.

**“The guards beat us like dogs.
The other detainees also beat me.”**

—
Tara,
trans woman and survey participant
recalling her experience in ICE custody.

Zora is a transgender woman who was detained in a Georgia ICE facility. The facility also housed individuals in criminal proceedings. Zora was housed in the area of the facility reserved for maximum security alongside non-immigration male prisoners, purportedly for her “safety” because it was the only area where she could be detained in a cell alone. Despite these supposed steps to afford her safety, she faced sexual and racist harassment and abuse. A man detained in the same unit who was tasked with bringing food to her cell twice exposed himself to Zora and masturbated in front of her while calling her a slur. As prison officials investigated the incident, a supervisor called Zora a “wetback.” Eventually, the man who had exposed himself was moved out of her unit. However, when Zora was being released, she saw the man in the hallway, and he tried to attack her again.

Benjamin is a gay man who was detained by ICE in New Jersey. Without his consent, detention staff disclosed Benjamin’s sexual orientation to other detained people and displayed an ID card on the door of his cell indicating Benjamin is gay. While Benjamin was asleep, a detained man punched him in the face. Benjamin told an officer about the attack. Instead of helping, the officer accused Benjamin of fighting and threatened to lock him in solitary confinement. After that, Benjamin was physically assaulted at least five more times in homophobic attacks. However, he did not report these attacks due to the officer’s threat to place him in solitary confinement.

Zoe, a trans woman detained in Louisiana in the male detention unit, felt unsafe in the ICE facility. After seven to eight requests for alternative housing, ICE told her that protective custody was her only alternative, which Zoe understood to mean 22+ hours of isolation per day. Because of the persecution she endured in her country of origin due to being LGBTQ, Zoe worried that prolonged isolation would be psychologically unbearable for her, so she remained in the general male population. She experienced several separate incidents of men exposing themselves, or requesting sexual favors. These multiple incidents of sexual harassment and abuse caused Zoe to suffer panic attacks.

In each case, ICE put LGBTQ/H participants in custodial settings that inevitably placed them in danger of abuse. Often, they punished participants for reporting abuse, or placed them in conditions that aggravated their psychological distress due to repeated exposure to sexual harassment, sexual abuse, and physical assault.

B. NEARLY ALL SURVEY PARTICIPANTS SUFFERED RAMPANT HOMOPHOBIC, TRANSPHOBIC, XENOPHOBIC, AND RACIST ABUSE AND HARASSMENT.

Homophobic and transphobic verbal abuse is psychologically harmful,⁷⁹ traumatizing and retraumatizing for LGBTQ people, especially for those who have faced extreme violence and pervasive abuse in their country of origin because of their sexual orientation or gender identity.⁸⁰ Verbal abuse also “function[s] to condone or encourage physical and sexual abuse, and can leave deep psychological scars on LGBTI detainees.”⁸¹ ICE and CBP do not publish data on the racial identity of the people they detain. However, the vast majority of people subject to detention are Black, Brown, or Indigenous. As a result, **detained LGBTQ/H people suffer abuse targeting multiple aspects of their identity.** Racist and xenophobic insults only compound the harm caused by homophobic and transphobic harassment.

Nearly all of the participants (35 out of 41) reported being targets of homophobic, transphobic, xenophobic, racist, or other verbal and nonverbal abuse while in custody that sometimes included threats of violence and assault.⁸² 29 of 41 participants reported that ICE or CBP staff or contractors perpetrated the abuse, including by using degrading and dehumanizing language like calling survey participants “fag,” “faggot,” “nasty blacks,” “scum,” “garbage,” “dirty,” “wetback” or telling survey participants to “fuck off,” “get away... faggot, I don’t want to catch AIDS,” or that “[you aren’t] wanted in this country.”

IV. 41 LGBTQ/H SURVEY PARTICIPANTS DESCRIBE WIDESPREAD ABUSE IN ICE AND CBP JAILS.

Elisa, a trans woman detained in Arizona, screamed for help when men harassed her in the shower. When an officer came, he berated Elisa rather than helping her, saying, “Why are you talking to so many men if you don’t want them to bother you.”

Survey participants reported the following experiences:

Elisa is a trans woman who was detained in Arizona in the male detention unit. Detained men watched Elisa shower and threatened that they would force her to perform oral sex in the bathroom. The men also made other sexually explicit comments to Elisa, like saying, “I want to suck your breasts.” Elisa was scared that if she reported the harassment she would be put in solitary confinement. At another Arizona facility, a detained man harassed Elisa while she was showering. She screamed for help. When an officer came, he berated Elisa rather than helping her, saying, “Why are you talking to so many men if you don’t want them to bother you?” There were other instances of harassment that Elisa reported. The officers responded by placing her in solitary confinement.

Celso is a bisexual man who was detained in Louisiana. During one incident, a guard saw him talking to another man and called Celso a “fag” in Spanish. Afterward, Celso became a target of verbal abuse by other detained people, who referred to him as a “bitch” and said he “look[ed] like a woman” and “ha[d] a nice ass.” While in CBP custody, a CBP officer referred to Celso and other detained people as “scum” and “garbage” and said that they “weren’t wanted in this country.” Other CBP officers witnessed the abuse and did nothing.

Cris is a trans woman who presented to CBP to seek asylum. When Cris asked a CBP officer to refer to her by her female name, the officer responded, “I don’t care if you want to be called Princess Diana or Queen Isabel. I see you have a man’s name in the documents, and I’ll refer to you as a man.”

Humberto is a gay man who was detained in Texas facilities in 2023. Detained men frequently called him a “fag” and made comments like, “fags don’t present anything useful to society.” Humberto never reported the harassment to detention staff because he feared retaliation from his abusers.



Photo credit: Alex Milan Tracy / AP Images

Nelly is a transgender woman who was detained in CBP and ICE custody in 2023 with male populations. Nelly recounted numerous incidents of harassment, including being asked by another detained person to come and stay in his cell and if she was “ready to be penetrated.” In other instances, she was asked invasive, sexually explicit questions like “Does anal hurt? Do you have [an] orgasm? How does it feel?” In another incident, a detained man shared information that he had overheard her telling an asylum officer during her credible fear interview about her desire to transition. He told others, she “wants to operate on her tits and ass.” Nelly was intimidated by the harassment and feared for her safety.

Kiana, a trans woman who was detained in Arizona in male detention units in 2022 stated, “The showers were a huge issue because the men shower all together and the dividers between the shower stalls [only] go up to the waist, so everyone can see each other’s chests. But I have breasts, and I couldn’t take my bra off. I was so uncomfortable and men were standing everywhere and staring at me and making comments about me having breasts.”

All of the organizational participants who provide direct services to detained people similarly reported that their clients were targets of verbal harassment by staff and other detained people, for example:

- According to a Las Americas attorney representing people in New Mexico, a client told her that a jail staff member referred to him as a “gay bitch.” During the same incident, the jail staff member made another homophobic comment, telling the client, “You got sick because you’re pregnant from all your prior boyfriends.”
- A Florence Project attorney, who represents people in Arizona, received a report from a client that a jail staff member called him a homophobic slur. In a different incident, another LGBTQ client told an attorney that a jail staff member referred to him as a “bitch.” The attorney’s transgender clients also reported that jail staff regularly misgendered them.
- An AFSC service provider said he heard from transgender clients that before the implementation of a telehealth system that allows detained people to receive gender affirming care online with an outside provider, they avoided going to the medical center at the Denver Contract Detention Facility because they experienced homophobia and transphobia there.
- A NYLPI attorney who represented a gay man detained in Louisiana stated that her client heard other detained people say that they would kill a gay person if they came in contact with them. This was a central reason why the client was too scared to disclose his sexual orientation during his CFI and did not pass.

These disturbing examples are unfortunately not an exception, but the norm in ICE and CBP detention for LGBTQ/H people. DHS has been repeatedly put on notice of the prevalence of homophobic and transphobic abuse and harassment in detention facilities and failed to take action.⁸³

“The showers were a huge issue because the men shower all together and the dividers between the shower stalls [only] go up to the waist, so everyone can see each other’s chests. But I have breasts, and I couldn’t take my bra off.”

—
Kianna,
trans woman detained
in Arizona in male
detention units.

C. THE MAJORITY OF SURVEY PARTICIPANTS REPORTED EXPERIENCING MEDICAL NEGLECT OR WERE OUTRIGHT DENIED MEDICAL TREATMENT IN DETENTION.

Detained individuals cannot access medical care without the facilitation and permission of federal immigration authorities. Standards of care vary across CBP and ICE facilities, but neglect or denial of medical care is endemic to both. CBP routinely confiscates a variety of personal belongings from people in its custody, including prescription medication and inhalers, resulting in adults' and children's rapid health deterioration and hospitalization.⁸⁴ **CBP's primary contractor for medical services routinely understaffs and underpays medical professionals at CBP facilities, keeps incomplete or inaccurate records, and hires nursing assistants with little to no experience in health care.⁸⁵ The result of such substandard care has been deadly.⁸⁶**

Medical neglect in ICE custody also has fatal consequences.⁸⁷ Medical expert review of deaths in ICE custody between 2011 and 2018 showed alarming rates of ICE jail staff ignoring abnormal vital signs leading to untimely deaths, in violation of ICE's own standards of care.⁸⁸ In 2019, California's then-Attorney General Xavier Becerra produced a detailed report on conditions of confinement in ICE jails across the state, finding that nurses "fail to check vital signs for conditions that present as simple matters, but could have more serious causes that a full evaluation would reveal."⁸⁹ Even ICE has recognized that some of its facilities are unsafe and must be closed, but has failed to take action to shut them all down. In August 2022, ICE officials drafted a memorandum recommending the closure or downsizing of nine immigration detention centers in part because these jails were unsafe, unsanitary, and failed to provide minimum healthcare.⁹⁰ As of February 2024, over 50 members of the U.S. House of Representatives wrote to the Biden administration expressing concern that two-thirds of these facilities (all of them for-profit) remain open and continue to provide substandard care.⁹¹ Survey participants corroborate CBP and ICE's pattern of medical neglect and woefully inadequate care.

Out of 41 participants, 28 reported receiving inadequate medical care or asking for medical care and not receiving it while in ICE or CBP detention. Seventeen survey participants reported being people who live with HIV. Thirteen of them reported issues with their HIV care. Delays of weeks or months in receiving HIV care were common in ICE detention, while CBP routinely confiscated and/or denied access to HIV medication. Even where HIV medication was accessible, participants had to advocate and request on multiple occasions to receive care. Organizational participants also reported incidents where their clients were denied HIV medication or care while detained.



Denis Davydov, a gay man from Russia formerly detained at an ICE facility, speaks at a rally in support of the Dignity for Detained Immigrants Act.

Four participants reported significant delays or outright denials of gender-affirming hormonal treatment by ICE or CBP.

Elisa, a trans woman repeatedly denied hormonal treatment, reported, "The only thing you get is Ibuprofen."

Karina, a trans woman who also requested hormonal treatment, was told by the jail staff that she needed to be detained for a year to receive hormone treatment.

IV. 41 LGBTQ/H SURVEY PARTICIPANTS DESCRIBE WIDESPREAD ABUSE IN ICE AND CBP JAILS.

Two participants, Fidel and Zora, reported acute tooth pain and/or a cracked and broken tooth, but were never referred to a dentist.

Zora is a trans woman who has breast implants. In ICE custody, one of her implants burst. As a result, Zora was having difficulty moving her arm and her fingers and fingernails were turning purple. She experienced high levels of persistent pain, but the medical staff did not attend to Zora's concerns until she developed a high fever, causing sweating and shaking. Eventually, Zora was taken to the medical unit. The medical staff could not explain well what was happening because they were not using an interpreter. The medics gave her a mammogram but could not determine what was wrong. Zora said that the medical staff "didn't even want to touch me because they didn't know my symptoms." She started to turn white and lost sensation in her left arm. Zora was eventually sent to see a doctor outside of the detention center. She was crying and her arm was swollen. The doctor also could not diagnose the problem and said that Zora needed an MRI. However, an MRI required ICE's approval. It took weeks for the MRI to be approved, and by that time Zora was getting released from custody.

Fidel, a gay man, reported bleeding from his rectum for two weeks and filled out multiple requests for emergency medical care, all of which were ignored by jail staff. Eventually, a nurse gave him some medication to address the issue.

Among the 34 participants who sought medical care and received it, 17 participants shared that they had to persistently advocate to receive these services.

ICE confiscated **Saïd**'s asthma inhaler, returning it after one month of repeated complaints.

Selvin, a bisexual man living with HIV, had to advocate to keep his medical records, which he needed to convince CBP jail staff that he needed access to HIV medication at two different facilities.

Nathan, another bisexual man, submitted three requests to see a doctor after suspecting he may test positive for syphilis, which he did.

Elisa, who had been taking hormones in her country of origin, was experiencing severe headaches. She believed this was because of the cessation of hormone therapy. She made repeated requests for hormones or a medical evaluation, but her requests were ignored.

Survey participants also reported fearing that asking for medical help would lead to adverse consequences.

Humberto, a gay man, reported apprehension about sharing some of his physical and psychological symptoms, because he heard from other detained people that, "if you go to medical a lot, you'll be denied release because you're sick."

In ICE custody, **Belinda**, a non-binary survey participant, heard detained people say that "you can't tell the staff you're sick or you'll be placed in the pit [i.e., solitary confinement]." Belinda developed a cough in custody, but they were scared to see a doctor because they did not want to be placed in solitary confinement.

Zacarias, a gay man, was scared to tell CBP officers that he is living with HIV because he was afraid this would result in a deportation.

Survey participants suffered significant emotional, psychological, and physical harm as a result of the systemic medical neglect and mistreatment in CBP and ICE custody. Nikolai, a gay man detained by both agencies, reflected: "Imagine sitting in jail and not getting your medication. You're feeling worse and worse and worse."

ICE Jails Routinely Fail to Provide Gender-Affirming Care

Fourteen survey participants identified as transgender. Gender-affirming care, including hormone therapy, is medically necessary treatment that significantly improves mental health outcomes for trans and non-binary people, including reducing suicidality.⁹² Current detention standards provide for hormone therapy in immigration detention. However, there are problematic limitations on such care, and access can be difficult to obtain.⁹³ Moreover, hormone therapy is sometimes poorly monitored, there are delays and interruptions in care, and hormones are sometimes prescribed at significantly reduced dosages, leading to negative health outcomes.

Dr. Elizabeth Kvach, a specialist in trans care who participated in an organizational interview, provides medical services to trans people detained in the trans pod in Aurora, Colorado. She reported that hormone therapy is often unreasonably delayed for months because people are forced to undergo unnecessary psychological evaluations not in accordance with international professional standards of care. In other cases, hormone therapy is significantly delayed because of record transfers from other facilities. The delays and interruptions in hormone therapy can be especially damaging for people who had previously been taking hormones, but had to stop abruptly because they were detained. Stopping hormone treatment can also retrigger gender dysphoria and lead to depression and worsening mental health outcomes. Further, Dr. Kvach observed that Aurora medical staff does not always conduct medical labs in a timely manner. This makes it difficult to monitor and evaluate a patient's health, and to detect whether someone is experiencing side-effects of hormone therapy or is getting a dose that is not right for them.

D. MENTAL HEALTHCARE IN DETENTION IS SUBSTANDARD OR NONEXISTENT.

Numerous scholars, advocates, and medical professionals continue to report on the abysmal mental healthcare in ICE and CBP facilities.⁹⁴ An ICE whistleblower report bolstered these accounts.⁹⁵ For LGBTQ immigrants, including those seeking asylum, lack of mental healthcare is dire because they are at an increased risk of surviving hate crimes, interpersonal violence, and sexual assault while in custody, which compounds anti-LGBTQ persecution they may have already fled. This predisposes LGBTQ community members to higher rates of post-traumatic stress disorder (PTSD) and depression, even prior to detention.⁹⁶

Survey participants reported serious, recurrent deficiencies in mental healthcare for LGBTQ/H people in immigration detention. **Twenty of the 41 people interviewed reported new or increased mental health symptoms while in detention, including hives, panic attacks, mental health crises, flashbacks, and self-harm.** Examples from our survey include:

Leona was diagnosed with depression at an ICE detention center and saw a psychologist there. She found these sessions helpful. However, the psychologist had a big case load and frequently could not see Leona. Not receiving the psychological assistance that she needed affected Leona's health and wellbeing. She lost a lot of weight, in part due to being depressed. Sometimes Leona felt that she was having emotional breakdowns, when she lay in bed and cried.

David requested to start taking medication in detention in response to new mental health symptoms that appeared after he survived homophobic acts of violence against him by another detained man, and ICE jail staff failed to respond. David began to experience flashbacks, panic attacks, anxiety, and depression after the attack. When recounting his flashbacks, he said, "[T]here's a sensation, you just recall everything, words he told me, he took me off the bunk, and I'm scared of him beating me up again. Your breathing changes, gets quicker."

Nikolai was diagnosed with depression and, prior to being detained, had been prescribed medication as treatment. Yet once detained, CBP jail staff ignored his requests to receive antidepressants. Even as his symptoms grew worse and he experienced withdrawal, he did not receive his medication.

Although our survey did not specifically ask participants about self-harm or suicidal ideation while in detention, **three participants voluntarily disclosed that they had attempted suicide while in detention due to mental health symptoms.** All three of the participants who reported suicide attempts are transgender.

Kilian, a trans man, attributed suicidal acts to abuse and surveillance by the jail staff. After one suicide attempt, Kilian was placed in solitary confinement for about 10 days. The experience was very traumatic for him. Kilian was forced to undress and was put in a straitjacket. Kilian did not want to take his clothes off because he felt embarrassed, but the staff made him do it anyway. Kilian stated, “[T]hey took away my clothes, even underwear. They put me in a shirt that they put on crazy people. The worst abuse is taking my clothes away without my permission.” Kilian reports that after his second suicide attempt, the jail staff did not take him to see a mental health professional. “They wouldn’t care unless I killed myself,” Kilian said.

Many of the participants who experienced mental health symptoms never saw a mental health professional while in detention. **Of the few participants that ultimately reported seeing a mental health professional (11 of 41 participants), seven reported that their care was inadequate.**

Over a decade after ICE’s own memorandum acknowledging the special vulnerability of LGBTQ individuals being subjected to solitary confinement,

“They wouldn’t care unless I killed myself.”

—
Kilian,
a trans man abused and surveilled by jail staff.

roughly half of LGBTQ/H participants in our survey (20 of 41) were subject to this practice.⁹⁹ Immigrant participants we interviewed were placed in solitary confinement because of reporting homophobic or transphobic harassment, after attempting self-harm (at times in response to detention conditions), or simply because jail staff appeared to not otherwise know where to place them. Organizational participants also reported LGBTQ clients being placed in solitary confinement and instances where clients did not disclose their LGBTQ status for fear of being placed in isolation.

Some participants were sent to solitary confinement as a punitive measure, despite not having done something to warrant disciplinary “segregation.”

Elisa, a transgender woman, recalled, “When you complain, they put you in the punishment cell.” She was first held in an infirmary area of the detention facility after requesting not to be housed incorrectly with men. Subsequently, corrections officers placed her in solitary confinement multiple times after she complained to the officers about sexual harassment and abuse. They would not allow her to join the general population until she was evaluated by a psychologist; in one instance this took weeks to be scheduled.

Solitary Confinement

It is generally defined as isolating someone in a cell for 22 hours or more per day without meaningful human contact.⁹⁷ Cloaking this harsh reality, ICE and CBP describe the practice as “segregation” or “segregated housing,” using it as both punishment (termed “disciplinary segregation”) and allegedly for safety (“administrative segregation”).⁹⁸

E. SURVEY PARTICIPANTS REPORTED PRIVACY VIOLATIONS AND NONCONSENSUAL DISCLOSURES OF LGBTQ/H STATUS.

DHS has some standards protecting confidentiality of detained LGBTQ/H people (See Appendix A). But like many other DHS detention standards, these are not consistently followed, as is demonstrated by the participants' experiences.

Out of the 41 survey participants, 18 reported having their sexual orientation, gender identity, HIV status or other confidential medical information disclosed in custody without their consent. These breaches of confidentiality occurred primarily in CBP detention, but some took place in ICE detention centers. Two more people reported that other medical information was disclosed in ICE custody. Additionally, two participants witnessed other people's private information about their sexual orientation or medical histories publicly disclosed.



Outed in CBP Custody

Six survey participants who came to the San Ysidro port of entry reported being housed in a CBP facility that had cells labeled as “gay,” “transgender,” or “HIV.” For example, Boris is a gay man who presented at the San Ysidro port of entry. At the CBP facility, Boris was held alone in the cell with the word “gay” written on it. The cell door had a small window, and, according to Boris, others who were detained walked by and tried to peek through “to see who the gay was.” Fiona is a lesbian who presented at San Ysidro port of entry. In CBP custody, she was held in a cell with the word “gay” written on it. She asked the officer to take the sign down, but he refused. Bruno is a gay man living with HIV who also presented at the San Ysidro port of entry. Bruno reports that while in custody in what appears to be a CBP facility a guard put an “HIV” sign on his cell.

Nikolai is a gay man who presented at the San Ysidro port of entry. Nikolai was detained in the general population, but he observed that the facility had cells with signs on the door that said, “HIV,” “GAY,” and “TRANSGENDER” in big letters. The cells had windows, so detained people who walked by tried to peek inside. Nikolai stated that these conditions were “like a zoo.” He further stated that when people were transferred, due to the lack of confidentiality, LGBTQ individuals or people living with HIV could be identified by others. Nikolai knows a same-sex couple who was detained in the LGBTQ-labeled cells. The couple was harassed during a transfer as a result of being outed because of this arrangement.

Six out of 17 participants living with HIV reported being forced to publicly disclose their HIV status during interactions with CBP staff.

Cris is a transgender woman who presented to CBP officers at a port of entry to seek asylum. An officer demanded to know in front of other migrants what Cris's HIV medication was. Cris recalls the officer saying, "Tell me what you're taking these for or you won't enter. I want to hear it from your mouth." When Cris told the officer it was HIV medication, she noticed people trying to distance themselves from her. Later, during processing, no one wanted to sit on the same bench as her. Cris says that the "experience was very uncomfortable. Other people started to see me as strange."

Manuel is a gay man who presented to CBP to seek asylum. When CBP officers detained Manuel, they asked him in front of other migrants if he had any medical conditions. He told the officers that he is HIV positive. He was scared to disclose this information in front of other people, but he was also scared that his HIV medication might be confiscated. Later he saw a medical professional in CBP custody and discussed being HIV positive again in a non-confidential space. Manuel stated that "[A] lot of people don't understand what it means to be HIV positive and discriminate because of it."

Selvin presented to CBP officers. He had to tell the officers in the presence of other detained people that he is HIV positive. As a result, other people "started to reject [him] and not go near [him]." Later, Selvin overheard detained people talking about him and his partner, saying that Selvin and his partner had AIDS.

"[A] lot of people don't understand what it means to be HIV positive and discriminate because of it."

—
Manuel,

gay man who presented to CBP to seek asylum.

Theo is a bisexual man living with HIV who presented to CBP officers to seek asylum. During processing, an officer told Theo to take his medication out of his pocket and put it in the bag. When the officer saw that Theo had HIV medication she called for a different officer, saying "you have AIDS" loudly in Spanish in front of other migrants. Theo tried to explain that he is HIV positive and does not have AIDS. Theo felt very vulnerable because his HIV status was disclosed in front of other people. The officers then took Theo to speak to another officer who again said that he had "AIDS." Theo just agreed with the officer, rather than clarifying that he is HIV positive and does not have AIDS, because he felt stressed and overwhelmed.

Other survey participants reported their LGBTQ/H status being disclosed in ICE custody:

Kevin was scared to disclose to a CBP officer that he is living with HIV and needs medication because there were other people around. He was later transferred to a detention center in New Mexico. There, the medical staff only spoke English, so Kevin had to use the help of another detained person to communicate that he needed HIV medication. As a result, other detained people found out and asked the staff to move Kevin to a different cell because they did not want to share living quarters with an HIV-positive person. Kevin felt hurt that people ostracized him due to ignorance.

Benjamin is a gay man who was detained in a county jail that had a contract with ICE. The officers working in the jail outed Benjamin to other detained people. Benjamin's prison ID card, which was displayed on his cell door, also identified him as gay. Benjamin reports being physically assaulted various times by other detained people because of his sexual orientation.

Outing LGBTQ/H people in detention contributes to the climate of hostility, violence, and lack of safety that participants experienced.

F. SURVEY PARTICIPANTS ROUTINELY STRUGGLED TO ACCESS ATTORNEYS TO ADVOCATE ON THEIR BEHALF WHILE DETAINED.

Although civil in nature, immigration proceedings have very high stakes — deportation to dangerous or deadly conditions,¹⁰⁰ family separation and banishment of individuals making central contributions to their families and communities, and the lifelong trauma and impact on deported people and their loved ones. Nevertheless, there is no guaranteed right to counsel for immigrants, including detained individuals. As of December 2023, representation rates for immigrants in deportation proceedings, whether detained or released, stood at 30% — a rate that plummeted following dramatic increases in immigration enforcement over the past five years.¹⁰¹

Detention severely increases the chances of people being unrepresented during their immigration proceedings; the few who are able to retain counsel while detained see their odds of winning increase tenfold.¹⁰² Immigration jails are often in remote locations, affording detained people little to no access to legal service providers. For example, a 2017 survey of legal service providers in New Mexico and Texas revealed that the providers could represent approximately 6% of detained individuals at ICE’s Cibola prison at any given time — when the providers are stretched “at their maximum capacity.”¹⁰³ Frequent transfers between ICE facilities also disrupt individuals’ access to retained counsel and bring despair to detained people searching for attorneys.

Many facilities lack basic infrastructure to facilitate free telephonic access to counsel,¹⁰⁴ disparately harming indigent immigrants seeking to retain or communicate with counsel. The minority of detained individuals who have retained attorneys often struggle to meet with them in confidential settings or at reliable intervals, as visitation rooms are frequently limited and force attorneys to compete with one another.¹⁰⁵ In CBP jails, access to counsel is near nonexistent, even when asylum seekers undergo high-stakes screenings that could result in their imminent deportation without judicial review.¹⁰⁶

Out of 41 participants, seven reported they did not know they could call a lawyer, did not know how to use the phone to call for a lawyer, or did not know who they could call to find a lawyer.

One participant, **Dimitri**, was instructed on how to use the phones in English, a language he did not understand.

Four survey participants made clear that access to counsel was particularly inaccessible in CBP custody. One of those participants, **Belinda**, recalled, “[T]here was a sign on the wall saying that they had the right to call a consulate. It didn’t say anything about legal calls.”

Many of the participants who had a CFI in ICE custody — a pivotal screening that could result in summary deportation — were not represented at the time. This left participants alone to present their claims and advocate for themselves, often with inadequate interpretation, during their telephonic interview. **Miriam**, an unrepresented trans woman, reported that the USCIS asylum officer who conducted her interview continuously misgendered and interrupted her. She recalls: “I felt it was psychological abuse. I spoke on the phone from a private space but did not feel comfortable to share. The asylum officer could not see me by phone so the least they could do was to be respectful of my gender identity and expression.”



Photo credit: Steven Rubin

IV. 41 LGBTQ/H SURVEY PARTICIPANTS DESCRIBE WIDESPREAD ABUSE IN ICE AND CBP JAILS.

Privacy and cost presented major barriers for access to counsel, impeding LGBTQ/H participants from sharing their gender and sexual identity, as well as their HIV status.

David described phones in large dormitories within a Virginia ICE jail, with no privacy. “When you talk on these phones the guys around you are listening, and you can’t even say things out loud because everyone is listening.” He used to send letters instead, but “you have to pay for it and then wait for letters to be delivered.”

Humberto had to wait until other detained people were away from earshot to speak with his attorney about his HIV status. He had no choice but to use a public phone to conduct his legal calls. When a protest broke out due to conditions in ICE custody, the facility cut off access to public phones for days as collective punishment. For those who had access to private calls, or overcame their fear or discomfort with speaking on the phone in public spaces, cost often presented an additional barrier. Miriam recalls: “I could not call unless my lawyers put money in my commissary. Calls were not confidential.”

Several organizational participants similarly reported that lack of privacy hindered clients’ ability to communicate. For example:

- A Florence Project attorney who works with people at Arizona ICE facilities reported hearing from clients that they feel uncomfortable discussing their LGBTQ status when they call counsel. This is because phones are often located in public areas and even when phones are located in private rooms, the rooms lack soundproofing, making conversations easy to overhear.
- A Las Americas attorney who represents individuals in New Mexico facilities, including in their CFIs, noted that one center conducts CFIs in a large room separated by room dividers, so what is being said during interviews is easily overheard. Consequently, clients are scared to share important information with asylum officers, like sexual orientation or gender identity. One of Las Americas’ clients told the attorney that he did not disclose information

regarding LGBTQ-based persecution during his CFI because of the lack of privacy. The client failed his CFI.

Although some ICE facilities post lists of legal service providers, survey participants struggled to get a hold of overburdened attorneys.

Xavier recalls: “[Y]ou get a pro bono list but they don’t always answer.” Alberto, who was searching for attorneys, recalled that he had a limited number of free calls per week; if he could not contact an attorney within those calls, his family had to send him money to cover calls at the rate of \$1.50 per minute. Elisa and Issa, participants who lacked financial support, had to hold back from calling counsel altogether and saved their questions until their attorneys visited them — though visits were rare due to the remote location of their jail.

Denis, who is a gay man suffering from HIV-related complications that require close monitoring and care, was unable to find an attorney throughout his immigration proceedings. The immigration judge denied Denis relief and he decided not to appeal, although he had a fear of returning to his country of origin. However, Denis was scared that his detention would be prolonged if he appealed, which would cause his health to deteriorate further.



LGBTQ/H survey respondents experienced family separation

Twelve out of 41 survey participants reported that ICE or CBP separated them from their loved ones, whether a partner, spouse, or sibling — particularly ignoring, casting doubt on, or blatantly disregarding their familial relationship because they were LGBTQ. Though traveling alone, Nikolai reported witnessing two married couples separated by CBP officers who distrusted the authenticity of the two queer couples' certificates. Dimitri, a gay man traveling with his partner who is living with HIV, had to ask a doctor about the whereabouts of his partner, as CBP officers refused to give him any updates on him or his well being. Boris, a married participant, reported only seeing his spouse by chance, in the cafeteria of their CBP jail, while the two of them were separately kept in solitary confinement.

Organizational participants reported similar issues. A Las Americas attorney serving detained people in New Mexico worked with a married lesbian couple from Colombia who were separated in ICE custody and sent to two different detention centers. One woman was released from custody, while the other was detained and ordered removed. A Florence Project attorney reported a case of a transgender woman who came to the United States together with her male partner. The client told the attorney that initially, they were detained in the same housing unit, but were separated after facility staff realized they were a couple. These forced separations compounded the distress participants faced. Fiona, who was separated from her partner in custody, reported that her partner experienced significant psychological deterioration and a hospitalization as a result of the federal government's actions.

Four participants reported outright hostility or obstruction from ICE when they tried to assert their right to counsel or as they tried to represent themselves.

Tara, a trans woman, reported that guards would laugh at her when she asked to speak to her attorney, taunting her to sign a deportation order if she really wanted to get out of detention.

Zora was told that she did not have the right to a legal call until after she had her immigration court, which is incorrect. Zora also reported that the video calls with her attorney were cut short. She could not say what she wanted to say because there was a guard in the room with her. Additionally, Zora had an in-person meeting with an attorney. When she was talking to the attorney, the detention center manager was standing behind her. The attorney asked the manager to leave, which he did. But Zora could see him through a door window, pacing outside of the room.

Two participants, **Leona and Saïd**, reported that ICE denied them access to the law library. Saïd also reported having to plead to ICE to return his legal documents after staff made photocopies for him.

Lacking access to attorneys also meant diminished oversight into the conditions suffered by LGBTQ/H participants.

Two survey participants were deported after the survey was conducted. Quinn was detained in ICE custody for about a year. They suffered from health issues and reported not receiving adequate medical care. **Quinn found prolonged detention unbearable, and after their case was denied, they could not endure being detained even longer for the duration of the appeal process.** As a result, Quinn returned to their country of origin and was separated, most likely permanently, from their elderly parents and siblings who reside in the United States.

**“They have you with hands behind your back, head down.
If you turn around, they yell at you. Maybe it’s the norm.
It’s my first time in this country.”**

—
Boris,

survey participant recalling his experience in CBP custody.

CBP Jails Are Rife with Dehumanizing Abuses

In addition to LGBTQ/H-specific concerns described throughout this report, participants recounted other abuse and unsanitary conditions while in CBP custody. For example, there were several reports of hostility and threatening language from CBP officers such as an officer forcefully striking a detained man on the head and another yelling, “Are you dumb?!” and reaching for his gun when detained people moved toward him. Other participants reported that officers threw food at them, or denied them water except with morning and evening meals. One participant recalled officers scolding a colleague for asking if migrants wanted more food saying, “Why’re you letting them have food freely?”

Extremely cold temperatures that “felt like torture” or “punishment” were another common theme. Other participants reported that the lights and sometimes televisions were on 24 hours a day, disorienting people and making it impossible to sleep. A number of participants did not have access to showers and personal hygiene items like toothpaste and a toothbrush for prolonged periods of time. Participants who were

housed in tents reported using portable toilets with excrement and urine on the floors. Others reported dirty and smelly cells in detention centers with toilets next to the sleeping areas. As one participant noted, “[W]hen you sleep, there is a toilet right next to you. You can be sleeping and someone will be [defecating] next to you. It’s disgusting.”

Several participants reported that toilets and showers in the facilities did not provide sufficient privacy. One woman described having to use toilets that were within the line of sight of the male officers, others mentioned cameras where officers could observe migrants showering and using the toilet. Many people avoided going to the bathroom because “everyone was watching you.”

Many participants also reported CBP making them sign immigration-related paperwork in English, which they did not understand and which was not adequately explained or translated to them.





V. Closing recommendations

The experience of these 41 survey participants confirms what voluminous studies have previously shown – DHS is incapable of safely detaining LGBTQ/H people. Decades of documented abuses and failed reform efforts have revealed the inevitable and avoidable harms of CBP and ICE’s carceral system. As Zoe, a trans asylum seeker and survey participant reflected regarding her time in CBP and ICE custody, “no human being should be held there.” This system creates and exacerbates physical and mental health crises, dangers that are particularly pronounced for LGBTQ/H individuals. **The government’s continued use of this abusive detention system, which operates with impunity and puts vulnerable people in physical and psychological danger, is inexcusable.**

All of these harms are preventable and avoidable because the United States has the power to phase out the use of immigrant detention for all, including for LGBTQ/H people. Upon taking office, President Biden took bold steps in the domestic sphere to address the United States’ troubling reliance on jails and prisons, when he ordered the closure of private prisons in the federal criminal system. He rooted this action in the “broad consensus that our current system of mass incarceration imposes significant costs and hardships on our society and communities and does not make us safer.”¹⁰⁷ Nevertheless, those same private prison companies are thriving as they profit off ICE’s detention practices, and tens of thousands of immigrants languish daily in ICE and CBP jails.¹⁰⁸ The Biden administration must bring its immigration policy in alignment with its commitment to equitable rights for LGBTQ individuals and pledges of racial equity¹⁰⁹ by phasing out all immigrant detention.¹¹⁰

The Biden administration must bring its immigration policy in alignment with its commitment to equitable rights for LGBTQ individuals and pledges of racial equity by phasing out all immigrant detention.

V. CLOSING RECOMMENDATIONS

Congress should also pass the **Dignity for Detained Immigrants Act**, which institutes a presumption of liberty rather than a presumption of detention for all immigrants. The Act requires the release of most LGBTQ people with rare exceptions, phases out the use of private immigration detention, reduces reliance on detention, and enhances oversight in the U.S. immigration detention system, among other crucial provisions.¹¹¹

There are five concrete steps the executive branch can take in the interim, while phasing out detention. These include:

- 1. Using parole authority to the fullest extent for arriving asylum seekers:** The federal parole statute provides the U.S. government broad authority to release asylum seekers on parole,¹¹² but the Biden administration frequently denies or delays the release of asylum seekers who meet agency standards for release and parole denials are often disparately applied to people seeking asylum from Black majority countries.¹¹³ The administration should use its parole authority to the fullest extent to ensure people seeking asylum can seek protection in the safety of their homes and communities.
- 2. Remove recent arrivals from the administration’s targeted enforcement priority list:** The administration should remove recent border arrivals from the categories of individuals considered to be ICE enforcement priorities. Targeting arriving asylum seekers for enforcement functionally serves to punish individuals for the act of seeking safety, which imperils U.S. compliance with international asylum law.¹¹⁴
- 3. Provide transparency, accountability, and uniformity on the detention standards across CBP and ICE facilities, including in the treatment of LGBTQ/H people:** The current standards, which we detail in Appendix A, provide for a byzantine system that endangers the health and wellbeing of LGBTQ/H asylum seekers. Transgender people continue to suffer abhorrent harms because neither ICE’s Transgender Care Memorandum nor its use of a special “pod” or unit for transgender people have led to the protection of transgender people’s basic

rights and needs in immigrant detention.¹¹⁵ Opaque and insufficient standards of care contribute to the culture of impunity that directly harms LGBTQ/H people in detention. Transparency, accountability, and uniformity in the application of standards is key, so that CBP and ICE officers and contractors can be held to those standards and face consequences when they fail to meet the needs of individuals in their custody.

- 4. Terminating contracts with facilities that fail to meet basic standards of safety and care:** Despite repeated findings that ICE jails do not comply with detention standards by government watchdog agencies, such as OIG and GAO, and by ICE’s own inspections, DHS has failed to meaningfully redress these violations.¹¹⁶ As a result, facilities with histories of chronic abuse continue to operate under ICE contracts without consequence. DHS can and must terminate such contracts¹¹⁷ that endanger the health and safety of detained people, including LGBTQ/H individuals.
- 5. Promptly issue agency guidance protecting vulnerable populations in custody, including LGBTQ/H individuals:** It is imperative that the administration protect vulnerable populations from the use of detention by issuing specific guidance tailored to facilitating the prompt, safe release of vulnerable people including LGBTQ/H individuals to U.S. communities.

The United States has the power to take bold steps to protect LGBTQ/H people in the short and long term. In the words of Zora, a trans woman and survey participant, **“People can’t understand because they don’t know how much you had to sacrifice”** to come to the United States and seek protection. Treating LGBTQ/H people with the dignity they deserve begins with a presumption of liberty in compliance with international law, transparency and uniformity in the treatment of people currently jailed by ICE or CBP, and protecting vulnerable individuals from detention. All these steps can and should be taken while phasing out the abusive and harmful system of mass immigrant detention.

VI. Appendices

APPENDIX A: CBP AND ICE'S STANDARDS FOR PEOPLE IN FEDERAL IMMIGRATION CUSTODY

There are no formal or enforceable regulations providing the minimal standards of care for those detained by CBP and ICE.¹¹⁷ Both systems operate under a set of internal standards that are not legally binding and do not provide a meaningful mechanism for redress for those who endure mistreatment that violates the standards.

ICE'S PATCHWORK OF STANDARDS

ICE uses a patchwork of standards across over more than 100 facilities, with contractors and facilities referencing one of four sets of detention standards in their contracts with ICE. ICE has developed these standards primarily based on criminal correctional guidelines despite the civil nature of immigration proceedings.¹¹⁸ For years, government watchdogs and civil society have tracked and reported on ICE's lack of compliance with even these minimal basic standards of care.¹¹⁹ ICE's oversight system is riddled with loopholes that result in failure to prevent persistent abuse and inhumane conditions.¹²⁰

ICE's most recently amended standards are the 2019 National Detention Standards, but it has not required its contractors to adopt these standards into their contracts, meaning that many facilities are still governed by earlier sets of standards from 2000, 2008, or 2011.¹²¹ The four standards differ in the extent to which they safeguard detained people's rights, but even the most comprehensive standards fall short of protecting LGBTQ/H people in ICE custody. As the survey demonstrates, LGBTQ/H individuals experienced physical and sexual violence, verbal harassment, medical neglect, and disclosure of confidential information, including HIV status – all of which the above-mentioned standards are supposed to prevent in theory but fail to accomplish in practice.

PHYSICAL AND SEXUAL ABUSE

One way ICE standards purport to prevent physical and sexual abuse is through a custody classification system, which is designed to separate detained people based

on management considerations and concerns.¹²² The 2011 Performance-Based National Detention Standards (2011 PBNDS) and the 2019 National Detention Standards for Non-Dedicated Facilities (2019 NDS) recognize that being LGBTQ is a "special vulnerability" requiring "appropriate accommodation."¹²³ However, neither of the standards clearly defines what constitutes an "appropriate accommodation" for someone with a special vulnerability. Furthermore, the classification system fails to adequately prevent abuse of LGBTQ people at the hands of staff or detained individuals who share the same custody classification. In practice, detention centers often jail LGBTQ people in solitary confinement as a means of addressing their safety concerns.

Unlike the newer standards, the 2000 National Detention Standards for Non-Dedicated Facilities (2000 NDS) and the 2008 Performance-Based National Detention Standards (2008 PBNDS) do not meaningfully acknowledge that being LGBTQ constitutes a particular vulnerability. However, both standards note that being a "homosexual" is a "special management concern" that might require "protective custody" a.k.a. solitary confinement.¹²⁴

With the enactment of the Prison Rape Elimination Act (PREA) in 2003, ICE standards now require that detention facilities have a written sexual abuse and prevention policy.¹²⁵ This requirement appears in the 2008 PBNDS, 2011 PBNDS, and 2019 NDS. However, only the 2011 PBNDS and the 2019 NDS recognize that being LGBTQ might put a detained person at an increased risk of sexual abuse or assault.¹²⁶ By contrast, the 2008 PBNDS do not affirmatively instruct the staff to consider a person's LGBTQ identity when assessing them for risk of sexual victimization. The 2000 NDS do not expressly address sexual assault prevention in custody or take into account that LGBTQ people are particularly vulnerable to sexual abuse and assault. (The 2000 NDS have a general disciplinary system that prohibits sex crimes).¹²⁷ Moreover, as was explained above, all four standards fail to meaningfully address the fact that danger to LGBTQ people often stems from

jail staff or individuals detained alongside the LGBTQ individuals. In short, ICE's standards do not effectively protect LGBTQ people from physical and sexual abuse (as is outlined in Section IV.A above).

VERBAL ABUSE AND HARASSMENT

DHS policy and standards include some limited protections against verbal abuse. For instance, the Transgender Care Memorandum requires ICE to provide a "respectful, safe, and secure environment for all detainees, including those individuals who identify as transgender" and prohibits "[d]iscrimination or harassment of any kind based on a detainee's actual or perceived orientation or gender identity."¹²⁸ However, there are no mechanisms for accountability,¹²⁹ and, as was explained in Section II.D, the applicability of the Memorandum across different detention facilities is unclear.

The four ICE standards state that detained people have "freedom from discrimination," and "right to protection from personal abuse ... and harassment."¹³⁰ However, only the 2008 PBNDS, 2011 PBNDS, and 2019 NDS list "sexual orientation" as a protected characteristic; the 2000 NDS does not include sexual orientation.¹³¹ Detained people can use the grievance system to report various issues in detention;¹³² and although the standards do not state so explicitly, the grievance system can be used to report homophobic and transphobic verbal abuse. Additionally, some verbal abuse targeting LGBTQ people can constitute a PREA violation.¹³³ However, as demonstrated by the experiences of survey participants, the standards are insufficient to protect LGBTQ people. Detained people are often scared to report the abuse, and jail staff often ignore the abuse, even when they witness it.

CONFIDENTIALITY

The 2008 PBNDS, 2011 PBNDS and 2019 NDS require facilities to ensure "the highest degree of confidentiality" regarding a person's HIV status.¹³⁴ The 2000 NDS does not guarantee confidentiality specific to HIV status, but the standards provide general confidentiality protections around detained person's medical information.¹³⁵ ICE detention standards do not have explicit guidelines around keeping a

person's sexual orientation confidential. However, 2011 PBNDS and 2019 NDS instruct jail staff to ask about a person's LGBTQ status when accessing them for risks of sexual victimization. The standards instruct that "[t]he facility shall implement appropriate controls on the dissemination within the facility of responses to questions [regarding LGBTQ identity] in order to ensure that sensitive information is not exploited to the detainee's detriment by staff or other detainees or inmates."¹³⁶ Additionally, the standards require facilities to keep a detained person's files confidential, including custody classification worksheets, which might contain information about sexual orientation.¹³⁷ The Transgender Care Memorandum provides some additional confidentiality protections for a person's gender identity.¹³⁸ Additionally, detention standards mandate confidentiality of an individual's medical records, where sexual orientation might also be disclosed.¹³⁹ Despite these protections, survey participants reported numerous instances where their privacy was violated in ICE or CBP custody. (Section IV.E.).

HIV CARE

All ICE standards provide for the provision of HIV care, with the 2011 PBNDS and the 2019 NDS being the most comprehensive of the four standards. Both standards mandate that medical staff provide HIV diagnosis and 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."¹⁴⁰ The standards also require detention centers to make certain that all FDA-approved HIV medication is accessible, and for staff to "develop and implement distribution procedures to ensure timely and confidential access to [HIV] medications."¹⁴¹ By contrast, the 2008 PBNDS and the 2000 NDS do not contain language requiring detention centers to ensure timely access and distribution of HIV medication. Despite these standards, survey participants and service providers reported a variety of issues surrounding HIV care. (Section IV.C.).

TRANS CARE

ICE has limited provisions around trans care in the 2011

PBNDS and the 2019 NDS. The 2011 PBNDS state that “Transgender detainees who were already receiving hormone therapy when taken into ICE custody shall have continued access. All transgender detainees shall have access to mental health care, and other transgender-related health care and medication based on medical need. Treatment shall follow accepted guidelines regarding medically necessary transition-related care.”¹⁴² However, the 2019 NDS is significantly more limited in scope only stating that “The facility will notify ICE/ERO of any self-identified transgender detainees and coordinate care with ICE/ERO based on medical needs.”¹⁴³ The 2000 NDS and the 2008 PBNDS do not address the medical needs of transgender people in ICE custody.

As was discussed in Section II.D. of the report, ICE issued a “Transgender Care Memorandum” in 2015. The Memorandum’s protections are vague and insufficient. For instance, the Memorandum instructs that “placement into administrative segregation due to a detainee’s identification as transgender should be used only as a last resort and when no other temporary housing option exists.”¹⁴⁴ But “last resort” is not defined, and ICE routinely places transgender people into solitary confinement as a matter of course (see Section IV.D). Under the Memorandum, “transgender detainees who were already receiving hormone therapy when taken into ICE custody shall be provided continued access, and all transgender detainees must have access ...based on medical need.”¹⁴⁵ However, medical need is not clearly defined and transgender people regularly experience long delays or have difficulties accessing hormone therapy (See Section IV.C).

Further, many of the protections outlined in the Memorandum are only mandatory for a facility if it has incorporated the provisions into its contract. As of 2020, Reuters reported that no facility had modified its contract to adopt the 2015 guidance although some facilities had adopted the guidance “informally.” As of the date of this report, the authors do not know exactly which facilities have incorporated the Transgender Care Memorandum into their contracts because ICE does not post its contracts publicly in a consistent manner. Our interview with ACLU of New Mexico revealed that in early 2022, ICE modified its contract for the Otero County

Processing Center to incorporate trans care standards. ICE also proposed to incorporate such standards into its contract with the Torrance County Detention Facility but received pushback from the facility. ACLU-NM added that it is challenging to know which ICE facilities have incorporated the trans care (and other) standards because that information is not routinely publicly disclosed. Even when incorporated, implementation remains of concern. ICE’s own standards, including the Transgender Care Memorandum, are routinely ignored when it comes to transgender care as demonstrated by past reports as well as the individual and organization participants in this survey. ACLU of New Mexico observed this firsthand, noting that even where there is a contractual obligation, ICE does not always enforce it with facilities.

CBP STANDARDS

CBP is governed by a set of standards known as the National Standards on Transport, Escort, Detention, and Search (TEDS), however CBP has a documented history of noncompliance with these standards.¹⁴⁶

Relevant here, the TEDS Standards provide that “CBP has a zero tolerance policy prohibiting all forms of sexual abuse of individuals in CBP custody . . .”¹⁴⁷ The TEDS Standards instruct CBP officers to screen detained people for individuals who might be at-risk due to their sexual orientation or gender identity.¹⁴⁸ Officers then must provide at-risk populations with “heightened protection,” including “continuous direct sight and sound supervision, a single-occupancy hold room, monitoring in open areas or placement in a hold room actively monitored on video by an officer/agent sufficiently proximate to intervene, unless no such option is determined to be feasible.”¹⁴⁹ The TEDS Standards do not, however, explicitly address homophobic or transphobic mistreatment.

The TEDS Standards also do not have specific requirements around provision of HIV medication or hormones for transgender people. However, the Standards do allow detained people to self-administer medication they bring with them if it is prescribed in the United States or “validated by a medical professional if not U.S.-prescribed.”¹⁵⁰ The Standards further dictate that non-U.S. prescribed medication should be

validated by a medical professional or that a detained person should be taken to a medical professional in a timely manner to obtain a U.S. equivalent of their medication.¹⁵¹

The TEDS Standards offer limited confidentiality protection for vulnerability assessments, directing that “[e]fforts should be taken to ensure that all assessments are conducted in a way that provides detainees the greatest level of privacy possible.”¹⁵² The Standards provide stronger protections for medical confidentiality, directing that a person’s medical information “must be protected.”¹⁵³

APPENDIX B: SURVEY INTERVIEW
QUESTIONS

ICE/CBP CONDITIONS

Your participation is voluntary, and responses will be kept confidential. We may report statistical results of this study to the public. In that case, your personal information will be removed, so your identity will not be disclosed. Similarly, in the event we use open-ended, narrative responses, we will remove your identifying information from these responses, so your identity will not be disclosed. You have the option not to respond to any questions that you choose.

1. Interviewer name

2. Interview date

* 3. Interviewee name

4. Interviewee telephone number

5. Interviewee email

* 6. Do you identify as a member of the LGBTQ community?

- Yes
- No

* 7. If you answered "yes" to question 6, how do you identify?

- Gay
- Lesbian
- Bisexual
- Pansexual
- Trans woman
- Trans man
- Nonbinary
- Queer
- Intersex
- Asexual
- Other

If you answered "other," please specify

8. Are you seeking protection in the United States?

- I'm in the process of applying for protection in the United States
- I applied for protection in the United States and won my case
- I applied for protection in the United States and lost my case
- I did not come to the United States to seek protection

9. If known, what kind of protection are you applying for/have applied for in the United States?

10. What is your country of birth?

* 11. What is your race or ethnicity?

* 12. Do you know your HIV status?

- HIV positive
- HIV negative
- I don't know
- Prefer not to answer

* 13. What year were you detained by the United States immigration authorities (It's okay if you don't remember the exact year, you can give an approximation)

* 14. Approximately how long were you detained by the United States immigration authorities?

- Less than two weeks
- Between two weeks and one month
- Between one month and six months
- Six months or longer

Please add notes below

* 15. Which immigration agency detained you? (to determine which agency detained the person, consider asking some of the following questions: Approximately how much time did you spent in the U.S. before you were detained by the immigration officials? Were you ever detained in a "hielera"? Did you have a bed to sleep on? What color uniforms did the officers wear?)

- ICE
- CBP
- ICE and CBP

Please add notes below

16. In what state or states were you detained?

* 17. Did you ask for medical help while you were in immigration detention?

- I asked for medical help and received it
- I asked for medical help and didn't receive it
- I was given inadequate medical care
- I needed medical help but I didn't ask for it
- I did not need medical help

Please add notes below

* 18. Were you allowed to talk to a lawyer while you were in immigration detention?

- I could talk to a lawyer
- I asked to talk to a lawyer, but I was not given the opportunity
- I didn't need to talk to a lawyer

Please add notes below

* 19. While in CBP detention, did you ever experience any of the following?
(please check all that apply)

- Physical violence by guards
- Physical violence by detained people
- Sexual abuse or violence by guards
- Sexual abuse or violence by detained people
- Homophobic and/or transphobic insults by guards
- Homophobic and/or transphobic insults by detained people
- Racist insults by guards
- Racist insults by detained people
- Insults by guards because of you HIV status
- Insults by detained people because of your HIV status
- Threats by guards
- Threats by other detained people
- Being separated and isolated from other detained people for days or longer
- Disclosure of private medical information, like your HIV status
- Not receiving medical help that you needed
- Other types of violence or abuse by guards
- Other types of violence or abuse by detained people

Please add details below

* 20. While in ICE detention, did you ever experience any of the following?
(please check all that apply)

- Physical violence by guards
- Physical violence by detained people
- Sexual abuse or violence by guards
- Sexual abuse or violence by detained people
- Homophobic and/or transphobic insults by guards
- Homophobic and/or transphobic insults by detained people
- Racist insults by guards
- Racist insults by detained people
- Insults by guards because of you HIV status
- Insults by detained people because of your HIV status
- Threats by guards
- Threats by other detained people
- Being separated and isolated from other detained people for days or longer
- Disclosure of private medical information, like your HIV status
- Not receiving medical help that you needed
- Other types of violence or abuse by guards
- Other types of violence or abuse by detained people

Please add details below

21. Did you travel with family (including non-married partner)? Were you detained together with your family member(s) or were you separated?

22. Did you have a credible fear interview, while you were in immigration detention? If so, what was the outcome? Did you tell the asylum officer all the reasons why you seek protection in the United States? If not, why not?

23. Would you like to add anything else about your experiences in immigration detention?

24. Are you interested in doing public advocacy around your experiences in immigration detention? If so, would you be willing to disclose your identity or would you prefer to remain anonymous?

Extra space for notes, in case you need it

Submit

Sources

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⁶⁵See American Immigration Council, Immigrant Justice Idaho, and Immigration Equality to ICE Associate Director for Office of Professional Responsibility et al. RE: Racial Discrimination, Excessive Use of Force at the Denver Contract Detention Facility. March 24, 2022. https://www.americanimmigrationcouncil.org/sites/default/files/research/complaint_against_ice_racial_discrimination_excessive_force_colorado.pdf; Rocky Mountain Immigration Advocacy Network, National Immigration Project, and American Immigration Council to Shoba Sivaprasad Wadhia et al. Complaint Detailing Abusive Overuse of Solitary Confinement and Mistreatment That Disproportionally Impacts Persons with Disabilities at the Aurora Contract Detention Facility. July 13, 2023. https://www.americanimmigrationcouncil.org/sites/default/files/research/misuse_of_solitary_confinement_in_colorado_immigration_detention_center_complaint.pdf; Rocky Mountain Immigrant Advocacy Project, National Immigration Project, American Immigration Council. Complaint Underscoring Why People Who Are Transgender and Nonbinary Should Not Be Detained in Civil Immigration Detention. April 9, 2024. https://nipnl.org/sites/default/files/2024-04/CRCL_complaint-transgender-care.pdf; American Immigration Council and ACLU to ICE Health Service Corps Assistant Director Stewart D. Smith et al. RE: SUPPLEMENT – Failure to Provide Adequate Medical and Mental Health Care to Individuals Detained in the Denver Contract Detention Facility. June 11, 2019. https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_supplement_failure_to_provide_adequate_medical_and_mental_health_care.pdf

⁶⁶Homan, Trans Care Memo. supra n. 58.

⁶⁷See Rosenberg, “Exclusive: Serious Health Care Lapses Found in U.S. Detention Center Housing Transgender Migrants,” supra n. 64.

⁶⁸Toomer, Lindsey. “Trans Woman Detained in Aurora ICE Facility for 2 Years Struggles to Get Court Date.” Colorado Newsline, March 19, 2024. <https://coloradonewline.com/2024/03/19/trans-woman-aurora-ice-court-date/>.

⁶⁹Franzblau, Jesse. “Harassment, Pervasive Fear, and Transphobic Abuse: Trans Woman Requests Civil Rights Investigation into Civil Rights Violations at the Pine Prairie ICE Detention Center.” NJC, July 27, 2023. <https://immigrantjustice.org/staff/blog/harassment-pervasive-fear-and-transphobic-abuse-trans-woman-requests-civil-rights>.

⁷⁰Tatiana Flowers. "Racial discrimination, excessive force and retaliation alleged at ICE detention center in Aurora." The Colorado Sun, April 14, 2022. <https://coloradosun.com/2022/04/14/aurora-detention-center/>.

⁷¹Franzblau, Jesse. "Harassment, Pervasive Fear, and Transphobic Abuse: Trans Woman Requests Civil Rights Investigation into Civil Rights Violations at the Pine Prairie ICE Detention Center." NJC (July 27, 2023). <https://immigrantjustice.org/staff/blog/harassment-pervasive-fear-and-transphobic-abuse-trans-woman-requests-civil-rights>.

⁷²See, e.g., Aleaziz, Hamed. "A Secret Memo Revealed How A Transgender Immigrant Bleeding From Her Rectum Waited 13 Days For Care While Jailed By ICE." BuzzFeed News, March 4, 2020. <https://www.buzzfeednews.com/article/hamedaleaziz/transgender-immigrant-detainees-medical-care-memo>; see also Oztaskin, Murat. "The Harrowing, Two-Year Detention of a Transgender Asylum Seeker." The New Yorker, October 31, 2019. <https://www.newyorker.com/news/dispatch/the-harrowing-two-year-detention-of-a-transgender-asylum-seeker>; Gomez, Laura. "Migrants Held in ICE's Only Transgender Unit Plead for Help, Investigation in Letter." AZ Mirror, July 9, 2019. <https://azmirror.com/2019/07/09/migrants-held-in-ices-only-transgender-unit-plea-for-help-investigation-in-letter>; Gendelman, "I'm a Prisoner Here," supra n. 4, at 15-17; Rosenberg, "Exclusive: Serious Health Care Lapses Found in U.S. Detention Center Housing Transgender Migrants," supra n. 63; Santa Fe Dreamers Project et al., to ICE Interim Field Office Director Dianne Witte. RE: Detention Conditions Impacting the Health and Safety of LGBTQI/HIV+ Immigrants Detained at the Winn Correctional Center in Winnfield, LA, supra n. 56 (letter from advocacy organizations detailing medical neglect); Moore. "Transgender Woman Migrant Who Had Been in ICE Custody Dies after Falling Ill," supra n. 64.

⁷³Transgender Law Center et al., "Failure to Provide Adequate Medical and Mental Health Care," supra n. 61.

⁷⁴Immigration Equality to Assistant Director for ICE Health Services Corps Dr. Stewart D. Smith et al., Re: HIV-Positive Asylum Seekers Who Receive Grossly Negligent Medical Care in Immigration Detention and Are Particularly Vulnerable to COVID-19 Must Be Released Immediately. March 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>.

⁷⁵Fitzsimons, Tim. "Democratic Lawmakers Call on ICE to Release Transgender Migrants." NBC News, January 16, 2016. <https://www.nbcnews.com/feature/nbc-out/democratic-lawmakers-call-ice-release-transgender-migrants-n1116621>; Rep. Mike Quigley, et al. to Chad Wolf, Acting Secretary, U.S. Department of Homeland Security, January 14, 2020. <https://quigley.house.gov/sites/evo-subsites/quigley-evo.house.gov/files/01.14.20%20ICE%20Letter.pdf>; see also Sens. Elizabeth Warren and Tammy Baldwin to Kevin McAleenan, Acting Secretary, U.S. Department of Homeland Security, October 15, 2019. <https://www.warren.senate.gov/imo/media/doc/2019.10.15%20Letter%20to%20DHS%20ICE%20and%20CPB%20regarding%20transgender%20migrants%20and%20asylum%20seekers.pdf>; Rep. Mike Quigley, et al. to Sec. Mayorkas, U.S. Department of Homeland Security, July 9, 2021. <https://quigley.house.gov/sites/evo-subsites/quigley-evo.house.gov/files/07.09.21.%20Rep.%20Quigley%20Letter%20on%20Detention%20of%20Transgender%20Immigrants.pdf>.

⁷⁶In some instances, participants' narrative responses were inconsistent with check box answers on the questionnaire. For example, a participant had initially indicated that they had requested medical care and had received it in custody. However, they later described in detail a time when they had requested medical care, but had not received it. In such instances, authors have relied upon the participant's detailed narrative response to ensure the accuracy of the data.

⁷⁷This list is incomplete because some participants did not identify the name of the specific facility or did not want the facility named in the report over confidentiality concerns. Some facilities are no longer ICE jails, but were at the time participants were detained.

⁷⁸Two participants witnessed officers physically assault other detained people, although they did not know the sexual orientation or gender identity of the individuals who were assaulted.

⁷⁹"LGBTI Persons in Immigration Detention." International Detention Coalition, June 2016 at 11. <https://www.refworld.org/reference/themreport/idc/2016/en/112157>.

⁸⁰For example, in 2023, NJJC filed a complaint on behalf of Vicky, a trans woman who was detained at Pine Prairie Correctional Center in Louisiana. Vicky was housed in male solitary confinement housing. The complaint states that Vicky's "isolation and inability to be herself only worsen[ed] her mental health struggles, including anxiety and depression. Her vulnerability in detention has impacted her mental health so significantly that she now takes two different anxiety medications: one in the morning and two at night." NJJC to Katherine Culliton-Gonzalez, CRCL, July 7, 2023, RE: Request for Investigation into Violations of Transgender Care Standards. https://immigrantjustice.org/sites/default/files/content-type/commentary-item/documents/2024-03/CRCL-complaint-letter_ICE-abuse-Pine-Prairie_July2023-1.pdf.

⁸¹International Detention Coalition, "LGBTI Persons in Immigration Detention," supra n. 79.

⁸²Another 8 participants reported witnessing verbal abuse directed towards other detained people.

⁸³For example, in 2020, a group of organizations submitted a letter to ICE, OIG, and CRCL documenting severe harassment of LGBTQ people at the Winn Correctional Center. The abuses include a detained man threatening a trans woman with inserting a stick into her anus to "make her a man," incidences of Winn staff refusing to use correct pronouns for trans women, an officer threatening a trans woman with physical harm, and officers ordering trans women "to walk like men, not faggots." Santa Fe Dreamers Project et al., "RE: Detention Conditions Impacting the Health and Safety of LGBTQI/HIV+ Immigrants Detained at the Winn Correctional Center in Winnfield, LA," supra n. 56, at 6, 9.

⁸⁴Washington Office of Latin America. "Taken Away: U.S. Border Agents' Widespread Confiscation of Migrants' Valuable Personal Items." WOLA, August 26, 2022. <https://www.wola.org/2022/08/taken-away-u-s-border-agents-widespread-confiscation-of-migrants-valuable-personal-items/>; Schramm, Noah. "Border Patrol's Abusive Practice of Taking Migrants' Property Needs to End." ACLU, February 13, 2024. <https://www.aclu.org/news/immigrants-rights/border-patrols-abusive-practice-of-taking-migrants-property-needs-to-end>.

⁸⁵Miroff, Nick. "Medical Provider Vying for Border Contract Faces Scrutiny after Girl's Death." Washington Post, November 19, 2023. <https://www.washingtonpost.com/immigration/2023/11/19/border-loyal-source-medical-care-migrants/>.

⁸⁶Under the Trump administration, six children, most of them Indigenous, died either while in CBP custody or shortly after their release because they never received treatment while in detention. Their ages ranged from 2 to 16 years old. Moore, Robert. "Six Children Died in Border Patrol Care. Democrats in Congress Want to Know Why." ProPublica, March 2, 2020. <https://www.propublica.org/article/six-children-died-in-border-patrol-care-democrats-in-congress-want-to-know-why>. Substandard or deadly medical neglect in CBP custody persists today. In May 2023, 8 year old Anadith Danay Reyes Alvarez died in CBP custody after staff refused her family's pleas that she be taken to the hospital multiple times, and staff downplayed or ignored the girl's pain. An independent federal court monitor found Anadith's death a "preventable tragedy" that raised "profound concerns" about CBP's ability to care for those in its custody. Montoya-Galvez, Camilo. "Official Concedes 8-Year-Old Who Died in U.S. Custody Could Have Been Saved as Devastated Family Recalls Final Days." CBS News, July 22, 2023. <https://www.cbsnews.com/news/anadith-danay-reyes-alvarez-8-year-old-migrant-died-border-patrol-custody-family>; Montoya-Galvez, Camilo. "Death of Migrant Girl Was a 'Preventable Tragedy' That Raises 'Profound Concerns' about U.S. Border Process, Monitor Says." CBS News, July 19, 2023. <https://www.cbsnews.com/news/8-year-old-migrant-girl-died-us-custody-anadith-danay-reyes-alvarez-report/>.

⁸⁷Owen, Quinn. "At Least 6 Immigrants Died after 'inadequate' Care in US Custody since 2017: Report." ABC News, September 26, 2020. <https://abcnews.go.com/US/immigrants-died-inadequate-care-us-custody-2017-report/story?id=73250958>; Herrera, Jack. "Why Are Trans Women Dying in ICE Detention?" Pacific Standard, June 4, 2019. <https://psmag.com/social-justice/why-are-trans-women-dying-in-ice-detention>; NJJC, Human Rights Watch, ACLU, and Detention Watch Network. "Code Red. The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention," June 2018, at 15. <https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-06/Code%20Red-%20detention%20deaths%20report%20June%202018.pdf>. ("independent medical experts who agreed to review cases for this report analyzed the 15 ICE Detainee Death Reviews posted by ICE on its website. . . found evidence of substandard care in nearly all of the cases, and concluded that medical lapses likely led or contributed to eight of the deaths."). Harms include unreasonable delays in providing care, poor practitioner and nursing care, and botched emergency responses at 45-51.

⁸⁸Grassini, Molly, et al. "Characteristics of Deaths Among Individuals in US Immigration and Customs Enforcement Detention Facilities, 2011-2018." JAMA Network Open, July 7, 2021. <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2781682>.

⁸⁹ Becerra, Xavier, Cal. Atty Gen. "Immigration Detention in California." Office of the Atty Gen, Cal. Dep't of Justice, February 2019, at 124.

<https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf>.

⁹⁰ Hesson, Ted. "Exclusive: Biden Officials Kept Immigration Jails Despite Internal Cost Concerns." Reuters, September 27, 2023.

<https://www.reuters.com/world/us/biden-officials-kept-immigration-jails-despite-internal-cost-concerns-2023-09-27/>

⁹¹ Congresswoman Pramila Jayapal. "Jayapal, Stansbury Call for Transparency on Conditions at Immigration Detention Centers - Congresswoman Pramila Jayapal." February 16, 2024. <https://jayapal.house.gov/2024/02/16/jayapal-stansbury-call-for-transparency-on-conditions-at-immigration-detention-centers/>.

⁹² Coleman, E. et al. "Standards of Care for the Health of Transgender and Gender Diverse People, Version 8." International Journal of Transgender Health 23, no. S1 (September 15, 2022). <https://www.tandfonline.com/doi/epdf/10.1080/26895269.2022.2100644?needAccess=true>.

⁹³ According to ICE's 2011 Performance-Based National Detention Standards, "Transgender detainees who were already receiving hormone therapy when taken into ICE custody shall have continued access. All transgender detainees shall have access to mental health care, and other transgender-related health care and medication based on medical need. Treatment shall follow accepted guidelines regarding medically necessary transition-related care." ICE, Performance-Based National Detention Standards 2011, Revised December 2016 at 273-274 [hereinafter 2011 PBNDS].

<https://www.ice.gov/doclib/detention-standards/2011/pbnlds2011r2016.pdf>. Similarly, the Transgender Care Memorandum provides in the contract modification to ICE detention facilities that "transgender detainees who were already receiving hormone therapy when taken into ICE custody shall have continued access to hormone therapy; those who have not yet begun treatment will be assessed and treated, if deemed medically necessary and safe in the context of their other medical conditions. All transgender detainees shall have access to mental health care, and other transgender-related health care and medication based on medical need." Homan, Trans Care Memo, supra n. 58, at 10. Notably, the 2019 National Detention Standards are more limited, only stating that "The facility will notify ICE/ERO of any self-identified transgender detainees and coordinate care with ICE/ERO based on medical needs." ICE, National Detention Standards For Non-Dedicated Facilities, Revised 2019, at 117 [hereinafter 2019 NDS] <https://www.ice.gov/doclib/detention-standards/2019/nds2019.pdf>. However, many ICE facilities do not have the contract modification in place. See Appendix A. And the ones that do, like the Denver Contract Detention Facility, still struggle to provide adequate care.

⁹⁴ Physicians for Human Rights, HIRC, and PEELER Immigration Lab. "'Endless Nightmare' Torture and Inhuman Treatment in Solitary Confinement in U.S. Immigration Detention," supra n. 61; New York Lawyers for the Public Interest. "Still Detained and Denied - The Health Crisis in Immigration Detention Continues." NYLPI, April 2020. <https://nylpi.org/wp-content/uploads/2020/04/NYLPI-report-Detained-Denied.pdf>; Human Rights Watch, "Do You See How Much I'm Suffering Here," supra n. 5; NIJC and Physicians for Human Rights. "Invisible in Isolation. The Use of Segregation and Solitary Confinement in Immigration Detention." Immigrant Justice Center, September 2012. https://immigrantjustice.org/sites/immigrantjustice.org/files/Invisible%20in%20Isolation-The%20Use%20of%20Segregation%20and%20Solitary%20Confinement%20in%20Immigration%20Detention_September%202012_7.pdf; Chloe Reichel, "How detention centers affect the health of immigrant children: A research roundup," The Journalist's Resource, July 22, 2019, <https://journalistsresource.org/politics-and-government/health-effects-immigration-detention-children>. (while there is slim reporting on mental healthcare provided to those in CBP custody, there are several reports that focus on the particular impact of CBP custody on the mental health of children and mothers, lending to how mental health may be impacted across demographics).

⁹⁵ CRCL Officer Cameron P. Quinn and Office of General Counsel Attorney Advisor Marc Pachon to ICE Deputy Director and Senior Official Performing the Duties of the Director Ronald Vitiello and ICE Executive Deputy Principal Legal Advisory Michael P. Davis, March 20, 2019, ICE Health Service Corps (IHSC) Medical/Mental Health Care and Oversight, <https://www.documentcloud.org/documents/6575024-ICE-Whistleblower-Report.html>.

⁹⁶ See Marchi, Mattia et al. "Post-traumatic stress disorder among LGBTQ people: a systematic review and meta-analysis." Epidemiology and Psychiatric Sciences 32 e: 44, (July 11, 2023). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10387489/>.

⁹⁷ Physicians for Human Rights, HIRC, and PEELER Immigration Lab. "'Endless Nightmare' Torture and Inhuman Treatment in Solitary Confinement in U.S. Immigration Detention," supra n. 61, at 6 (citing The United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 44 (United Nations Office of Drugs and Crime, 2015). Retrieved from https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-book.pdf).

⁹⁸ Physicians for Human Rights, HIRC, and PEELER Immigration Lab. "'Endless Nightmare' Torture and Inhuman Treatment," supra n. 61, at 6 (citing OIG, ICE Needs to Improve its Oversight of Segregation Use in Detention Facilities, (October 13, 2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-10/OIG-22-01-Oct21.pdf>).

⁹⁹ ICE. "11065.1: Review of the Use of Segregation for ICE Detainees." September 4, 2013.

https://www.dhs.gov/sites/default/files/publications/segregation_directive.pdf. (3.3. "Detainees with special vulnerabilities include those who are known to be suffering from mental illness or serious medical illness; who have a disability or are elderly, pregnant, or nursing; who would be susceptible to harm in general population due in part to their sexual orientation or gender identity; or who have been victims - in or out of ICE custody- of sexual assault, torture, trafficking, or abuse.").

¹⁰⁰ Stillman, Sarah. "When Deportation Is a Death Sentence." The New Yorker, January 8, 2018.

<https://www.newyorker.com/magazine/2018/01/15/when-deportation-is-a-death-sentence>.

¹⁰¹ TRACImmigration. "Too Few Immigration Attorneys: Average Representation Rates Fall from 65% To 30%," January 24, 2024. <https://trac.syr.edu/reports/736/>.

¹⁰² Eagly, Ingrid, and Steven Shafer. "Access to Counsel in Immigration Court." American Immigration Council, September 28, 2016 at 19.

https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.

¹⁰³ NIJC. "What Kind of Miracle....The Systemic Violation of Immigrants' Right to Counsel at the Cibola County Correctional Center." November 2017.

<https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2017-11/NIJC-Cibola-report-November2017.pdf> ("An NIJC survey of legal service providers reveals that New Mexico and Texas immigration attorneys, at their maximum capacity, are only able to represent approximately 42 detained individuals at the Cibola prison at any given time — six percent of the jail's population in April 2017." at 3).

¹⁰⁴ See, e.g., University of Pennsylvania Carey Law School Gittis Legal Clinics et al. to CRCL Officer Shoba Sivaprasad Wadhia, OIG Inspector General Joseph V. Cuffari, and Acting Immigration Detention Ombudsman David Gersten, June 20, 2023, RE: Complaint Regarding Telephone Access and Access to Counsel at the Pike County Correctional Facility, <https://www.law.upenn.edu/live/files/12627-complaint-regarding-telephone-access-and-access-to> (complaint outlining "pattern of systemic failures of Pike County staff, and their ICE counterparts, to comply with the PBNDS as well as policies outlined in the Pike County Facility Handbook, including: (1) failure to provide adequate procedure to schedule legal calls with clients in detention, (2) failure to provide functioning telephones, (3) failure to provide a private and confidential setting for legal calls, (4) improper monitoring of legal calls, (5) failure to provide individuals in detention with equitable access to telephone communication, (6) improperly charging individuals in detention for legal calls, and (7) failure to provide the required time allotment for legal calls.").

¹⁰⁵ A 2019 California review of ICE detention facilities found that in one facility, immigration attorneys "must compete for a small number of attorney visit rooms with criminal defense counsel," and immigration detainees in California "have little to no access to private areas for legal calls" "With limited exceptions, calls are monitored and recorded and — particularly in county facilities — they can be prohibitively expensive." Detained people in solitary have telephone access "only during their one or two hours of 'day room' time," which is not necessarily a set schedule and may occur outside of business hours." Particularly difficult to find counsel: "general scarcity of free and low cost legal services for detained immigrants, especially away from urban centers. Many detention facilities, including Imperial, are in such remote locations that legal services organizations are unable to provide consistent legal orientation programs or offer representation to those detained." Becerra. "Immigration Detention in California," supra n. 89, at 126-127.

¹⁰⁶ NIJC. "The Biden Administration Continues to Thwart Access to Counsel for People Seeking Asylum." June 20, 2023.

<https://immigrantjustice.org/staff/blog/obstructed-legal-access-june-2023-update>.

¹⁰⁷ White House, Executive Order on Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities (Jan. 26, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/executive-order-reforming-our-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention-facilities/>.

¹⁰⁸ Hesson, "Exclusive: Biden Officials Kept Immigration Jails Despite Internal Cost Concerns," supra n. 92.

¹⁰⁹ White House, Executive Order on Further Advancing Racial Equity and Support for Underserved Communities Through The Federal Government (Feb. 16, 2021),

<https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/16/executive-order-on-further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

¹¹⁰ White House, Memorandum on Advancing the Human Rights of Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Persons Around the World (Feb. 4, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/04/memorandum-advancing-the-human-rights-of-lesbian-gay-bisexual-transgender-queer-and-intersex-persons-around-the-world/>.

¹¹¹ H.R.2760: Dignity for Detained Immigrants Act. <https://www.congress.gov/118/bills/hr2760/BILLS-118hr2760ih.pdf>; S.1208: Dignity for Detained Immigrants Act. <https://www.congress.gov/118/bills/s1208/BILLS-118s1208is.pdf>.

¹¹² 8 USC § 1182(d)(5) (providing broadly the authority to parole individuals on a case-by-case basis for humanitarian reasons or if otherwise in the public interest)

¹¹³ Gendelman, "'I'm a Prisoner Here': Biden Administration Policies Lock Up Asylum Seekers," supra n. 4 at 22.

¹¹⁴ NIJC. "New Immigration Enforcement Guidelines Put Too Much Power in Hands of an Abusive Agency and Betray U.S. Obligations to Protect Asylum Seekers," September 30, 2021. <https://immigrantjustice.org/press-releases/new-immigration-enforcement-guidelines-put-too-much-power-hands-abusive-agency-and>.

¹¹⁵ Flowers, Tatiana. "Immigration Rights Groups Allege Abuse, Harassment of Transgender Detainees at Aurora ICE Facility." The Colorado Sun, April 11, 2024. Accessed May 22, 2024. <https://coloradosun.com/2024/04/11/aurora-contract-detention-facility/>.

¹¹⁶ OIG, ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements (June 26, 2018). www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf; OIG, ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards (Jan. 29, 2019). www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf; U.S. Government Accountability Office (GAO), Immigration Detention: ICE Can Improve Oversight and Management (Jan. 2023), www.gao.gov/assets/gao-23-106350.pdf.

¹¹⁷ NIJC. "Beyond Repair: ICE's Abusive Detention Inspection and Oversight System." November 2023. https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2023-11/NIJC-Policy-brief_ICE-detention-inspections_November2023.pdf; Gupta, Nayna, et. al., "Roadmap To Dismantle The U.S. Immigration Detention System." NIJC. July 28, 2021, <https://immigrantjustice.org/research-items/white-paper-roadmap-dismantle-us-immigration-detention-system>.

¹¹⁸ NIJC. "'The Expansion and Troubling Use of ICE Detention.'" September 26, 2019. https://immigrantjustice.org/sites/default/files/uploaded-files/no-contenttype/2019-09/HJC_Hearing_Detention_Expansion_Testimony_Heidi-Altman_2019-09-26.pdf.

¹¹⁹ ICE. "ICE Detention Standards," August 8, 2023. <https://www.ice.gov/factsheets/ice-detention-standards>.

¹²⁰ Saadi, Altaf et al. "Understanding US Immigration Detention: Reaffirming Rights and Addressing Social-Structural Determinants of Health." Health and Human Rights Journal 22, no. 1 (June 2020): 187-97. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7348446/>.

¹²¹ OIG. "ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements," supra n. 116.

¹²² According to ICE's 2024 Statistics, there are two different versions of the 2011 PBNDS: PBNDS 2011 – 2016 Revised and PBNDS 2011-2013 Errata. The 2011-2016 Revised standards are in place in 43 facilities. The 2011-2013 Errata standards are in place in 2 facilities. ICE, 2024 ICE Statistics, supra n. 35.

¹²³ ICE, 2000 National Detention Standards for Non-Dedicated Facilities, September 2000. [hereinafter 2000 NDS]. <https://www.ice.gov/detain/detention-management/2000>. (Detainee Classification System); ICE, 2008 Operations Manual ICE Performance-Based National Detention Standards, December 2, 2008. [hereinafter 2008 PBNDS]. <https://www.ice.gov/detain/detention-management/2008>. (Classification System); ICE, 2011 PBNDS, supra n. 93, at 60, 70; ICE, 2019 NDS, supra n. 93, at 21.

¹²⁴ ICE, 2011 PBNDS, supra n. 93, at 61, 70; ICE, 2019 NDS, supra n. 93, at 21, 22.

¹²⁵ ICE, 2008 PBNDS (Classification System), supra n. 123, at 18; ICE, 2000 NDS (Detainee Classification System), supra n. 123.

¹²⁶ ICE, 2008 PBNDS (Sexual Abuse and Assault Prevention and Intervention), supra n. 123, at 2-3; ICE, 2011 PBNDS, supra n. 93, at 127; ICE, 2019 NDS, supra n. 93 at 69.

¹²⁷ ICE, 2011 PBNDS, supra n. 93, at 135; ICE, 2019 NDS, supra n. 93 at 78; PBNDS 2011-2013 Errata does not have explicit language recognizing LGBTQ people as an at-risk group for sexual victimization. In this aspect, PBNDS 2011-2013 Errata is more similar to 2008 PBNDS.

¹²⁸ ICE, 2000 NDS (Disciplinary Policy), supra n. 123.

¹²⁹ Homan, Trans Care Memo. supra n. 58, at 2.

¹³⁰ Homan, Trans Care Memo. supra n. 58.

¹³¹ ICE, 2000 NDS (Disciplinary Policy), supra n. 123, at 2; ICE, 2008 PBNDS (Disciplinary System), supra n. 123, at 3; ICE, 2011 PBNDS, supra n. 93, at 217; ICE, 2019 NDS, supra n. 93, at 95.

¹³² Id.

¹³³ ICE, 2000 NDS (Detainee Grievance Procedures), supra n. 123; ICE, 2008 PBNDS (Grievance System), supra n. 123; ICE, 2011 PBNDS, supra n. 93, at 414; ICE, 2019 NDS, supra n. 93, at 182.

¹³⁴ ICE, 2008 PBNDS (Sexual Abuse and Assault Prevention and Intervention), supra n. 123, at 16 (defining "Detainee-on-Detainee Sexual Abuse/Assault: One or more detainees engaging in, or attempting to engage in a sexual act with another detainee or the use of threats, intimidation, inappropriate touching or other actions and/or communications by one or more detainees aimed at coercing and/or pressuring another detainee to engage in a sexual act," and "Staff Sexual Misconduct is: Sexual behavior between a staff member and detainee which can include, but is not limited to indecent, profane or abusive language or gestures and inappropriate visual surveillance of detainees."); ICE, 2011 PBNDS, supra n. 93, at 130-131, (stating that "threats, intimidation, or other actions or communications by one or more detainees [or staff] aimed at coercing or pressuring another detainee to engage in a sexual act" constitute sexual abuse or assault); ICE, 2019 NDS, supra n. 93, at 71-72 (stating that "Threats, intimidation, or other actions or communications by one or more detainees [or staff] aimed at coercing or pressuring another detainee to engage in a sexual act" constitute acts of sexual abuse or assault).

¹³⁵ ICE, 2008 PBNDS (Medical Care), supra n. 123, at 7; ICE, 2011 PBNDS, supra n. 93, at 263; ICE, 2019 NDS, supra n. 93, at 118.

¹³⁶ ICE, 2000 NDS (Medical Care), supra n. 123, at 9.

¹³⁷ ICE, 2011 PBNDS, supra n. 93, at 135-136; ICE, 2019 NDS, supra n. 93, at 78-79.

¹³⁸ ICE, 2000 NDS (Detention Files), supra n. 123, at 2; ICE, 2008 PBNDS (Detention Files), supra n. 123, at 2, 4-5; ICE, 2011 PBNDS, supra n. 93, at 442-444; ICE, 2019 NDS, supra n. 93, at 195, 197.

¹³⁹ Homan, Trans Care Memo. supra n. 58, at 3.

¹⁴⁰ ICE, 2000 NDS (Medical Care), supra n. 123, at 9; ICE, 2008 PBNDS (Medical Care), supra n. 123, at 20; ICE, 2011 PBNDS, supra n. 93, at 277-278; ICE, 2019 NDS, supra n. 93, at 119-120.

¹⁴¹ ICE, 2011 PBNDS, supra n. 93, at 263; ICE, 2019 NDS, supra n. 93, at 118.

¹⁴² Id.

¹⁴³ ICE, 2011 PBNDS, supra n. 93, at 273-274.

¹⁴⁴ ICE, 2019 NDS, supra n. 93 at 117.

¹⁴⁵ Homan, Trans Care Memo. supra n. 58, at 4.

¹⁴⁶ Id. at 10.

¹⁴⁷ OIG. El Paso Sector Border Patrol Struggled with Prolonged Detention and Consistent Compliance with TEDS Standards. August 9, 2022. <https://www.oig.dhs.gov/sites/default/files/assets/2022-08/OIG-22-57-Aug22.pdf>; GAO. Southwest Border: CBP Oversees Short-Term Custody Standards, but Border Patrol Could Better Monitor Care of At-Risk Individuals. September 28, 2022. <https://www.gao.gov/assets/gao-22-105321.pdf>.

¹⁴⁸ CBP, TEDS, supra n. 2, at 4.

¹⁴⁹ Id. at 14.

¹⁵⁰ Id. at 24.

¹⁵¹ Id. at 17.

¹⁵² Id.

¹⁵³ Id. at 14.

¹⁵⁴ Id. at 17.