

# Our Moment for Reform: Immigration and Transgender People





## About the National Center for Transgender Equality

The National Center for Transgender Equality is a national social justice organization devoted to ending discrimination and violence against transgender people through education and advocacy on national issues of importance to transgender people. By empowering transgender people and our allies to educate and influence policymakers and others, NCTE facilitates a strong and clear voice for transgender equality in our nation's capital and around the country.

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Immigration Equality  
<http://www.immigrationequality.org>

Sylvia Rivera Law Project  
<http://srlp.org/>

Just Detention International  
<http://www.justdetention.org>

DC Trans Coalition  
<http://www.dctranscoalition.org/>

National Immigrant Justice Center  
<http://www.immigrantjustice.org>

Casa Ruby  
<https://uslea.org/>

Center for American Progress  
<http://www.americanprogress.org/>

National Gay & Lesbian Task Force  
<http://www.thetaskforce.org/>

Williams Institute  
<http://williamsinstitute.law.ucla.edu/>

Best Practices Policy Project  
<http://www.bestpracticespolicy.org/>

We also wish to thank those affected by the immigration system who allowed us to use their stories, especially Bamby Salcedo, Jaan Williams, Priyanka Oberoi, Johanna Vasquez, and Krypacia Campbell.

# Our Moment for Reform: Immigration and Transgender People

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## I. Forward

The U.S. immigration system touches millions of people's lives and can have an especially harsh affect on the lives of lesbian, gay, bisexual and transgender (LGBT) people. And while my partner, an immigrant from India, is in the process of securing legal status in the U.S., it wasn't always that way. I'm reminded that what we faced is an ongoing challenge for thousands of undocumented LGBT people today.

I met my wife Pri at a Queer Student and Allies meeting in college. I noticed Pri when she walked in; she was beautiful, laughing and smiling with her friends. After the meeting ended, everyone mingled. I wanted to say "hi," but Pri was surrounded by people chatting and I decided to hold off.

When the next meeting came around, Pri stayed after and we started talking. I had just figured out that I was a transgender man, and I hadn't come out yet to anyone. When we finished talking, Pri turned to walk away and, without thinking, I blurted out, "We should see a movie some time." A few weeks later we were dating.

Pri and I have been together for over seven years. We've been through a lot in our time together, but nothing has tested us more than navigating our country's broken immigration system.

Pri came to the U.S. from India with a student visa and has been able to stay through a series of training and work visas. Every year and a half, we had to go through the same application process, followed by months of waiting. When Pri applied for her most recent visa, we waited weeks after the expected date to find out if she would be allowed to stay in the country. Each day we faced the possibility of having our family torn apart. Because some of my legal records still identified me as female, I was unable to sponsor Pri for citizenship. This meant that if her work visa didn't come through, Pri would have no choice but to leave me, and the U.S., behind.



Photo Credit: Maggie Winters

When we finally heard the news that Pri's application had been accepted, we hugged, kissed, and sat down on the bed. After a few moments, my joy turned to anger that I couldn't sponsor Pri for citizenship. As an American citizen, there was nothing that I could do to save my family from the looming terror of what might happen if her visa wasn't approved the next time around.

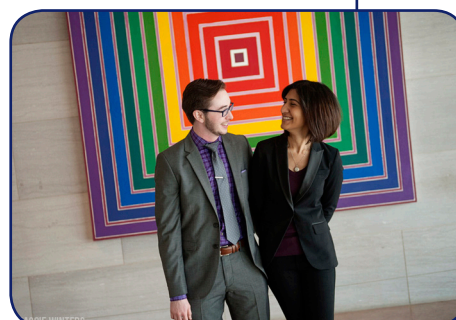
I was lucky to be born in Michigan, where a courageous transgender woman and her wife fought to make the state's policies for changing the gender on your birth certificate more straightforward and accessible. Because of them, I was able to update my identification and marry the love of my life in front of our friends and family. Since our wedding, one of the happiest days of my life, we've filed the paperwork so that I can sponsor Pri for a spousal visa. We can't wait until the day that we're done waiting, and the stress and uncertainty are lifted from our lives.

Fortunately, for the estimated 28,500 LGBT bi-national couples who are legally married in the United States, the Supreme Court recently overturned the Defense of Marriage Act, allowing all American citizens to sponsor their foreign-born partners for a spousal visa, regardless of gender. However, although ours is a success story, I know how painful it is to have the future of your family constantly in jeopardy. I also know that there are many other aspects of immigration reform that must still be addressed.

The report that you are about to read examines many aspects of our immigration system that should be reformed, including protecting those seeking asylum, making common-sense reforms to immigration enforcement and detention, and providing a pathway to citizenship for the millions of undocumented Americans who seek to contribute to our country.

As Congress continues to debate these important reforms, Pri and I hope that lawmakers will hear the voices of our community and so many others around the country whose lives would be transformed for the better by real reform. Our country desperately needs immigration reform, and LGBT individuals and families like mine need relief from the fear and uncertainty that have haunted us for too long.

Jaan Williams  
Program Manager, Gay & Lesbian Victory Institute  
National Advisor, Trans Advocacy Network's Steering Committee



*Photo Credit: Maggie Winters*

## II. SUMMARY

Shortcomings and inequities in current US immigration law impact tens of thousands of transgender people and family members. According to the Williams Institute at UCLA, there are approximately 267,000 lesbian, gay, bisexual, and transgender (LGBT) adult undocumented immigrants living in the United States.<sup>1</sup> We estimate that between 15,000 and 50,000 of these undocumented adults are transgender, based on existing data on the trans population as a fraction of the US population and LGBT population.<sup>2</sup> The actual number may be higher because many people may be reluctant to identify themselves as transgender. However, the full impact of immigration laws on trans people and their families is far larger, and includes:

- An estimated 15,000 to 50,000 transgender, undocumented adults
- 7,500 to 25,000 *partners* of undocumented trans people, many of them U.S. citizens<sup>3</sup>
- 9,000 to 30,000 *children* of undocumented trans people, many of them U.S. citizens<sup>4</sup>
- Thousands more *transgender DREAMers* who arrived in the US as children and are still under 18<sup>5</sup>

Among a population that is highly marginalized, transgender immigrants are among the most vulnerable to discrimination and violence. Our current immigration laws, together with pervasive discrimination against transgender people, force transgender immigrants to live in dual shadows. Our current system results in trans people experiencing stark rates of employment insecurity, poverty, and health risk and inequity.

Many transgender immigrants came to the US to escape severe and often life-threatening persecution because of who they are. Others came fleeing desperate poverty, compounded by gender-based discrimination. Still others arrived at a young age with family members and have grown up in the United States. Transgender immigrants work hard to support themselves and their families, and make the best of the circumstances created by a broken immigration system and lingering prejudices against trans people. Yet among a transgender population that is already marginalized, the National Transgender Discrimination Survey shows that undocumented transgender people face even higher risks of discrimination and violence in employment, housing, health care, when seeking services, and even in their own home.

Trans immigrants often have limited support systems, and find themselves shut out of jobs or education that could provide them with better opportunities. They are commonly denied the right to seek asylum or to be sponsored for lawful permanent residence by a partner. When placed in immigration detention, they frequently faced inhumane and dangerous conditions. Given these factors, any vision of comprehensive immigration reform must include ensuring security and safety for trans immigrants.

This report builds off of the Center for American Progress's *Living in Dual Shadows* report, which presented the issues affecting LGBT undocumented people in the United States. Our goal is to highlight the concerns of transgender immigrants as an especially vulnerable group within the immigration system. We hope this report will aid advocacy organizations and policy makers alike to include a consideration of trans immigrants' rights in their work toward Comprehensive Immigration Reform.

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1 Crosby Burns, Ann Garcia, and Philip E. Wolgin, Center for American Progress, *Living in Dual Shadows: LGBT Undocumented Immigrants 8* (March 2013) [hereinafter *Living in Dual Shadows*].

2 The low estimate of 15,000 is based on estimates that 0.3% of the U.S. adult population is transgender, or about 700,000 adults. Gary J. Gates (2011), "How many people are lesbian, gay, bisexual, or transgender?" Los Angeles, CA: Williams Institute. We multiplied the 700,000 estimate by the 2% of respondents in the National Transgender Discrimination survey who identified themselves as undocumented. Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force 53 (2011) [hereinafter *Nat'l Trans Discrimination Survey*]. The high estimate of 50,000 is based on applying that 0.3% estimate to the estimate 11,000,000 people in the U.S. who are undocumented. Michael Hoefer, Nancy Rytina, and Bryan Baker (2012), "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011." Washington, DC: Department of Homeland Security.

3 This estimate is based on the finding that 50% of transgender adults report having a spouse or partner. *Nat'l Trans Discrimination Survey*.

4 This estimate is based on the finding that 38% of transgender adults report being parents. *Nat'l Trans Discrimination Survey*.

5 No estimates exist for this population of young transgender immigrants.

### III. CHALLENGES FACING TRANSGENDER IMMIGRANTS TODAY

Because of their gender identity and lack of immigration status, undocumented transgender immigrants, as well as their family members, face numerous challenges. This combination of being transgender and undocumented means trans immigrants have a double minority status that creates barriers to housing, health care, and economic security and exposes them to heightened risk of discrimination, negative health outcomes, and violence.<sup>6</sup> Undocumented transgender people contribute greatly to society as workers, family members, volunteers, and community leaders, but their success, their contributions, and their well-being are severely limited by living in the dual shadows of transphobia and undocumented status.

In this section, we will examine the several areas of hardship and discrimination that transgender individuals encounter in daily life, which prevent their full participation in society and create further barriers to achieving lawful status.

#### A. Employment Insecurity

The dual challenges faced by undocumented transgender immigrants and their families can make it incredibly difficult to find and maintain work to support themselves, and often face discrimination and abuse on the job. Without legal status, undocumented transgender people are unauthorized to work legally in the United States. Consequently, when they manage to find subsistence work, they are often exploited by their employers and have few avenues for recourse. According to a nationwide study conducted by the National Employment Law Project, undocumented immigrants experience “some of the highest rates of workplace and employment discrimination, with a full 85 percent of respondents reporting, for example, overtime rate violations. And because of their status, many undocumented immigrants are too fearful to come forward and report these violations.”<sup>7</sup> Employment insecurity and vulnerability for undocumented trans workers is especially stark because of transphobia and bias against transgender people. Transgender undocumented workers thus face a double vulnerability, often working in dangerously hostile environments. Workplace discrimination, combined with undocumented status, results in trans people having few options for employment and many resorting to involvement in informal economies, and in some cases illegal work, in order to survive.

While the National Transgender Discrimination Survey found that bias on the job is a near-universal experience for transgender people, undocumented respondents reported more frequently experiencing the most severe forms of discrimination.<sup>8</sup> Undocumented transgender workers were far more likely to lose a job because of being transgender, and to be forced to present in the wrong gender to keep their job, than transgender people generally.<sup>9</sup> The partners and children of undocumented trans people also face anti-transgender discrimination at higher rates. And while an alarming 7% of transgender people reported being physically assaulted and 6% reported being sexually assaulted because of bias on the job, these figures were *more than three times* higher for undocumented transgender people.<sup>10</sup> Undocumented workers who are also transgender fear being “outed” at work for both their trans and undocumented status. These fears are often well-founded because transgender people and undocumented workers are overwhelmingly not protected from discrimination under the law. In most places in the United States, there is no explicit law against firing someone based on their gender identity. Because employment insecurity is so problematic for transgender individuals and undocumented workers, those who are both transgender and undocumented experience double discrimination and insecurity in finding and maintaining employment.

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6 Living in Dual Shadows, at 8.

7 Id.

8 Nat'l Trans Discrimination Survey, at 53.

9 Id.

10 Id. at 58 & 59.

## Employment Data from the National Transgender Discrimination Survey

- Undocumented trans people (39%) reported **lost jobs due to bias** more often than U.S. citizens (26%).
- Undocumented trans people in our sample reported the **highest rates of physical assault on the job** at 25%, over three times the rate of the overall sample.
- Undocumented trans people reported the **particularly high rates of sexual assault** in the workplace at 19%, over three times the rate of the overall sample.
- Undocumented trans people reported **high levels of associational discrimination** in employment for both spouses/partners (20%) and children (20%).

## B. Income and Housing Insecurity

With the high levels of employment insecurity among undocumented transgender workers, income insecurity is also a problem that significantly affects transgender immigrants' livelihood. According to the Center for American Progress's Dual Shadows Report, "[un]documented immigrants have a median income that is \$14,000 less per year than the median household income for U.S.-born residents."<sup>11</sup> The report also highlights that children in households headed by LGBT and undocumented parents are almost twice as likely to be living in poverty as children in families headed by opposite-sex, U.S.-citizen parents.

Like transgender people generally, undocumented transgender immigrants are more likely to have a college-level or higher education, yet they have disproportionately low incomes. A shocking 15 % of all transgender people earn less than \$10,000 per year - a rate of extreme poverty that is nearly four times that of the general population.<sup>12</sup> Undocumented transgender people are slightly more likely (18%) to earn less than \$10,000 per year. They are also far more likely (39% versus 27% for all trans adults) to earn less than \$20,000 per year.<sup>13</sup>

Homelessness is also an extremely serious problem for the transgender population, with 1 in 5 transgender people reporting that they have ever been homeless.<sup>14</sup> Trans homelessness is driven by discrimination, anti-trans violence, family rejection, and resulting poverty. Because of the dual barriers undocumented trans people face, rates of homelessness are even higher. More than one in five undocumented trans people (21%) report having been evicted at least once due to bias - a rate twice that reported among all transgender people.<sup>15</sup> Transgender people who are undocumented are also more than twice as likely to be currently homeless as the overall trans population. Worse yet, undocumented trans people are even more likely to report that, when they sought help at a homeless shelter, they experienced physical or sexual violence.<sup>16</sup>

## Housing Data from the National Transgender Discrimination Survey

- Undocumented non-citizens are more than twice as likely as all transgender people to report being **currently homeless** (4% vs. 1.7%).
- All non-citizens were almost twice as likely (13%) as all transgender people to be **physically assaulted in a place of public accommodation**.
- Undocumented immigrants were twice as likely to have **been evicted** because of their gender identity (21%) as all transgender people.

<sup>11</sup> *Living in Dual Shadows* at 9.

<sup>12</sup> *Nat'l Trans Discrimination Survey* at 22.

<sup>13</sup> National Transgender Discrimination Survey Public Data Set.

<sup>14</sup> *Nat'l Trans Discrimination Survey* at 4.

<sup>15</sup> *Id.* at 112.

<sup>16</sup> *Id.* at 117.



## C. Lack of Access to Health Care

Undocumented immigrants and transgender people are both much more likely than the general population to lack access to quality, affordable health care. Recent data show that 59% of adult undocumented immigrants have no health insurance, while only 15% of the general population is without health insurance.<sup>17</sup> Undocumented transgender immigrants experience a 36% rate of being uninsured—more than twice the rate of the general population but, surprisingly, lower than for the undocumented population as a whole.<sup>18</sup> Like all transgender people, undocumented trans people who can obtain insurance coverage regularly face discrimination in the scope of their coverage.

Undocumented transgender immigrants face even larger struggles in securing health insurance because of their undocumented status. Under current law, individuals and families who are undocumented are excluded from accessing any health care programs that are even partly federally funded, including Medicare, Medicaid, the State Children’s Health Insurance Program, as well as from the new health insurance tax credits available starting in 2014. Between the lack of insurance, the fear of discrimination and violence, and the fear of being reported to immigration authorities, many trans immigrants today go without adequate health care. This is true even for those younger immigrants currently benefiting from the Deferred Action for Childhood Arrivals (DACA) program. Unfortunately, current reform proposals in the Senate and House of Representatives would continue to leave trans immigrants and many others without access to adequate health care for a decade and a half or longer. Under this approach, many trans immigrants might wait years before being able to see a doctor.

These extreme disparities in health coverage contribute to disparities in physical and mental health for trans immigrants. For example, noncitizen transgender participants in our National Transgender Discrimination Survey reported HIV+ status at more than twice the rate of the overall transgender respondents, and more than seven times that of the US population.<sup>19</sup> Trans noncitizens were also more than twice as likely as all trans people to not know their HIV status.<sup>20</sup> Ensuring that trans immigrants have access to needed health care is imperative to increasing HIV detection, reducing HIV transmission, and ultimately beating the epidemic.

### Health Data from the National Transgender Discrimination Survey

- Undocumented transgender respondents experienced **physical assault in a medical setting** at twice the rate of the overall sample (4% vs. 2%).
- Undocumented transgender respondents had **very low rates of health insurance** coverage: 26% reported private insurance, 37% public insurance, and 36% no insurance.
- All noncitizen transgender respondents reported **HIV+ status** at a rate (6.96% for undocumented, 7.84% for documented) more than twice transgender people as a whole (2.64%) and more than seven times that of the overall US population (0.6%).
- Undocumented non-citizens were more than **twice as likely not to know their HIV status** (17%) as all transgender people.

<sup>17</sup> Living in Dual Shadows at 9.

<sup>18</sup> Nat’l Trans Discrimination Survey at 77.

<sup>19</sup> Id. at 80.

<sup>20</sup> Id.

## D. Creating a Pathway to Citizenship

There are over 11 million noncitizens in the United States who arrived here under varied circumstances, contribute positively to society, and are seeking the same rights as current citizens of this nation. A pathway to citizenship would allow these noncitizens to remain in the country and experience the security, opportunity, and peace of mind that current citizens enjoy.

For the estimated 15,000 to 50,000 undocumented transgender immigrants in the U.S. and their families, as well as for transgender U.S. citizens with undocumented partners or other family members, having a definite, realistic path to citizenship is critical to improving their economic and physical well-being. For trans and non-trans immigrants alike, a pathway to citizenship would provide the legal certainty that they will not be deported or separated from their families and communities. It would also allow them to better provide for themselves and their families by being able to work legally and earn higher wages. Creating a pathway to citizenship would also strengthen the economy as a whole. The Department of Labor has found that the wages of immigrants with legal status increase by 15 percent within five years of gaining legal status.<sup>21</sup> These higher wages would flow through the economy consumer spending, as well as increased tax revenue for local, state, and federal governments.

A pathway to citizenship must be realistically attainable, within a reasonable time period. Legislation passed by the Senate and introduced in the House would create a pathway taking 13 years for most immigrants, with substantial fees and fines, as well as work and income requirements and that may be difficult for many people to meet. If these hurdles are too high for many immigrant families—including many transgender people who continue to face job discrimination—to surmount, reform will not accomplish its goals. Comprehensive reform must also include an accelerated path to citizenship for young immigrants who came to the United States as children and consider the U.S. their home. Under the DREAM Act—which is part of current Senate and House legislation—young people who entered the United States before the age of 16, have lived in the US for at least five years, and have completed high school or a GED or served in the military, would be eligible for this accelerated pathway.

Creating a pathway to citizenship will not create full equality for transgender people immigrants and their families. Further legislation is and will be needed to prevent discrimination based on gender identity and sexual orientation in employment, housing, education, health care, credit, public services, and other areas, and to address other barriers that impact all transgender people. But by the same token, strengthening antidiscrimination laws alone would be insufficient to improve the lives of tens of thousands of trans people and their families who are among the most vulnerable undocumented Americans. A fair and realistic pathway to citizenship is critical to ensure equal opportunity for all transgender people and their loved ones.

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21 Robert Lynch & Patrick Oakford, Center for American Progress, “The Economic Effects of Granting Legal Status and Citizenship to Undocumented Immigrants,” Mar. 20, 2013, <http://www.americanprogress.org/issues/immigration/report/2013/03/20/57351/the-economic-effects-of-granting-legal-status-and-citizenship-to-undocumented-immigrants/>.

“As we get tantalizingly close to comprehensive and inclusive immigration reform, Congress needs to provide a path to citizenship to the over 11 million undocumented immigrants, including the 267,000 LGBT immigrants.”

—Rea Carey, Executive Director, National Gay and Lesbian Task Force

“The hundreds of transgender immigrants who call Immigration Equality’s hotline every year deserve immigration reform that provides a pathway to citizenship without onerous costs and employment requirements.”

— Julie Kruse, Policy Director, Immigration Equality

## THE OBAMA ADMINISTRATION’S ACTIONS TO HELP LGBT IMMIGRANTS

- In 2011, the Department of Homeland Security issued prosecutorial discretion guidelines to refocus government resources to focus deportation efforts on threats to public safety or national security. These guidelines include instructing immigration officials to halt deportations of individuals with significant family relationships in the United States. The Department later clarified that this guidance applied to individuals with “long-term same-sex partners.”
- Also in 2011, U.S. Citizenship and Immigration Services for the first time issued guidance to all refugee and asylum officers on adjudicating LGBT refugee and asylum claims.
- In April 2012, U.S. Citizenship and Immigration Services adopted new policy guidelines to clarify the eligibility of transgender people and their partners for family-based immigration benefits. The guidelines also made it easier for immigrants who have obtained legal status to update gender designations on immigration documents.
- In June 2012, President Obama announced that certain undocumented young people who came to the U.S. as children would be eligible to apply affirmatively for deferred action. This Deferred Action for Childhood Arrivals (DACA) initiative has helped many LGBT young people obtain temporary relief.
- In December 2012, the Department of Homeland Security proposed regulations to implement the Prison Rape Elimination Act of 2003 in immigration detention. The proposed rules include measures aimed at addressing the particular vulnerabilities of trans people in detention. They are expected to be finalized in 2013.

## IV. FAMILY UNITY AND IMMIGRATION REFORM

As a nation, we have long recognized the importance of family unity in immigration law. Current law allows U.S. citizens to sponsor their non-citizen spouse, parent, or unmarried minor child for lawful permanent residence (a green card) without being subject to any restrictions on the number of visas that can be issued for each visa category. Additionally, U.S. citizens can sponsor adult children and siblings for benefits, and green card holders can sponsor spouses, minor children, and unmarried adult children under the family preference system. Unfortunately, the family preference system is subject to per country and category caps, which has created long waits, sometimes of more than a decade. After the family member attains lawful permanent residence, it is possible to apply for citizenship after three or five years. For years, however, chronic backlogs have been a serious roadblock to reunification for over four million family members of U.S. citizens or permanent residents,<sup>22</sup> including many trans people and their loved ones. Today, many face absurdly long waits of years or decades to sponsor family members such as adult children or siblings. Immigration reform would not be complete without addressing the backlogs that currently exist for securing a family-sponsored immigrant visa.


Current reform proposals could alleviate some of these problems by increasing the number of available visas in several ways, such as increasing the per-country visa limit and allowing unused visa slots to carry over from one year to another.<sup>23</sup> These changes would be significant because they would greatly diminish the current backlog for family-sponsored immigrant visas and decrease the number of years that families are separated before receiving a green card. This is especially important for transgender youth who need to be in a supportive environment to counter the discrimination and harassment that they often experience in school and in public. While trans youth do not always have a supportive family, family support is a lifeline for many. Because unbearably long visa waiting periods can have a tremendous effect on trans youth, and children in general, any efforts to increase the number of visas available and to decrease family-visa backlogs would be a significant advancement toward our immigration system's goal of keeping families together.

Reforms should not, as some current proposals would do, arbitrarily cut certain family members, particularly siblings, out of the visa sponsorship categories. Sibling relationships can be as close as any family relationship and have long been recognized by US law as important for family unification. For many transgender people, a brother or sister is a key source of love and support, even when other family members are less accepting. For some, a sibling may be the only family they have at all. Family unity is central to American immigration policy because Congress has recognized that the fundamental fabric of our society is family. To be truly comprehensive, comprehensive immigration reform must preserve existing family categories and decrease family-visa backlogs, which will strengthen the family immigration system and protect all families.

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22 See *Living in Dual Shadows* at 28.

23 See, e.g., Reuniting Families Act, H.R. 717, 113th Cong § 101 (2013).



“Comprehensive immigration reform is a vital and urgent need for our community. Our legal helpline receives many calls from transgender immigrants facing challenges in accessing quality health care, employment, and housing. Those are things all families need in order to thrive.”

—Masen Davis, Executive Director, Transgender Law Center

## **THE RIGHTS OF BI-NATIONAL COUPLES AFTER UNITED STATES V. WINDSOR**

Until the Supreme Court’s decision on June 26, 2013, the Defense of Marriage Act (DOMA) prohibited the federal government from recognizing marriages between same-sex partners, and thereby prevented LGBT citizens from sponsoring their same-sex immigrant partners for lawful permanent residence. With the Supreme Court’s ruling in *United States v. Windsor* striking this provision of DOMA, that impediment is gone, and legally married same-sex couples now have the same right to petition for immigration rights as different-sex married couples. In addition, guidance issued by US Citizenship and Immigration Services (USCIS) in April 2012 makes it easier for many trans people and their spouses who married validly as a different-sex couple in states that still deny marriage equality to establish their marriage for immigration purposes.

Despite these enormous steps forward, navigating family-based immigration laws can still be complicated for transgender people and their partners and families. Like other couples, transgender people and their partners who are in same-sex relationships are still denied the right to marry in many states. Trans people and their partners in different-sex relationships may also have their marriage, or their ability to marry, questioned by officials, or may be unable to marry because of onerous requirements for gender recognition in their state. Just as important, most undocumented trans immigrants don’t have a U.S. citizen partner, making it all the more essential to ensure a fair and reasonable pathway to citizenship for all immigrants.

## Bamby Salcedo

The challenges facing many trans asylum seekers are illustrated by the experiences of trans activist Bamby Salcedo. Bamby is a trans woman who fled from Mexico to escape severe physical and sexual violence. When she arrived in the United States, she had no idea that she had the right to file for asylum but had to do so within one year. After living in the United States for 20 years, she was detained and placed in immigration deportation proceedings. While waiting to have her case decided in an immigration detention facility, she was housed and forced to shower with men, was sexually harassed, was physically attacked, and was placed in solitary confinement. A judge ultimately agreed that she should not be deported, but because the one-year filing deadline had passed, she was not able to gain the full benefits of asylum and was granted “withholding of removal” status – a status that requires a higher standard of proof, yet lacks the same benefits as asylum.



Even though Bamby was not deported and was allowed to remain in the United States, her “withholding of removal” status leaves her in a state of legal limbo. Those who are granted this status cannot travel outside the U.S., can never apply for lawful permanent residence or citizenship, must renew their Employment Authorization Document annually, and can be required to have regular check-ins with a deportation officer in perpetuity. *This means that someone who misses the one-year filing deadline, no matter how strong their case for asylum is, can never fully regularize their legal status.*

Although Bamby’s immigration status means that she is not afforded lawful permanent residence or citizenship, she stays active and involved in the trans Latina community and devotes her time to leading conversations about transgender youth empowerment and HIV education. She is currently the President of the TransLatin@ Coalition and is also the Transgender Services Coordinator and Trainer for the Children’s Hospital of Los Angeles’s Center for Strengthening Youth Prevention Paradigms.<sup>1</sup>

<sup>1</sup> Living in Dual Shadows at 20.

## V. Transgender Asylum Seekers Seeking Safety, Denied Justice

U.S. law allows individuals to claim asylum if they have a well-founded fear of persecution by the government of their home country based on factors such as gender identity or sexual orientation.<sup>24</sup> This protection is a lifeline for many LGBT people fleeing danger in their countries of origin. Former U.S. Secretary of State Hillary Clinton summarized the threats facing LGBT people around the world when she addressed the United Nations on International Human Rights Day in 2011:

*LGBT people around the world] are arrested, beaten, terrorized, and even executed. Many are treated with contempt and violence by their fellow citizens while authorities empowered to protect them look the other way or, too often, even join in the abuse. They are denied opportunities to work and learn, driven from their homes and countries, and forced to suppress or deny who they are to protect themselves from harm.*<sup>25</sup>

Given the widespread persecution of transgender people worldwide, it is not surprising that many asylum-seekers in the United States are able to meet the eligibility requirements for asylum. While no reliable estimates exist of the number or percentage of asylum-seekers who are transgender, groups that represent those seeking asylum say many of their clients are transgender – and that trans people are a disproportionate share of LGBT asylum-seekers, and many are able to obtain asylum.

However, because undocumented immigrants are not appointed legal counsel and are unaware that they can seek asylum based on their gender identity, many are unable to obtain asylum because of the one-year deadline. A study conducted in 2010 found that in approximately 46 percent of cases where the filing deadline is an issue, it is the *only* reason cited for denying asylum.<sup>26</sup>

In a very real sense, being transgender, lesbian, gay, or bisexual is the reason many asylum-seekers are living in the United States today. And yet filing for asylum can be difficult for LGBT people. Unlike in situations where a person is persecuted because of their political affiliation, for example, a transgender person may not be willing to be open about the reason they were persecuted for fear of experiencing discrimination or violence here in the United States. While LGBT asylum-seekers may know that the US will not be as dangerous as the community they left, the idea that they could be officially protected as an LGBT person is foreign and unthinkable for many. For many who came from countries where government officials persecuted and abused trans people, the last thing they would think to do upon arriving in the US is notify officials that they are trans.

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24 U.S. Citizenship and Immigration Services (2011), “Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Refugee and Asylum Claims.”

25 Hillary Rodham Clinton, U.S. Secretary of State, “Free and Equal in Dignity and Rights,” Address at the Palais de Nations (Dec. 6, 2011) (Transcript available at <http://www.humanrights.gov/2011/12/06/remarks-in-recognition-of-international-human-rights-day/>)

26 Heartland Alliance for Human Needs & Human Rights, National Immigrant Justice Center, Human Rights First, and Penn State Law, “The One-Year Asylum Deadline and the BIA: No Protection, No Process” (2010), available at <http://www.immigrantjustice.org/sites/immigrantjustice.org/files/1YD%20report%20FULL%202010%2010%2020%20FINAL.pdf>.

## Repeal the One-Year Asylum Deadline


The one-year filing deadline is one of the primary reasons why LGBT immigrants, and many others with meritorious asylum claims, are denied legal protection. The one-year asylum bar does not take into account the realities of seeking asylum as an LGBT immigrant and results in countless legitimate LGBT asylum seekers being denied necessary protections.<sup>27</sup> Today's asylum application process has built-in mechanisms that adequately prevent fraud in asylum applications, including penalties for fraudulent applications, interviews with asylum officers, court hearings, and the presentation of research and evidence. All of these factors mean that the one-year filing deadline does not serve any important goal and instead results in the denial of valid asylum claims.

The UN High Commissioner for Refugees declared in 2011 that nations must “ensure that no one fleeing persecution on grounds of sexual orientation or gender identity is returned to a territory where his or her life or freedom would be threatened.”<sup>28</sup> For LGBT asylum-seekers, the threat to their life and freedom is severe and our asylum laws and procedures should be reformed to recognize that reality. Congress must repeal the one-year filing deadline in order to ensure our asylum laws fulfill their purposes of protecting vulnerable people.

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27 Victoria Neilson and Aaron Morris (2006), *The Gay Bar: The Effect of the One-Year Filing Deadline on Lesbian, Gay, Bisexual, Transgender, and HIV-Positive Foreign Nationals Seeking Asylum or Withholding of Removal*, 8 N.Y.C. Law Rev. 233.

28 UNHCR Report 2011 at ¶ 84(c).



“We MUST have immigration reform that doesn’t exclude transgender immigrants on the basis of cost, employment discrimination, or a history of fleeing persecution.”

—Julie Kruse, Policy Director, Immigration Equality



## Johanna Vasquez

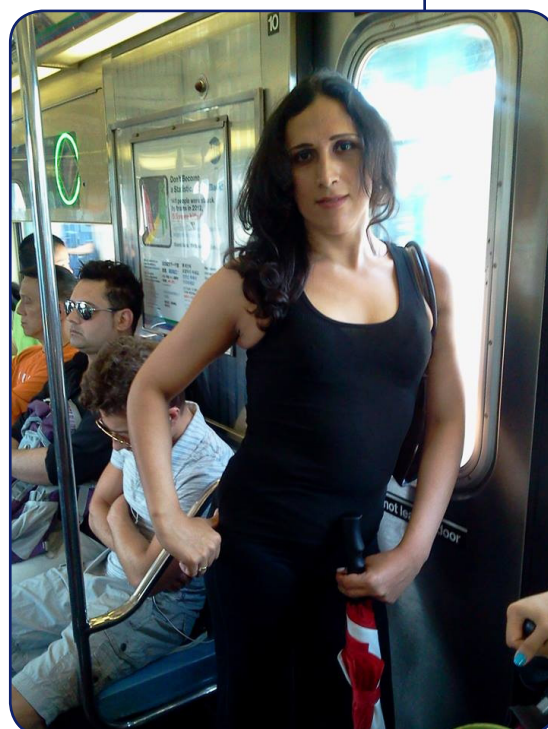
Johanna Vasquez, a transgender woman, was born on December 16, 1980 in Jucuarán, El Salvador. Throughout her youth, community members tormented Johanna and classmates beat and taunted her because she was transgender. When Johanna was sixteen, a group of seven transphobic men brutally gang-raped her, screaming, “You are a sickening, piece of trash, faggot.” The men left her unconscious to die. Fearing that transphobic police and community members would kill her if she reported her rape, Johanna suffered in silence. She fled El Salvador for the United States, fearing for her life. Struggling with trauma, she missed a critical one-year filing deadline for asylum that she had no idea existed. Johanna was sixteen years old.

After twelve years in the United States, Johanna was arrested after authorities found that she lacked proper proof of lawful immigration status. She was transferred to an immigration jail, where she was a victim of transphobic violence. After another detainee beat her and sexually assaulted her, Johanna was faced with a bleak choice—accept deportation or continue to suffer indefinitely in immigration detention. Without an attorney and facing unbearable conditions in detention, Johanna grimly chose to stop fighting her case and she was deported in December of 2009.

In El Salvador, the danger to Johanna’s life and safety as a transgender woman remained unchanged. A few weeks later, Johanna once again fled desperately to the United States. Border patrol put her into a federal prison for returning after deportation, and then transferred her to an all-male immigration jail to be removed once again to El Salvador. Because she had already been deported, she did not get a chance to explain her case in front of a judge.

Simply for being transgender, detention staff housed Johanna in “protective” solitary confinement, in a cell traditionally reserved for dangerous and violent felons. Johanna remained in solitary confinement twenty-three hours a day for seven months until she was deported again to El Salvador in September 2010.

Johanna did not even make it past the airport before she was yet again targeted by transphobic community members in El Salvador. Ten armed men in a car abducted her, raped her, and threatened to kill her. She pleaded with them to let her live, and they eventually abandoned her. Salvadorean police took no action against her rapists, instead telling Johanna that her rapists should have killed her. For a third time, Johanna fled El Salvador, and was again arrested by American immigration authorities and sent to federal prison for illegally reentering the United States. This time, the LGBT immigration group, Immigration Equality, helped Johanna obtain a chance to explain her case to a judge. Johanna eventually won “withholding of removal” status, which allows her to live and work freely in the U.S. Johanna now works as an advocate for other transgender immigrants in New York.



## VI. ENFORCEMENT AND DUE PROCESS CONCERNS

### Distorted Enforcement and Deportation without Due Process

The US spends more today on immigration enforcement than on all other federal law enforcement activities combined.<sup>29</sup> In addition, the federal government has deputized state and local law enforcement around the country as de facto immigration agents, trading data with federal agencies to check the immigration status of anyone they arrest and holding them on behalf of immigration authorities. These programs have undermined community trust in law enforcement by raising the specter of police profiling.<sup>30</sup> In May of 2013, a federal judge ruled that Maricopa County, Arizona Sheriff Joe Arpaio had engaged in racial and ethnic profiling on a large scale, looking for Latino men drivers to stop and check for immigration violations.<sup>31</sup> The harmful effect of these programs is exacerbated for LGBT immigrants and their families, who have historically experienced police abuse and distrust, and especially for transgender women of color, who are frequently profiled as suspected sex workers.<sup>32</sup>

Once in immigration proceedings, detainees are not afforded due process and immigration judges are denied the discretion to make fair and reasonable case-by-case decisions. The National Immigration Justice Center explained this most succinctly in their statement to the Senate Judiciary Committee in March 2013: “The immigration adjudication system is purportedly a civil system, however it functions like the criminal justice system without many of the protections afforded those in criminal custody. Notably, immigrants who want to fight their deportation do not present evidence to a jury, do not have the right to a speedy trial and do not have access to court-appointed counsel and, as a result, the majority are unrepresented.”<sup>33</sup> In addition, when deportation proceedings are initiated, immigration judges usually lack discretion to give any meaningful review. The Leadership Conference on Civil and Human Rights summarized in recent Congressional testimony: “In the vast majority of cases, immigration judges [cannot] consider equities such as long U.S. residence, hardships to U.S. citizen spouses and children, employment history, military service, community ties, or evidence of rehabilitation. Without such discretion, immigration judges must deport immigrants who deserve a second chance.”<sup>34</sup>

### Reform and Refocus Enforcement

Comprehensive immigration reform should seek to reform enforcement measures to increase government accountability, prevent discriminatory profiling, maintain local community trust in law enforcement, and increase the safety of communities around the country. Congress should expressly ban racial profiling in immigration enforcement activities, and federal authorities should suspend state and local involvement in immigration enforcement efforts in locations that have a record of profiling or where federal agencies are actively investigating a pattern or practice of discriminatory policing. Congress should also make clear that state and local officials are not required to comply with requests by Immigration and Customs Enforcement (ICE) to hold individuals in custody solely for the purpose of interviews by ICE to determine immigration status. Any massive, unfocused expansion of enforcement activities, such as prosecuting low-level immigration violations, should be rejected.

In addition, those who are placed in immigration proceedings should have their fair day in court, in front of a judge who can weigh all the circumstances of the case before someone is ordered deported. Comprehensive reform should provide immigration judges with the discretion to consider all the facts and equities and grant relief from deportation in appropriate cases. Ensuring access to counsel for all detained persons is also essential for transgender immigrants and others who remain detained. Proposed Senate and House legislation would establish minimal protections by guaranteeing appointed counsel for minors, those with mental disabilities, and other especially vulnerable persons, and requiring orientations on legal rights at every detention facility.

29 Doris Meissner, Donald M. Kerwin, Muzaffar Chishti & Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Washington, DC: Migration Policy Institute (2013).

30 American Immigration Council, “The 287(g) Program: A Flawed and Obsolete Method of Immigration Enforcement” (Nov. 29, 2012), <http://www.americanimmigrationcouncil.org/just-facts/287g-program-flawed-and-obsolete-method-immigration-enforcement>.

31 Fernanda Santo, Judge Finds Rights Violations by Sheriff, N.Y. Times, A14 (May 25, 2013).

32 Nat'l Trans Discrimination Survey at 158 (“One-fifth of NTDS respondents who have interacted with police reported harassment by police, with much higher rates reported by people of color.”).

33 National Immigration Law Center, *Statement to Senate Judiciary Committee on Hearing: Building an Immigration System Worthy of American Values 2* (March 20, 2013).

34 Statement of Wade Henderson, President & CEO, The Leadership Conference on Civil and Human Rights, *Hearing before the Senate Committee on the Judiciary on “Building an Immigration System Worthy of American Values”* (Mar. 20, 2013).

“In order for immigration reform to be truly comprehensive, it must eliminate harmful enforcement programs like Secured Communities (S-Comm), which dramatically expand the deportation dragnet. In combination with pervasive police profiling of transgender people, especially transgender people of color, such programs create potentially devastating consequences for transgender immigrants.”

—Andrea Ritchie, Co-Coordinator, Streetwise and Safe

## VII. THE DANGERS OF DETENTION FOR TRANSGENDER IMMIGRANTS

Once apprehended by ICE, undocumented immigrants, asylum seekers, and even those with minor visa violations are overwhelmingly placed in what is now the largest immigration detention system in the world.<sup>35</sup> Immigration detention is supposedly a civil, not criminal, system, and its only legitimate purpose is to ensure participation in immigration court proceedings and hold those who are a serious threat to public safety. In fact, ICE detains over 425,000 men, women, and children every year, thousands of whom are LGBT, in a network of county jails and private prisons. While many are held for only a few days, others are detained for months or even years. Over the past decade, a total of 3 million people have spent time in immigration detention.<sup>36</sup> For a large number of people, detention is mandated by law, regardless of whether the detainee presents no flight risk or danger to the community. In 2011, it was recorded that approximately 45-64% of people in immigration detention on any given day were there because of the current mandatory detention law.<sup>37</sup>

Not only are current detention rules inefficient and unjust, but they also result in exorbitant costs to taxpayers compared to detention alternatives. Currently, it costs tax payers \$122 per day or more to house someone in immigration detention, while alternatives to detention can cost as little as \$12 per day.<sup>38</sup> On average, detention costs nearly \$60,000 per person for a year, leading taxpayers to pay nearly \$2 billion to fund ICE’s custody operations.<sup>39</sup> By reducing reliance on physical detention, our government can greatly reduce these unnecessary costs. Using more alternatives to detention would also allow prospective detainees to care for their families and access legal services while remaining an effective method to ensure immigrants’ appearance at their immigration hearings.<sup>40</sup> One such alternative could include community-based options run by USCIS or local NGOs. Such proven alternatives to detention would be more cost effective and humane, while still being able to meet the agency’s needs. Immigration reform proposals should explore efficient and cost-effective detention alternatives so that detaining undocumented immigrants becomes a last resort that is used only when other measures are insufficient.

The conditions of immigration detention are x and often dangerous, especially for LGBT immigrants. Physical and sexual abuse are a persistent problem in detention, with rates of sexual abuse similar to the high levels reported in prisons overall.<sup>41</sup> Transgender immigrants are at even higher risk, and the still-prevalent practice of housing trans-

35 Id. at 18.

36 Id.

37 Letter from Civil and Human Rights Organizations to U.S. House and Senate Judiciary Committees on Detention Efficiency p.3 (Mar. 14, 2013) [hereinafter Letter on Detention Efficiency].

38 See id.

39 Id. at 2-3.

40 See id.

41 Allen J. Beck & Marcus Berzofsky, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12*. Washington, DC: Bureau of Justice Statis-

gender immigrants based on their anatomy or sex assigned at birth is not only psychologically harmful but sharply increases their vulnerability to abuse. A statewide survey in California found that when transgender women were held in men's prisons, they were *13 times* more likely to report sexual abuse than other inmates.<sup>42</sup>

Instead of placing trans detainees in housing consistent with their gender identity, facility officials often place them in protective custody or solitary confinement, with the misguided intention that separating trans detainees from the general population will protect them from sexual abuse. The same often happens to gay, lesbian, and bisexual detainees. LGBT detainees in protective custody are often kept in total isolation for up to 23 hours a day, often without access to library resources, telephones, outdoor recreation, religious services, or legal services that are otherwise available to other detainees.<sup>43</sup> Solitary confinement fails to prevent abuse, much of which is committed by staff—and it can be extremely harmful in itself. Psychologists have long documented the harmful psychological effects caused by such prolonged isolation. These effects can include severe anxiety, depression, paranoia, hallucinations, and impulsive, self-directed violence.<sup>44</sup> These psychological effects have been shown to last long after release from protective custody and the resulting personality changes can permanently impair a person's ability to function in society.<sup>45</sup>

The following incidents documented by human rights organizations starkly illustrate the dangers of the detention system for transgender immigrants:

“B,” a transgender woman, was held at the Santa Ana City Jail in Orange County, California in 2010. “B” was detained with men and transported to immigration court in a van with male detainees, one of whom violently forced her to perform oral sex. Traumatized, and with no faith that facility staff would take the assault seriously and protect her during any investigation, she never reported it.<sup>46</sup>

“[D], a gay man, was held in segregation for four months in ICE's Houston Processing Center, justifying their decision on the basis that [D] presented “effeminately.” Facility staff refused to provide [D] a Bible and permitted him only one hour of recreation – in a cold nine-by-thirteen-foot cell – per day.”<sup>47</sup>

“In the North Georgia Detention Center, one transgender detainee [in solitary confinement] told researchers that she was grabbed by a guard while in the bathroom. The guard attempted to handcuff her while her pants were still around her ankles, and the detainee urinated on herself and the floor. She asked to clean herself up but the guard refused and told her to keep quiet about what happened.”<sup>48</sup>

Detention facilities can be especially hostile and dangerous for transgender immigrants in other ways. Those who escape physical or sexual assault typically face daily harassment and threats. Transgender detainees are often subject to humiliating searches by staff of their birth-assigned gender, sometimes without any justifiable reason. While current detention standards prescribe access to adequate health care for all detainees, including care for HIV and for gender dysphoria, these non-binding standards do not ensure that transgender detainees can actually access the health care they need. In particular, although courts have repeatedly ruled that denying treatment for gender dysphoria in confinement facilities is unconstitutional,<sup>49</sup> many transgender detainees are still told that facility policies or the personal beliefs of staff prohibit providing this care.

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tics (May 2013) (estimating that 3.8% of ICE detainees reported sexual abuse compared to 4% in all prisons and 3.2% in all jails).

42 V. Jenness, C. L. Maxson, K. N. Matsuda & J. M. Sumner, *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*, at 3. Irvine, CA: Center for Evidence-Based Corrections (2009).

43 *Living in Dual Shadows* at 21.

44 National Immigrant Justice Center & Physicians for Human Rights, *Invisible in Isolation – The Use of Segregation and Solitary Confinement in Immigration Detention* 14 (Sept. 2012) [hereinafter *Invisible in Isolation*].

45 *Id.* at 16.

46 Nat'l Ctr. Transgender Equal., et al., Comments Submitted to Proposed DHS PREA Standards, *Protecting Lesbian, Gay, Bisexual, Transgender, Intersex, and Gender Nonconforming People from Sexual Abuse and Harassment in Immigration Detention* 5 (Feb. 26, 2013) [hereinafter Comments on Proposed DHS PREA Standards]; See also Andrew Harmon, “Eight Months in Solitary,” *The Advocate*, May 7, 2012 at 2 (<http://www.advocate.com/news/news-features/2012/05/07/transgender-detainees-face-challenges-broken-immigration-system?page=0.2>).

47 Comments on Proposed DHS PREA Standards at 25.

48 *Invisible in Isolation* at 11.

49 See, e.g., *Fields v. Smith*, 653 F.3d 550 (7th Cir. 2011); *Battista v. Clarke*, 645 F. 3d 449 (1st Cir. 2011).

## OVERBROAD BARS TO LEGAL IMMIGRATION

Under our current immigration system, individuals can be denied entry to the US, or even stripped of legal immigration status, if they have engaged in certain behaviors, or have been convicted of certain crimes. Until 2010, having HIV was a ground for inadmissibility. Unfortunately, some other unduly harsh and unfair inadmissibility grounds remain in current law, and current Senate and House proposals could add new and harsher grounds.

One inadmissibility ground that has disproportionately affected transgender immigrants denies legal entry to anyone found to have engaged in commercial sex within the last 10 years.<sup>1</sup> This rule applies regardless of whether the individual was convicted of any crime, is no longer engaged in sex work, or whether the sex work occurred in a jurisdiction where it is legal. This ban has a disproportionate affect on transgender immigrants because transgender people are more likely to have engaged in sex work at some point their life for a variety of reasons, including that they could not find other employment as a result of pervasive discrimination. According to the NTDS, 11% of transgender respondents reported having participated in sex work at some point, compared to 1% of all women in the U.S.<sup>2</sup> The ban's unintended harmful effects were highlighted in 2012 when the International AIDS Conference was held in Washington, DC. Although the lifting of the HIV travel ban allowed the global conference to come to the US for the first time in 22 years, leading activists from around the world – many of them transgender – were prevented from attending because their history of sex work barred them from even entering the country.

Legislation passed by the Senate and introduced in the House do not include any provisions that would modernize these harsh inadmissibility and deportability grounds; in fact, they would add some new ones. At the same time, however, they would provide significant new protections by giving immigration judges more discretion to waive bars such as a history of commercial sex if a judge determines that an individual merits relief from deportation.<sup>3</sup>

1 Immigration & Nationality Act, 8 U.S.C. §1182 (a)(2)(D)(i).

2 Nat'l Trans Discrimination Survey at 22.

3 See National Immigration Law Center, Statement to Senate Judiciary Committee for Hearing: Building an Immigration System Worthy of American Values (March 20, 2013), available at [www.nilc.org/document.html?id=869](http://www.nilc.org/document.html?id=869).

## Reduce and Reform Immigration Detention

As the *New York Times* observed in 2011, the immigration detention system is “dangerously broken.”<sup>50</sup> The United States detains far more people than is conceivably necessary, at tremendous human as well as fiscal cost. The mass detention of hundreds of thousands of immigrants in often dangerous prisons or prison-like facilities is unnecessary and unsustainable. Continuing reports of mismanagement, abuse, and overuse of segregation underscore the need to reform both the scale and the conditions of detention.


The mass scale of detention is dictated by current law that categorizes huge numbers of immigrants as subject to mandatory detention, regardless of whether they pose any danger to the community or risk of flight, and has also been interpreted to require vast spending on an arbitrary fixed number of detention beds. Truly comprehensive reform would end the so-called “bed mandate” and eliminate mandatory detention for all but serious criminal offenders. An alternative approach, included in Senate and House legislation, would be to re-categorize alternative supervision programs so that they count as “detention” under the mandatory detention law. Requiring check-ins with an immigration officer or even an ankle monitor is unnecessary in most cases to ensure participation in court proceedings—but for transgender immigrants, and for many others, it would be far preferable to the dangers of detention.

For those who continue to be detained, the key to reforming the conditions of detention is ensuring accountability, which is sorely lacking in the current system of contracted county jails and for-profit prisons. ICE adopted new, non-binding detention standards in 2012 and is currently finalizing regulations aimed at preventing and addressing sexual abuse in confinement facilities. If properly implemented, these standards would guarantee detainees’ access to health care (including for HIV and gender dysphoria), require comprehensive risk screenings and staff training, and ensure that transgender immigrants are assessed for housing consistent with their gender identity on a case-by-case basis – all essential steps for preserving the safety of detainees.<sup>51</sup> Unfortunately, most facilities today are not legally bound to actually follow these rules, and there are rarely consequences for noncompliance. Proposals that would incorporate these rules into all facility contracts, and require financial penalties for violations, have been included in Senate and House reform legislation and are essential to provide real accountability on detention conditions.

A particularly urgent issue not adequately addressed by ICE standards to date is the widespread use of harmful, prolonged solitary confinement, especially for transgender immigrants. The current Senate and House bills include a measure that would greatly limit the reasons solitary confinement could be used, for how long, and under what conditions. In addition to banning solitary confinement for minors and those with serious mental illness, this proposal would require solitary to be used as a last resort and for no more than 15 days unless the Secretary determines that the person would be harmed more by *not* being in solitary. The proposal would also expressly ban the common practice of automatically placing individuals in solitary simply because they are LGBT.

<sup>50</sup> Editorial, *A Broken, Dangerous System*, N.Y. Times, A26 (Dec. 4, 2011).

<sup>51</sup> Immigration and Customs Enforcement, “Fact Sheet: ICE Detention Standards,” Feb. 24, 2012, <http://www.ice.gov/news/library/factsheets/facilities-pbnds.htm>.



“As a nation, we should look very carefully at what we’re doing to LGBT immigrants in detention centers here at home. Instead of supporting them after they experience trauma in their home countries, we lock them up and traumatize them more.”

—Ruby Corado, Executive Director, Casa Ruby LGBT Community Center

## Employment Discrimination Data from the National Transgender Discrimination Survey

- Trans people experience **twice the rate of unemployment** as the general population. For trans people of color, unemployment is four times the national rate.
- 90% of respondents experienced **harassment, mistreatment, or discrimination** on the job or took actions like hiding who they are to avoid it.
- 47% of respondents had been **fired, not hired, or denied a promotion** for being transgender or gender non-conforming.
- 26% reported that they had **lost a job** due to being transgender or gender non-conforming.
- 50% reported being **harassed at work** .

## EMPLOYMENT VERIFICATION MUST PROTECT ALL WORKERS' PRIVACY

Current proposals in the Senate and House call for requiring all employers to check employees' employment eligibility through a mandatory electronic verification system or a national identification card. While there are significant policy arguments for and against these approaches, it is essential that any new or expanded verification system not violate the personal privacy of workers, whether they are citizens or non-citizens. Any such system, if adopted, should only include personal information that is actually necessary to verify employment eligibility. Including information such as gender in verification systems will cause any gender discrepancies to be flagged as suspicious, which could "out" certain employees as being transgender. Similar concerns could arise if a verification system or identity card is linked to historical records that could disclose personal details such as a former name. Such disclosures could create new and unintended risks of harassment, firing, or even physical violence for trans people, simply because of their gender identity, and could affect hundreds of thousands of citizen and non-citizen transgender workers.

Current reform proposals say little about how verification would work in practice, what types of personal information would be used, and what safeguards would protect workers' privacy. The current E-Verify program does not use gender data. Nevertheless, the immigration reform proposals would create broad authority for new or expanded systems that, if not carefully implemented, could incorporate needless personal data and create serious problems for transgender workers. In the past, unnecessary and sensitive information such as gender has been incorporated in other government verification programs without adequate consideration. In 2011, for example, the Social Security Administration removed gender from the Social Security Number Verification System (SSNVS), a voluntary system used by many employers, because it determined that using gender data served no purpose – but not before notifications from this system had "outed" many transgender workers over a period of years. Thus, Congress and the federal agencies charged with implementing reforms must be careful to ensure that the privacy of all workers is adequately protected.

## Krypcia

A former bank teller from El Salvador, Krypcia legally came to the United States when she was 25 years old. She fled her home country because she knew that she could transition more safely in the United States and she eventually settled in the DC metropolitan area. Almost ten years after arriving in the US, Krypcia was placed in immigration detention after having a minor dispute with a DC cab driver who charged her an exorbitant amount of cab fare. When the police arrived to settle the dispute, they arrested Krypcia and placed her in detention because they learned that she had fallen out of legal immigration status.

Even though no criminal charges were brought against her, Krypcia spent almost 8 grueling months in detention. She spent much of this time in solitary confinement (normally reserved for dangerous criminals) because detention authorities refused to house her with women and because they knew she would be unsafe in the male population.

The long periods of isolation led Krypcia to be so depressed and emotionally distraught that, eventually, she resigned to signing a “voluntary” order to be sent back to El Salvador. After months of isolation, Krypcia would have rather risked her life by returning to El Salvador than waste away indefinitely in U.S. detention.

Luckily, Krypcia was not deported. The immigration judge handling her case refused to send her back to El Salvador because of the country’s longstanding history of violence against transgender people. Like many transgender immigrants, Krypcia qualified for asylum but had never heard of the one-year filing deadline and missed it. Instead of asylum, the judge granted Krypcia “withholding of removal” status – meaning she could not obtain permanent legal residence, but would not be deported.

Krypcia is now living and working in DC and is recuperating from months of unnecessary suffering at the hands of our immigration system. Her story illustrates how the current system locks up too many people, for too long, in harsh conditions that can be especially severe for transgender people. Krypcia’s experience also illustrates the urgent need to eliminate the asylum filing deadline, a problem that is addressed by the Senate and House immigration reform proposals.

With her future on the horizon, Krypcia looks forward to saving up enough money to start a small hair salon business, finding love, and maybe getting married some day. She stays committed to volunteering with Casa Ruby (a multicultural LGBT community center in Washington, D.C.) and to using her experience to raise awareness about the treatment of LGBT people in immigration detention. Krypcia hopes that by telling her story she will help people understand the urgent need for reform.





## VIII. CONCLUSION

Our country has a historic opportunity to create common-sense reforms that will make our immigration system stronger, more effective, and more humane for all immigrants, including transgender non-citizens. We must re-evaluate the goals of our immigration system to make sure that the way it is implemented benefits our nation rather than causing harm to individuals and communities. Specifically, we call on Congress to enact comprehensive immigration reform that will:

- Create a fair and realistic pathway to citizenship for millions of undocumented immigrants, including tens of thousands of transgender people and their loved ones.
- Incorporate the DREAM Act, allowing young trans immigrants who were raised in the U.S. to remain here and contribute their talents, and education to our society.
- Ensure that all families are protected under immigration law.
- Repeal the one-year asylum deadline, allowing trans immigrants to take advantage of their right to seek asylum and avoid returning to countries where they will be persecuted and subject to violence.
- Reduce and reform detention to stamp out abuse, mistreatment, and the overuse of solitary confinement, especially regarding those who are targeted because of their gender identity.
- Reform and refocus enforcement efforts in order to eliminate discriminatory profiling, maintain trust in local law enforcement, and ensure due process.
- Remove or reform current inadmissibility grounds for minor offenses and non-offenses that disproportionately affect transgender immigrants.
- Protect worker privacy in employment verification systems to ensure that these systems do not become vehicles for discrimination or violence against transgender immigrants.

These reforms would immeasurably improve the lives of as many as 100,000 people who are, or who have a loved one who is, transgender, as well as their communities. Currently, trans people are extremely vulnerable to discrimination, abuse, and unfairness in the immigration system. Our immigration system should be reformed to recognize that immigrants, including transgender immigrants, are a vital part of our society's fabric and should be treated equally under our immigration laws. All immigrants deserve to be treated with basic human dignity. Our immigration policies should reflect this truth and should stay true to the principles upon which the United States was founded so that transgender immigrants can fully participate in society.



# Appendix

## Statement of U.S. Transgender Organizations on Immigration Reform

April 10, 2013

The undersigned transgender service and advocacy organizations join to state their support for common sense immigration reform efforts that address the issues faced by undocumented transgender immigrants.

An estimated 20,000 transgender adults in the US are undocumented, and thousands of transgender youth who came to the US at an early age also lack legal status. In addition, thousands of transgender American citizens have immigrant partners or other family members who have been or may be separated from them by our immigration laws. Among a population that is highly marginalized, transgender immigrants are among the most vulnerable to discrimination and violence. Our current immigration laws, together with pervasive discrimination against transgender people, force transgender immigrants to live in dual shadows.

Many transgender immigrants came to the US to escape severe and often life-threatening persecution because of who they are. Others came fleeing desperate poverty; still others arrived at a young age with family members and have grown up in the United States. Transgender immigrants work hard to support themselves and their families, and make the best of the circumstances created by a broken immigration system and lingering prejudices against trans people. Yet among a transgender population that is already marginalized, the National Transgender Discrimination Survey shows that undocumented transgender people face even higher risks of discrimination and violence in employment, housing, health care, and when seeking various services. Trans immigrants often have nowhere to turn, find themselves shut out of jobs or education that could provide them with better opportunities, are denied the right to seek asylum or to be sponsored by a partner, and are thus subject to detention in inhumane and dangerous conditions. Given these factors, any vision of Comprehensive Immigration Reform and equality for transgender people must include ensuring security and safety for trans immigrants.

No single change to our laws will bring transgender immigrants to safety and allow them to reach their full potential to succeed and continue contributing to American society. The undersigned transgender organizations call on policy-makers to uphold and incorporate the following principles to ensure that the basic rights of all immigrants and their families are protected:

- **Create a definite, reasonable pathway to citizenship.** Provide the estimated 267,000 LGBT and as many as 21,000 transgender undocumented immigrants with a pathway to citizenship. This would give them the legal certainty that they can work and travel safely, will not be separated from their families and communities, and can become full and equal members of society.
- **Ensure a swift pathway for DREAMers.** Undocumented trans youth who were brought to the US as children, attended school here or served in the military, and see themselves as Americans in every other way should benefit from the swift pathway laid out in the DREAM Act.
- **Strengthen the family immigration system by increasing the number of family visas and including binational LGBT families.** Family unity is central to American immigration policy because Congress has recognized that the fundamental fabric of our society is family. Yet today many face absurdly long waits of years or decades to sponsor family members such as parents or siblings. In addition, US citizens who are LGBT or have an LGBT partner are typically barred from sponsoring their partner for a visa. Even transgender people and their partners who are in different-sex marriages can face overwhelming legal battles to be recognized under current law.
- **Repeal the one-year filing deadline for asylum-seekers.** Each year many transgender people come to the US fleeing life-threatening persecution because of who they are, leaving everything behind to protect their life and their freedom. Yet many do not know that asylum is potentially available to them as a trans person, and the current one-year filing deadline is the primary reason why many are denied protection and risk being sent back to dangerous situations. Even those granted withholding of removal live in a permanent legal limbo, unable to travel abroad or to permanently integrate into

US society. The one-year deadline is harsh, arbitrary, and no longer serves any legitimate purpose in light of other changes that have made frivolous asylum applications far less likely.

- **Reduce mandatory detention and reform detention conditions.** The current immigration system detains more than 400,000 people each year in prison-like conditions, with no right to counsel. Transgender detainees are overwhelmingly housed according to their birth-assigned gender, are subjected to prolonged isolation that can amount to torture, and are vulnerable to physical and sexual abuse. Many are asylum-seekers who are further traumatized by detention. Current law prohibits even considering many people for bond or alternatives to detention. This wasteful and inhumane use of the detention system must be reduced and reformed.
- **Reform the Secure Communities program and other similar state and local enforcement measures.** Under current laws, 90% of state and local jails nationwide share fingerprints with DHS, in most instances before there is a final disposition in the criminal case. Transgender individuals are often targeted by police based solely on their appearance and have thus been disproportionately affected by removal proceedings stemming from these programs. Enforcement measures should prioritize targeting serious offenders by giving states the discretion to comply with federal detention requests for undocumented low-level and non-offenders.
- **Any employment verification system must not violate personal privacy.** Verification measures should use the minimum information necessary and should not include additional personal data that invades personal privacy. For transgender workers, a system that tracks gender markers, or uses other personal data such as former names, could “out” individuals and make them vulnerable to discrimination.

We recognize that transgender immigrants are a highly vulnerable population within the immigration system and we stand committed to advocating for a series of comprehensive immigration reforms that protect all immigrants’ rights.

## Signatory Organizations

*The following organizations signed onto the above statement of principles:*

Black Transmen, Inc. (Dallas, TX)	Trans*Action Florida (St. Petersburg, FL)
Black Transwomen, Inc. (Dallas, TX)	Transgender Civil Rights Project - National Gay and Lesbian Task Force Action Fund (Washington, DC)
Casa Ruby (Washington, DC)	Transgender Education Network of Texas (TENT) (College Station, TX)
Center of Excellence for Transgender Health (San Francisco, CA)	Transgender Health Empowerment (T.H.E.) (Washington, DC)
DC Trans Coalition (DCTC) (Washington, DC)	TILTT, Inc. (Transgender Individuals Living Their Truth, Inc.) (Atlanta, GA)
FORGE (Milwaukee, WI)	Transgender Law Center (San Francisco, CA)
Gender Justice Nevada (Las Vegas, NV)	Transgender Legal Defense & Education Fund (TLDEF) (New York, NY)
Gender Rights Maryland (Laurel, MD)	TransOhio (Columbus, OH)
Gender Rights Advocacy Association of New Jersey (GRAANJ) (New Brunswick, NJ)	Transgender People of Color Coalition (TPOCC) (Washington, DC)
Kansas Statewide Transgender Education Project (K-STEP) (Topeka, KS)	Transgender Resource Center of New Mexico (Albuquerque, NM)
Louisiana Trans Advocates (Baton Rouge, LA)	Trans Youth Equality Foundation (Portland, ME)
Massachusetts Transgender Political Coalition (Boston, MA)	Trans Youth Family Allies (TYFA) (Holland, MI)
National Center for Transgender Equality (NCTE) (Washington, DC)	Transgender Youth Support Network (TYSN) (Minneapolis, MN)
Rainbow Community Cares (RCC) (Raleigh, NC)	TransLatina Coalition (Los Angeles, CA)
Southern Arizona Gender Alliance (SAGA) (Tucson, AZ)	
Sylvia Rivera Law Project (SRLP) (New York, NY)	
Tennessee Transgender Political Coalition (TTPAC) (Nashville, TN)	



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