

Kevin Landy
Assistant Director, Office of Detention Policy and Planning
Immigration and Customs Enforcement
Department of Homeland Security
Washington, D.C. 20528

February 12, 2016

Dear Assistant Director Landy:

We write to encourage Immigration and Customs Enforcement (ICE) to issue guidance clarifying that lesbian, gay, bisexual and transgender (LGBT) immigrants and people living with HIV (PLWH) are particularly vulnerable populations whose detention is “not in the public interest” per Secretary Johnson’s November 2014 memorandum on *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*.¹

Due to their vulnerability to sexual assault and abuse in confinement, detention of vulnerable groups such as LGBT immigrants should be limited to extraordinary circumstances. The Bureau of Justice Statistics (BJS) found that non-heterosexual detainees experience sexual assault at up to ten times the rate of heterosexual men.² The risk is even higher for transgender people. According to BJS, one in three will be sexually abused within twelve months in custody.³ The risk is high in immigration detention as well. In 2013, the Government Accountability Office reported that 20% of substantiated reports of sexual assaults in ICE custody involved a transgender victim.⁴

ICE’s own policies, including the Prison Rape Elimination Act (PREA) Standards and its Risk Classification Assessment (RCA) tool, recognize that LGBT immigrants and PLWH are particularly vulnerable in detention.⁵ ICE’s *Transgender Care Memorandum* sought to enforce PREA’s housing guidance for transgender detainees and lower the risk of sexual abuse transgender women face when detained with men. The document outlines housing options and provides training and tools for identifying and processing transgender women in ICE custody.⁶ However, 2/3 of substantiated sexual assaults of transgender people in ICE custody in 2013 were

¹ Department of Homeland Security, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” November 20, 2014, available at https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.

² Bureau of Justice Statistics, “Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12,” May 2013, available at <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

³ Bureau of Justice Statistics, “Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12 Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmates,” December 2014, available at http://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf.

⁴ Government Accountability Office, “Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse,” November 2013, available at <http://www.gao.gov/assets/660/659145.pdf>.

⁵ Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 6 CFR §115 (2014).

⁶ Immigration and Customs Enforcement, “Further Guidance Regarding the Care of Transgender Detainees,” June 19, 2015 available at <https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf>;

perpetrated by a guard, indicating that simply changing the placement of transgender immigrants does not effectively address the extremely high risk of assault they face in confinement and additional guidance, training, and oversight are needed to make all facilities safe.⁷

ICE's intake system acknowledges the vulnerability of LGBT immigrants and PLWH in detention, as both categories are part of ICE's "Special Vulnerabilities screening."⁸ As a result, LGBT people and PLWH should be recommended for release from detention. Unfortunately, an analysis conducted by the Center for American Progress (CAP) found that although the RCA tool recommends that ICE release LGBT individuals who express a fear of harm based on their sexual orientation or gender identity 70% of the time, ICE officers consistently override this recommendation and use their discretion to detain in 68% of those cases.⁹ By comparison, a recent study conducted by the DHS Office of the Inspector General found that ICE overrode RCA recommendations for release in 1/3 of cases for the general population, while CAP found this occurred in 2/3 of the cases for LGBT detainees.¹⁰ ICE must apply discretion to ensure that vulnerable populations are not subjected to an unacceptably high risk for sexual abuse, not utilize this discretion to detain vulnerable groups. Issuing guidance clarifying that the detention of LGBT immigrants and PLWH is "not in the public interest" under the November 20, 2014 enforcement priorities memo would help protect this population.

We urge you to act swiftly by issuing guidance clearly including LGBT immigrants and PLWH as particularly vulnerable populations whose detention is not in the public interest. The safety and security of many individuals depend on it. If you have any questions, please contact Sharita Gruberg at sgruberg@americanprogress.org.

Sincerely,

BreakOUT!
Center for American Progress
Familia: Trans Queer Liberation Movement
Human Rights Campaign
Immigration Equality
Lambda Legal
National Center for Lesbian Rights
National Center for Transgender Equality

⁷ Government Accountability Office, "Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse," November 2013, p.60-62, available at <http://www.gao.gov/assets/660/659145.pdf>.

⁸ Office of the Inspector General, "U.S. Immigration and Customs Enforcement's Alternatives to Detention (Revised)," (The Department of Homeland Security 2015), p.29-30, available at https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf.

⁹ Sharita Gruberg, "No Way Out: Congress' Bed Quota Traps LGBT Immigrants in Detention," (The Center for American Progress 2015) available at <https://www.americanprogress.org/issues/lgbt/news/2015/05/14/111832/no-way-out-congress-bed-quota-traps-lgbt-immigrants-in-detention/>.

¹⁰ Ibid; Office of the Inspector General, "U.S. Immigration and Customs Enforcement's Alternatives to Detention (Revised)," (The Department of Homeland Security 2015), p.25, available at https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf.

National Coalition of Anti-Violence Programs
National Day Laborer Organizing Network
National Immigrant Justice Center
National LGBTQ Task Force
National Queer Asian Pacific Islander Alliance
Pride at Work
Sex Workers Outreach Project at the Urban Justice Center
Transgender Law Center
United We Dream