



HUMAN  
RIGHTS  
CAMPAIGN®

U.S. Commission on Civil Rights  
1331 Pennsylvania Ave NW #1150  
Washington, DC 20425

May 13, 2019

**Re: Public Comment in Response to the U.S Commission on Civil Rights Public Comment Session and Written Comment Submission: Immigration Detention Centers and Treatment of Immigrants**

To Whom It May Concern:

On behalf of the Human Rights Campaign's nearly 3 million members and supporters nationwide, I write in response to the U.S. Commission on Civil Rights' ("USCCR") request for public comment regarding the condition of immigration detention centers and the treatment of the vulnerable people detained within following the April 12th, 2019 briefing addressing the state of our nation's immigration detention centers. As the nation's largest organization working towards equality for lesbian, gay, bisexual, transgender, and queer (LGBTQ) people, we urge you to recognize the harsh, often life-threatening reality faced by LGBTQ immigrants. LGBTQ detainees are more likely to be sexually abused, detained, and placed in solitary confinement.<sup>1</sup> Moreover, facilities where these practices occur regularly fail to meet federal performance standards and are rarely held accountable for their poor record of compliance.<sup>2</sup> There is an alarming lack of oversight concerning the mental and physical well-being of immigrant detainees.

The United States currently detains over 320,000 non-citizens annually.<sup>3</sup> This widespread absence of accountability is unacceptable and places these lives at risk. Around 65% of all

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<sup>1</sup> KATHLEEN RICE, *LGBT IMMIGRANTS IN ICE DETENTION LETTER TO SECRETARY NIELSEN, CONGRESS OF THE UNITED STATES* (May 30, 2018), [https://kathleenrice.house.gov/uploadedfiles/2018.05.30\\_lgbt\\_immigrants\\_in\\_ice\\_detention\\_letter\\_to\\_sec\\_nielsen.pdf](https://kathleenrice.house.gov/uploadedfiles/2018.05.30_lgbt_immigrants_in_ice_detention_letter_to_sec_nielsen.pdf).

<sup>2</sup> U.S. DEP'T OF HOMELAND SEC., OFFICE OF INSPECTOR GEN., *ICE DOES NOT FULLY USE CONTRACTING TOOLS TO HOLD DETENTION FACILITY CONTRACTORS ACCOUNTABLE FOR FAILING TO MEET PERFORMANCE STANDARDS* (2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>

<sup>3</sup> U.S. DEPT' OF HOMELAND SEC., OFFICE OF IMMIGRATION STATISTICS, *IMMIGRATION ENFORCEMENT ACTIONS: 2017* (2019), [https://www.dhs.gov/sites/default/files/publications/enforcement\\_actions\\_2017.pdf](https://www.dhs.gov/sites/default/files/publications/enforcement_actions_2017.pdf)

immigrant detainees are held in privately run facilities.<sup>4</sup> Additionally, a congressional mandate requiring DHS to maintain 34,000 beds per day, has been interpreted by many legislators in Congress to mean they must be filled.<sup>5</sup>

When bed quotas are construed in this way, it provides a dangerous incentive for ICE agents to arrest and detain more immigrants. And while it should be true that the type of facility where one is detained should not have an effect on the length of detention, evidence shows that immigrants who were placed in privately operated facilities were detained for substantially longer periods of time than facilities operated by ICE.<sup>6</sup> This is especially concerning for LGBTQ immigrants, where a lengthier detention means prolonged exposure to unsafe and discriminatory practices by facility operators.

Private-run facilities also operate in a dangerous grey area with decreased federal oversight and accountability. To be clear, standards concerning facility conditions exist; they are just ignored or unenforced. In 2019, the Department of Homeland Security’s inspector general released a report finding that ICE did not “adequately hold detention facility contractors accountable for not meeting performance standards.”<sup>7</sup> ICE rarely used the financial and contract-based quality assurance tools at their disposal, choosing instead to hand out waivers to centers with deficiencies, which included allowing a facility to use tear gas on detainees.<sup>8</sup> For vulnerable detainee populations, this lack of oversight can be deadly. For Noelia, an asylum seeker from Central America, it was as though he had never left home.

Identifying as a gay man, Noelia told journalists that he had suffered sexual violence at the hands of local gang members in his country of origin. In an attempt to put an end to the abuse, he made the difficult decision to flee to the United States and seek asylum, but the violence didn’t end at the border. Noelia was detained in a private detention center for six months in Georgia, where he experienced sexual harassment and assault that he said was “happening every day”.<sup>9</sup> On one frightening occasion, he was sexually assaulted in a bathroom by several other men. Afraid of being placed in solitary confinement or disbelieved by staff, Noelia did not report the assault right away. When Noelia worked up the courage to share his story with a psychologist, his claim was marked ‘unsubstantiated’ and he received no assistance.

Sadly, Noelia’s story and the way his report of sexual abuse was handled are not uncommon occurrences. Though ICE claims that it investigates each report of abuse, evidence suggests this

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<sup>4</sup> U.S. DEP’T OF HOMELAND SEC., *REPORT OF THE SUBCOMMITTEE ON PRIVATIZED IMMIGRATION DETENTION FACILITIES* 6 (2016), <https://perma.cc/5FR5-JJY4>. 21.

<sup>5</sup> NAT’L IMMIGRANT JUST. CTR., *IMMIGRATION BED MANDATE 101*, <http://immigrantjustice.org/sites/immigrantjustice.org/files/Bed%20Mandate%20101%20Backgrounder%20FINAL.pdf> [<http://perma.cc/7VCZ-SLEL>].

<sup>6</sup> EMILY RYO & IAN PEACOCK, AM. IMMIGRATION COUNCIL, *THE LANDSCAPE OF IMMIGRATION DETENTION IN THE UNITED STATES* 16 (2018), <https://perma.cc/FN64-SZE2>

<sup>7</sup> See U.S. DEP’T OF HOMELAND SEC., *supra* note 2.

<sup>8</sup> *Id.*

<sup>9</sup> JULIE MOREAU, *LGBTQ MIGRANTS 97 TIMES MORE LIKELY TO BE SEXUALLY ASSAULTED IN DETENTION* (June 6, 2018), <https://www.nbcnews.com/feature/nbc-out/lgbtq-migrants-97-times-more-likely-be-sexually-assaulted-detention-n880101>.

is not true. According to the Government Accountability Office (“GAO”), ICE’s data on sexual abuse and assault was incomplete and excluded allegations.<sup>10</sup> Furthermore, GAO discovered that standards concerning sexual abuse and assault were inconsistently applied at various detention centers, and oversight methods addressing compliance of those standards were treated in the same unreliable fashion.<sup>11</sup>

Inconsistent policies regarding sexual abuse and assault can be incredibly dangerous for LGBTQ immigrants, who are especially vulnerable to abuse while detained. Despite accounting for only 0.1 percent of the detained immigrant population in 2017, LGBTQ immigrants accounted for 12% of reported sexual assaults.<sup>12</sup> This means that LGBTQ immigrants were 97 times more likely to be sexually assaulted compared to non-LGBTQ detainees.

This culture of noncompliance allows sexual assaults to go unchecked, like those experienced by Tanya Guzman-Martinez, a transgender woman who was detained at a private detention center.<sup>13</sup> Guzman-Martinez sought protection in the United States after she was attacked for being transgender in Mexico. Despite identifying as a woman, she was housed in an all-male unit in the detention center. While there, Guzman-Martinez was continuously harassed and then sexually abused by a guard under threat of deportation. Although she reported the officer, she remained in the same unit and was sexually assaulted by a male detainee less than a year later. This time, Guzman-Martinez was afraid of retaliation and like other detainees in her position, waited to report the incident. If there had been comprehensive measures to remove Guzman-Martinez from the all-male housing unit and proper training of staff concerning the correct placement and treatment of transgender detainees, she might have been protected from sexual assault in the first place.

It is important to note that detention centers have access to guidelines for the treatment of LGBTQ immigrant detainees. In 2014, the Prison Rape Elimination Act (PREA) was applied to immigration detention centers and required individualized custody determinations for transgender people.<sup>14</sup> Just a year later, an Obama-era memo detailed practices for how best to care for transgender immigrants who were being detained.<sup>15</sup> Still, abuses and improper treatment of transgender detainees persist. Transgender detainees are regularly held in solitary confinement by detention officials, despite increasing evidence that prolonged isolation causes substantial

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<sup>10</sup> U.S. GOV’T ACCOUNTABILITY OFF., GAO-14-38, *IMMIGRATION DETENTION: ADDITIONAL ACTION COULD STRENGTHEN EFFORTS TO ADDRESS SEXUAL ABUSE*, (2013)

<sup>11</sup> *Id.*

<sup>12</sup> See KATHLEEN RICE, *supra* note 1.

<sup>13</sup> ACLU, *ACLU OF ARIZONA FILES LAWSUIT ON BEHALF OF TRANSGENDER WOMAN SEXUALLY ASSAULTED BY CCA GUARD* (December 5, 2011) <https://www.aclu.org/news/aclu-arizona-files-lawsuit-behalf-transgender-woman-sexually-assaulted-cca-guard>

<sup>14</sup> DEP’T OF JUSTICE, *NATIONAL STANDARDS TO PREVENT, DETECT, AND RESPOND TO PRISON RAPE*, 28 C.F.R. § 115 (May 17, 2012).

<sup>15</sup> THOMAS HOMAN, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT EXECUTIVE ASSOC. DIRECTOR, *FURTHER GUIDANCE REGARDING THE CARE OF TRANSGENDER DETAINEES*, (June 19, 2015), <https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf>

harm to detainee's mental and physical well-being.<sup>16</sup> A study concerning the use of solitary confinement on transgender detainees showed that in 2017, 1 out of every 8 transgender detainees had been placed for some length of time in solitary confinement.<sup>17</sup>

LGBTQ immigrants who are fleeing their countries to escape persecution are often susceptible to depression and suicidal ideations, both of which are compounded by forced segregation and isolation.<sup>18</sup> Additionally, longer periods of segregation from the general population mean that detainees placed in solitary confinement are left alone with detention center staff, out of view of surveillance cameras. As mentioned previously, despite directions to facilities advising staff to decrease the use of solitary confinement, detention centers lack oversight and enforcement of these rules and the poor practices continue. For Roxsana Hernandez, a transgender woman from Honduras, these poor practices ultimately led to her death.<sup>19</sup>

Hernandez traveled to the United States in 2018, seeking asylum. She would die just weeks later in ICE custody. ICE officials denied responsibility for the woman's death, but autopsy reports would confirm that before she died, Hernandez was subject to "blows, and/or kicks, and possible strikes with a blunt object." Her wrists showed injury from use of handcuffs and there were contusions on her back and ribcage. In addition to the physical abuse she was subject to, fellow migrants from her caravan stated that Hernandez had been placed in an "icebox", a holding cell which received its name because of the low temperatures detainees were forced to endure once inside.

The physical abuses suffered by Hernandez and other LGBTQ immigrants do not just include physical abuses. Detained immigrants also report receiving substandard medical care, if they receive medical care at all. Investigations into detention centers have found detainees waiting as long as two months to see doctors.<sup>20</sup> Transgender immigrants are also routinely denied hormone-treatment in ICE custody, leading them to experience withdrawal and other severe physical symptoms, such as suicidal ideation and gender dysphoria.<sup>21</sup> Furthermore, detainees do not always receive complete and accurate health care information regarding services.<sup>22</sup> For detainees of vulnerable populations, including people living with HIV or with mental illness medical neglect and inattention can worsen already debilitating conditions.

It is undeniable that LGBTQ immigrant detainees are at a particular risk for both physical and mental abuse while in detention centers. These facilities have consistently demonstrated that they

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<sup>16</sup> LAUREN ZITSCH, *WHERE THE AMERICAN DREAM BECOMES A NIGHTMARE: LGBT DETAINEES IN IMMIGRATION DETENTION FACILITIES*, 22 *Wm. & Mary J. Women & L.* 105 (2015), <https://scholarship.law.wm.edu/wmjowl/vol22/iss1/5>

<sup>17</sup> See KATHLEEN RICE, *supra* note 1.

<sup>18</sup> PETER SCHARFF SMITH, *THE EFFECTS OF SOLITARY CONFINEMENT ON PRISON INMATES: A BRIEF HISTORY AND REVIEW OF THE LITERATURE*, *Crime and Justice* Vol. 34 No. 1, 441, 455 (2006), available at <http://www.jstor.org/stable/10.1086/500626>.

<sup>19</sup> HUMAN RIGHTS CAMPAIGN, *HRC CALLS ON ICE TO INVESTIGATE THE DEATH OF A TRANSGENDER WOMAN* (May 31 2018) <https://www.hrc.org/blog/hrc-calls-on-ice-to-investigate-the-death-of-a-transgender-woman>

<sup>20</sup> WOMEN'S REFUGEE COMMISSION, *MIGRANT WOMEN AND CHILDREN AT RISK: IN CUSTODY IN ARIZONA* (Oct. 2010) <https://womensrefugeecommission.org/resources/document/656>.

<sup>21</sup> See LAUREN ZITSCH, *supra* note 16.

<sup>22</sup> *Id.*

are either unable or unwilling to address the significant abuses that take place within their walls. As a result, LGBTQ immigrants remain especially vulnerable to discriminatory treatment that leads to higher rates of sexual assault, segregation from general population, and denial of proper and adequate medical care. We urge DHS to address these issues and comply with the existing standards concerning appropriate facility conditions and treatment of detainees. We also call for real accountability and oversight over ICE operations.