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“Do You See How Much I’m Suffering Here?”

Abuse against Transgender Women in US Immigration Detention



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**Abuse against Transgender Women in US Immigration
Detention**

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Glossary

Bisexual: Sexual orientation of a person who is sexually and romantically attracted to both males and females.

Cisgender: The gender identity of people whose birth gender (which they were declared to have upon birth) conforms to their lived and/or perceived gender (the gender that they are most comfortable with expressing or would express given a choice).

Gay: Used here to refer to the sexual orientation of a male whose primary sexual and romantic attraction is toward other males.

Gender: Social and cultural codes (as opposed to biological sex) used to distinguish between what a society considers “masculine” or “feminine” conduct.

Gender identity: A person’s internal, deeply felt sense of being female or male, both, or something other than female and male. A person’s gender identity does not necessarily correspond to the biological sex assigned at birth.

Heterosexual: A person whose primary sexual and romantic attraction or sexual orientation is toward people of the opposite sex.

Homophobia: Fear and contempt of homosexuals, usually based on negative stereotypes of homosexuality.

Homosexual: Sexual orientation of a person whose primary sexual and romantic attractions are toward people of the same sex.

LGBT/LGBTI: Lesbian, gay, bisexual, transgender, (and intersex); an inclusive term for groups and identities sometimes associated together as “sexual minorities.”

Lesbian: Sexual orientation of a female whose primary sexual and romantic attraction is toward other females.

Sexual orientation: The way a person's sexual and romantic desires are directed. The term describes whether a person is attracted primarily to people of the same sex, the opposite sex, or to both.

Transgender: The gender identity of people whose birth gender (which they were declared to have upon birth) does not conform to their lived and/or perceived gender (the gender that they are most comfortable with expressing or would express given a choice). A transgender person usually adopts, or would prefer to adopt, a gender expression in consonance with their preferred gender but may or may not desire to permanently alter their bodily characteristics in order to conform to their preferred gender.

Monserrath's Story

Us trans women, we come here fleeing from our countries. They don't have to detain us. Migration [ICE] is cruel with us trans women.

— Monserrath López, a 23-year-old transgender woman from Honduras, detained for about six months by US Immigration and Customs Enforcement (ICE).¹

On the evening of September 20, 2014, Monserrath was walking through a public park in Copán, Honduras, listening to music and enjoying an ice cream when four masked men suddenly appeared and beat her unconscious.²

She woke up several hours later in an unknown location. There, the same men beat her and forced her to perform oral sex on all of them; one sheared off her hair with pair of scissors while describing how he planned to torture and kill her. He told her, “We’re going to cut you up. [...] Even your family won’t be able to find you.”³

Fearing for her life, Monserrath spent the next three months making her way toward the United States through Mexico, where she said other migrants repeatedly raped and abused her. She arrived at the US Port of Entry in Eagle Pass, Texas, on December 12, 2014, where she presented herself to US Border Patrol agents and requested asylum. She was then held in isolation for four days at a Border Patrol station. On the fifth day, she was handcuffed, shackled, and forced to board a bus to a men’s detention center in Pearsall, Texas, where she was held for six months—despite disclosing to officials that she identified as a transgender woman.

Monserrath said guards and male detainees repeatedly sexually assaulted and verbally harassed her while she was in detention, and denied her access to medically necessary hormone replacement therapy. In one instance, after reporting to facility staff that a male detainee had sexually assaulted her while she was showering, a guard responded by

¹ Human Rights Watch interview with Monserrath López, Houston, Texas, July 7, 2015.

² Ibid.

³ Ibid.

threatening to place her in solitary confinement. She was released from detention and granted asylum in May 2015.⁴

⁴ Human Rights Watch telephone interview with Kennedy Granger, immigration attorney, San Antonio, Texas, May 21, 2015.

Summary

Do you see how much I'm suffering here? Do you think anyone deserves to be punished like this? ... Sometimes I get anxious. ... I thought about killing myself once, but then I regretted it and told myself I wasn't going to do it. I said, 'Lord, you gave me my life, why am I going to take it away?' It's not His fault they have me suffering here like this.⁵

Monserrath's story is not unique. At any given time, the United States holds scores of transgender women in immigration detention, including many who have fled to the US seeking protection from torture, sexual violence, and other forms of persecution in their home countries related to their gender identity or gender expression.

Once they arrive, the women are locked up for months or even years at a time in jails or prison-like detention centers as they wait for a court to adjudicate their asylum claims, or to be deported for civil immigration violations. While in detention, many experience sexual assault and other forms of abuse and ill-treatment, including denial of access to necessary medical care.

Immigration detention can be a difficult experience for anyone. But it is often particularly harmful for transgender women due to the abuse they have previously endured. Many are traumatized by extended placements in solitary confinement and other physically isolated settings—a practice that authorities often justify as a step to protect them from other forms of abuse in detention. Some are also denied prompt and adequate access to necessary medical care, including hormone replacement therapy and HIV-related care, or have been denied access to that care altogether.

Based on 28 interviews with transgender women—most of them from Mexico, Guatemala, El Salvador, and Honduras—held or being held in US immigration detention between 2011 and 2015, this report details the abuses that transgender women suffer in immigration detention and the US government's inadequate efforts to address them.

⁵ Human Rights Watch interview with Talia S. (pseudonym), El Paso Processing Center, July 9, 2015.

As of February 2016, US Immigration and Customs Enforcement (ICE), the federal agency responsible for overseeing immigration detention, claimed it did not know how many transgender women were in immigration detention across the US, let alone where and under what conditions they are being held.⁶ However, ICE officials estimate that there are approximately 65 transgender women in detention on any given day among a nationally detained population of approximately 30,000 migrants and asylum seekers.⁷ A December 2015 investigation by *Univision* quoted ICE officials as saying there were 36 transgender women held in a segregated unit at the Santa Ana City Jail in Santa Ana, California—where a large proportion of all transgender women in immigration detention were held at time of writing—and 20 held in other detention facilities throughout the US at that time.⁸

Until recently, transgender women in immigration detention were routinely held in men’s detention facilities, where many have been sexually assaulted and routinely harassed by male detainees and guards—the same kinds of abuses that drive many transgender women to flee their home countries in the first place.⁹

In early 2016, the US government appeared to move away from holding transgender women in men’s facilities and began transferring many of them to a segregated unit at the Santa Ana City Jail that exclusively houses transgender women. However, at time of writing, ICE officials were unable to state whether the agency had abandoned the practice of housing transgender women with men, and they had not announced any concrete plans to do so. Under ICE policy, immigration officials may still elect to house transgender women in men’s facilities—placing them at exceptionally high risk of sexual assault and other kinds of trauma and abuse. Others may be kept indefinitely in conditions of isolation simply because authorities cannot or will not devise any safe and humane way to keep them in detention.

⁶ Human Rights Watch email communication with Lana Khoury, ICE senior advisor for LGBTI care, February 2, 2016.

⁷ Briana Lee, “Immigration Reform: Transgender Immigrants Skeptical of New Detention Guidelines Designed to Protect Them,” *International Business Times*, July 9, 2015, <http://www.ibtimes.com/immigration-reform-transgender-immigrants-skeptical-new-detention-guidelines-designed-2000057> (accessed December 1, 2015).

⁸ Norma Ribeiro, “Inmigrantes transgénero denuncian que el Centro de Detención de Santa Ana es un ‘infierno;” *Univision*, December 16, 2015, <http://www.univision.com/noticias/univision-investiga/inmigrantes-transgenero-denuncian-que-el-centro-de-detencion-de-santa-ana-es-un-infierno> (accessed December 29, 2015).

⁹ Amy Stillman, “Migrating to the US is already risky. Try being a transgender migrant,” *Global Post*, February 17, 2016, <http://www.globalpost.com/article/6733747/2016/02/16/lgbt-migrants-mexico> (accessed February 18, 2016).

Even within the segregated detention unit inside a city jail in Santa Ana, several transgender women said they are regularly subjected to humiliating and abusive strip searches by male guards; have not been able to access necessary medical services, including hormone replacement therapy, or have faced harmful interruptions to or restrictions to that care; and have endured unreasonable use of solitary confinement. It is important to emphasize that all of these problems exist in a detention setting that was created by the US government with the express purpose of detaining transgender women in a humane and culturally sensitive environment.

Human Rights Watch calls on the US government to:

- Prioritize the development and expansion of alternatives to detention for transgender women and other non-citizens considered members of vulnerable populations, including those subject to mandatory custody.
- Review and revise its policy on immigration detention of transgender women. Where such detentions are consistent with US and international law, develop and implement a clearly articulated strategy to house transgender women in safe and humane conditions that ensure respect for their human rights. Transgender women should never be held with men, or in prolonged solitary confinement.
- Take immediate steps to investigate and halt abusive practices at the Santa Ana City Jail and ensure that transgender women held there are able to freely access necessary medical and mental health care services. If these problems cannot be promptly and comprehensively addressed, ICE should not continue to hold transgender women at the Santa Ana City Jail.
- Monitor conditions in which transgender women are being held at other detention facilities, and ensure that these settings are free from abuse and respectful of their specific medical and mental health needs. If an alternative site is designated to hold transgender women in a segregated unit, ICE should articulate detailed and specific steps to ensure that abuses do not occur there and that transgender women are held in safe and humane conditions.

If the US government is unable or unwilling to take all of these steps, it should not hold transgender women in immigration detention at all.

Methodology

This report is based primarily on interviews conducted between June 2015 and August 2015 in seven US cities—New York, New York; Washington, D.C.; Houston, Texas; Phoenix, Arizona; Tucson, Arizona; Los Angeles, California; and San Francisco, California—as well as interviews in detention facilities in Santa Ana, California, and Houston, Pearsall, and El Paso, Texas. These cities were chosen because community advocates and immigration attorneys identified transgender women who were then being held or had recently been released from immigration detention.

Interview participants were identified by immigration attorneys and LGBT immigrant rights organizations, including Familia: Trans Queer Liberation Movement (Los Angeles), Casa Ruby (Washington, DC), Mariposas sin Fronteras (Tucson), Arcoíris Liberation Team (Phoenix), and Translatina Network (New York).

More than half of the women whom Human Rights Watch interviewed were detained by immigration authorities upon seeking asylum along the US-Mexico border. Approximately one third of interviewees were transferred to federal immigration authorities by state and local law enforcement agencies and mandated to detention due to mostly low-level criminal offenses, including nonviolent drug possession and involvement in sex work.

This report is based on 28 interviews with transgender women who were held in US immigration detention for various periods of time between 2011 and 2015. Eleven were in detention at the time Human Rights Watch interviewed them, including one person who was interviewed at two different facilities.

Twelve of these women were either being, or had recently been, held in the segregated unit used exclusively to house transgender women at the Santa Ana City Jail in Santa Ana, California. Sixteen transgender women, or more than half of those interviewed by Human Rights Watch, were held in men's facilities at some point during their time in immigration detention, at various points in time between 2011-2015. We also interviewed one transgender woman who was detained in Virginia in 2010, and one transgender man who was detained in Texas in 2013. Lastly, we interviewed migrant services providers,

community advocates, immigration attorneys, mental health experts, and US government officials.

Human Rights Watch carried out interviews in English or in Spanish, depending on the preference of the interviewee, without interpreters. We informed all participants of the purpose of the interview and consented orally. Those interviewed in detention also consented in writing. One person who was unable to meet in person was interviewed by telephone. Interviewees were not compensated. We reimbursed those who travelled to meet with us the cost of public transport and provided a meal, between \$5 and \$15, depending on the distance traveled.

We gathered additional information from published sources, including laws, immigration detention regulations, United Nations documents, academic articles, media reports, and studies published by other human rights organizations. We also reviewed relevant US court rulings interpreting government obligations under the Convention against Torture, and other legal sources.

Where appropriate, Human Rights Watch provided interviewees with contact information for individuals and organizations providing legal, counseling, or other supportive services at the conclusion of the interview. The report uses pseudonyms for all currently and formerly detained interviewees, unless noted otherwise, for reasons of confidentiality and security.

On September 23, 2015, Human Rights Watch requested official records from ICE regarding the use of solitary confinement among vulnerable populations (including transgender women, elderly people, pregnant women, and people with disabilities) in US immigration detention. As of March 7, 2016, we had not received a response.

On February 2, 2016, Human Rights Watch wrote to ICE officials requesting information about implementation of the June 2015 transgender detention policy and any further action the agency may be taking to ensure the protection of this population (see Annex I). Following this correspondence, Human Rights Watch wrote to ICE officials on February 10, 2016 to present a summary of this report's findings and to request an official agency response (see Annex II). As of March 7, 2016, we had not received a response.

Background

US Immigration Law

Under US immigration law, transgender women who are fleeing persecution because of their gender identity or gender expression may have a valid claim to asylum.

As a party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the “Convention against Torture”), the US is obligated not to return somebody to a country “where there are substantial grounds for believing that [they] would be in danger of being subjected to torture.”

In making this determination, the convention obligates governments to “take into account all relevant considerations including, where applicable, the existence in the State concerned a consistent pattern of gross, flagrant or mass violations of human rights.”¹⁰

In the groundbreaking decision of *Avendano-Hernandez v. Lynch* in September 2015, the US Court of Appeals for the Ninth Circuit ruled that an undocumented transgender woman from Mexico who had a prior felony conviction could not be deported from the United States due to the high likelihood that she would experience future torture if she were returned to Mexico.¹¹ The court found that the US Board of Immigration Appeals (BIA) had erred in an earlier decision to deny the woman deportation relief under the Convention against Torture “because it [had] failed to recognize the difference between gender identity and sexual orientation.”¹²

The decision set an important precedent for transgender people seeking protection in the US and provides clear guidance to immigration judges reviewing future claims of persecution based on gender identity or expression.

¹⁰ Convention against Torture, art. 3(1).

¹¹ *Avendano-Hernandez v. Lynch*, No. 13-73744 (9th Cir. 2015), p. 10.

¹² *Ibid*, p. 2.

Mandatory Custody

Regardless of whether they may be able to remain in the US, transgender women and other asylum seekers who are in removal proceedings are often held in detention facilities until immigration courts decide their cases.

In the past two decades, the United States has made a major shift in immigration policy, using detention as a primary means of enforcement, regardless of whether an individual non-citizen is a flight risk or a danger to the community.

Two 1996 laws drastically expanded “mandatory custody” without bond to large categories of non-citizens, including asylum seekers and permanent residents who are detained as a result of mostly low-level criminal convictions.¹³

These same laws also established a new procedure that allows immigration inspectors to summarily remove immigrants arriving without proper documentation. Under this policy, the vast majority of migrants who cross the US-Mexico border without authorization are mandated to detention and undergo a hasty two-part assessment by US officials under either “expedited removal” for first-time border crossers, or “reinstatement of removal,” for migrants who have previously been deported from the US.¹⁴ These processes include fast-track screenings for a migrant’s fear of persecution or torture upon return to their home country or an intention to apply for asylum.¹⁵

According to data for 2011 and 2012 that Human Rights Watch obtained from US Customs and Border Protection under the Freedom of Information Act, a vast majority of migrants from Mexico, Honduras, El Salvador, and Guatemala who arrive at the US border are placed in fast-track expedited removal and reinstatement of removal proceedings.¹⁶ The data also show that only a minuscule minority of these individuals, ranging from 0.1 to 5.5 percent, were flagged for credible fear assessments which would allow them to apply for asylum or

¹³ Antiterrorism and Effective Death Penalty Act of 1996, P.L. 104-132; Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208 (Division C).

¹⁴ Human Rights Watch, *'You Don't Have Rights Here': US Border Screening and Returns of Central Americans to Risk of Serious Harm*, October 2014, <https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk>, p 7.

¹⁵ Ibid, p.2.

¹⁶ Ibid, p. 8.

other forms of protection.¹⁷ By comparison, 21 percent of migrants from other countries who underwent the same proceedings in the same years were flagged for credible fear interviews by CBP.¹⁸

Under expedited removal, a would-be asylum seeker faces mandatory custody until and unless an official with the US asylum office makes a preliminary determination that they have a credible claim to protection.

Under reinstatement of removal, a would-be asylum seeker is mandatorily detained until they can prove that they qualify for protection in an immigration court, a process that regularly takes a year or more to complete.

Mandatory custody also applies to non-citizens with certain criminal offenses, including nonviolent offenses, which can lead to deportation.¹⁹ These provisions require ICE to detain non-citizens who have finished serving sentences for certain crimes without even the possibility of a bond hearing to determine whether it is appropriate to release them pending the outcome of deportation proceedings.

This is in contrast to the US criminal justice system, where no one is held in comparable circumstances (in pretrial detention, for example) without a hearing to determine if they are a flight risk or dangerous.²⁰

The nonviolent crimes that can result in mandatory custody after the criminal sentence is served include controlled substance offenses (including simple possession) and certain crimes involving “moral turpitude” (including involvement in sex work), depending on the status of the non-citizen and the sentence imposed.²¹

Among the transgender women that we interviewed, nearly half were mandated to detention because of mostly low-level criminal convictions, including sex work, false

¹⁷ Ibid, p. 8.

¹⁸ Ibid, p. 8.

¹⁹ 8 U.S.C. Section 1226(c).

²⁰ Human Rights Watch, *Costly and Unfair: Flaws in US Immigration Detention Policy*, May 2010, <https://www.hrw.org/report/2010/05/06/costly-and-unfair/flaws-us-immigration-detention-policy>, p. 3.

²¹ Human Rights Watch, *A Price Too High: US Families Torn Apart by Deportations for Drug Offenses*, June 2015, <https://www.hrw.org/report/2015/06/16/price-too-high/us-families-torn-apart-deportations-drug-offenses>, p. 46.

identification, and minor drug possession charges. While most of these convictions were so minor that they resulted in little or no prison time in the criminal justice system, they still mandated transgender women to be detained, often in settings where they experienced abuse and neglect.

Immigration Detention under Obama

The US detains immigrants in a vast network of about 250 facilities nationwide. These vary widely: some are local jails that have agreed to provide space to the federal government to detain non-citizens, some are operated by private prison companies, and a few are run by ICE itself.

In all, under current congressional appropriations language, ICE is required to “maintain a level of not less than 34,000 detention beds” across these many facilities.²²

Though immigration detention is civil detention, jail-like conditions persist in many of the facilities in which non-citizens are held. In 2009, the Obama administration announced its plan to transform immigration detention into a “truly civil detention system” and to improve conditions for those who are vulnerable to abuse in detention.²³

Since then, ICE has developed a number of specific policies aimed to prevent sexual assault and limit the use of solitary confinement in detention, including a number of dedicated protections for transgender people.²⁴

For instance, ICE’s 2011 detention standards state that housing placements “should not be based solely on the identity documents or physical anatomy of the detainee,”²⁵ and that, whenever possible, transgender people should be able to choose the gender of a guard performing a strip search.²⁶

²² H.R. 2029, 114th Congress (2015-2016). Available: <http://docs.house.gov/billsthisweek/20151214/CPRT-114-HPRT-RU00-SHR2029-AMNT1final.pdf>.

²³ Nina Bernstein, “U.S. to Reform Policy on Detention for Immigrants,” *New York Times*, August 6, 2009, <http://www.nytimes.com/2009/08/06/us/politics/06detain.html> (accessed December 1, 2015).

²⁴ US Immigration and Customs Enforcement, “Performance-Based National Detention Standards 2011” (PBNS 2011), available: <http://www.ice.gov/detention-standards/2011>.

²⁵ US Immigration and Customs Enforcement, PBNS 2011, “Custody Classification,” section 2.2, p. 73.

²⁶ US Immigration and Customs Enforcement, PBNS 2011, “Searches of Detainees,” section 2.11, p. 144.

In May 2012, President Barack Obama issued a memorandum requiring federal agencies that operate confinement facilities, including ICE detention facilities operating under the supervision of the US Department of Homeland Security (DHS), adhere to the requirements of the Prison Rape Elimination Act (PREA), which Congress passed unanimously in 2003.

DHS issued detailed standards complying with the presidential memorandum in February 2014, stating a formal commitment to “prevent, detect, and respond to sexual abuse” in immigration detention facilities.²⁷

But these advances are of limited relevance to the majority of people that ICE detains because most are held in county jails, privately operated prisons, and other contracted facilities that often operate with limited independent oversight and inadequate implementation of federal detention standards.²⁸

Transgender Immigrant Detention under Obama

In June 2015, ICE announced a new set of transgender detention guidelines (the “guidelines”) that formally recognizes the vulnerability of transgender people in detention.

The policy is an important development for transgender women, who until recently were housed primarily among male populations and have long faced disproportionately high rates of sexual assault by both guards and male detainees. The guidelines instruct immigration officials to “consider whether the use of detention resources is warranted” and to assess “on a case by case basis, all relevant factors in this determination, including whether an individual identifies as transgender.”²⁹

²⁷ US Department of Homeland Security, “DHS Announces Finalization of Prison Rape Elimination Act Standards,” <http://www.dhs.gov/news/2014/02/28/dhs-announces-finalization-prison-rape-elimination-act-standards> (accessed December 17, 2015).

²⁸ National Immigrant Justice Center and Detention Watch Network, “Lives in Peril: How Ineffective Inspections Make ICE Complicit in Detention Center Abuse,” October 2015, <http://immigrantjustice.org/lives-peril-how-ineffective-inspections-make-ice-complicit-detention-center-abuse-0> (accessed November 23, 2015).

²⁹ US Immigration and Customs Enforcement, “Further Guidance Regarding the Care of Transgender Detainees,” June 19, 2015, available <https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf>, p. 1.

In an effort to improve the safety of transgender people in detention, the guidelines:

- Instruct immigration officials to make individualized housing assessments following an assessment by medical and mental health experts, allowing transgender people to be housed in men’s or women’s facilities; in segregated units that exclusively house transgender women; or under exceptional circumstances, in solitary confinement.
- Call for guard sensitivity trainings and improved access to gender-affirming medical care.
- Establish specialized intake procedures intended to gather important demographic information and to ensure that individuals who identify as transgender are properly identified and referred to by guards and staff with the use of their preferred gender pronouns.
- Call for the establishment of a “Transgender Care and Classification Committee” (TCCC) at facilities that have voluntarily incorporated its provisions.³⁰ The guidelines instruct that these committees should be composed of medical and mental health personnel, detention facility supervisors, and other relevant ICE officials or facility staff, who will convene upon a transgender person’s admission to a detention facility and develop a plan regarding their housing placement, medical care, and necessary security provisions.³¹
- State that transgender people should be housed “in a location away from the general population” for up to 72 hours while the committee’s assessment is being completed. Housing accommodations during this period may include placement in a “medical unit or protective custody” or, if there is no other available option, in administrative segregation.³²

Despite these advances, the measures lack an independent oversight mechanism to ensure their implementation in the nearly 250 facilities where detained immigrants are held throughout the US.

³⁰- US Immigration and Customs Enforcement, “Further Guidance Regarding the Care of Transgender Detainees,” Attachment 1: ICE Detention Facility Contract Modification for Transgender Care, sections 2-3.

³¹- Ibid.

³²- US Immigration and Customs Enforcement, “Further Guidance Regarding the Care of Transgender Detainees,” Attachment 1: ICE Detention Facility Contract Modification for Transgender Care, section 1.

The immigration detention system includes service processing centers operated directly by ICE, contract detention facilities managed by private prison companies, and reserved bed space at state and county jails.

The policy instructs immigration authorities to give priority to the placement of transgender women in facilities that have either adopted the transgender detention guidelines or in facilities that operate a segregated housing unit for transgender women. However, these units will only be established at a select number of facilities that voluntarily elect to negotiate the provisions into their existing operating contracts with ICE.

Beyond these shortcomings, the guidelines permit the continued use of solitary confinement solely on the basis of an individual's gender identity, stating that "placement into administrative segregation due to a detainee's identification as transgender should be used only as a last resort and when no other temporary housing option exists."³³ Indefinite solitary confinement is a form of human rights abuse and is not a legitimate way of protecting individuals in detention from other forms of abuse.

The policy also states that transgender individuals should "not be disciplined for refusing to answer any gender identity-related questions during processing, for not disclosing complete information in response to questions asked about gender identity, or for falsely reporting that he or she is not transgender."³⁴ Transgender people may fear disclosing their gender identity to detention facility staff or ICE officials due to fear of abuse or retaliation. ICE officials should therefore provide transgender people continuous opportunities to disclose their gender identity and to request alternative housing accommodations.³⁵

Santa Ana

Since March 2012, ICE has operated a segregated housing unit, or "pod," at the Santa Ana City Jail in Santa Ana, California, for transgender women and gay and bisexual men.

³³ US Immigration and Customs Enforcement, "Further Guidance Regarding the Care of Transgender Detainees," section 3(c).

³⁴ *Ibid.*, section 2(f).

³⁵ As of February 2016, Human Rights Watch was aware of at least two recent cases where transgender women who had declined to disclose their gender identity to detention facility staff or ICE officials were being held among the general male population.

Since August 2015, the pod has been used to exclusively house transgender women,³⁶ and ICE has begun transferring transgender women there who were previously housed in men's facilities. It is currently the only formally designated unit used to exclusively house transgender women in ICE custody. As of February 2016, 26 transgender women were being held in the unit according to ICE—a large proportion of all transgender women in immigration detention.

Nevertheless, at time of writing the facility had yet to incorporate the 2015 Transgender Care Memorandum into its operating agreement with ICE. Although ICE has conducted guard sensitivity trainings at the facility since the unit was established, Human Rights Watch found that transgender women held there continued to face abusive and humiliating treatment by guards, including:

- Invasive strip searches conducted by male guards;
- Frequent “lockdowns” for mostly minor disciplinary infractions, involving being confined to their cells for 22 to 24 hours per day; and
- Severely inadequate medical and mental health services to address their unique needs and particular vulnerabilities.

Human Rights Abuses against Transgender Women in the US

Transgender women face high levels of poverty, violence, and discrimination throughout the US. This often includes targeted police profiling, which has contributed to their disproportionate involvement in the criminal justice system and may leave them particularly vulnerable to the requirements of mandatory custody.³⁷

Previous Human Rights Watch research has found that in some jurisdictions, transgender women are frequently profiled, stopped and searched by police, and then accused of involvement of sex work simply because they are carrying condoms.³⁸

³⁶ Jessica Kwong, “Santa Ana distances itself from immigration agency in rare rejection of jail contract expansion,” *Orange County Register*, February 2, 2016,

<http://www.ocregister.com/articles/santa-702571-housing-detainees.html> (accessed February 4, 2016).

³⁷ For more information, see Movement Advance Project and Center for American Progress, “Unjust: How the Broken Criminal Justice System Fails LGBT People,” February 2016, <http://www.lgbtmap.org/news/lgbt-criminal-justice-release> (accessed March 1, 2016).

³⁸ Human Rights Watch, *Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities*, July 2012, <https://www.hrw.org/report/2012/07/19/sex-workers-risk/condoms-evidence-prostitution-four-us-cities>, p. 9.

Transgender people also report higher rates of personal drug use than compared to the general population. According to the 2011 National Transgender Discrimination Survey, 26 percent of transgender people reported either currently or previously using drugs or alcohol to cope with the impacts of discrimination related to their gender identity.³⁹

Transgender women in the US experience disproportionately high rates of sexual assault in confinement facilities, including in jails and prisons within the criminal justice system and in civil immigration detention facilities. Numerous studies have found that transgender women of color and those who are poor or undocumented often experience verbal, physical, and sexual abuse while they are held in police custody.⁴⁰

A 2013 investigation by the US Government Accountability Office found that three out of fifteen substantiated incidents of sexual assault in US immigration detention facilities involved transgender women. Two of these cases involved transgender women who were sexually assaulted by male guards while they were housed in solitary confinement.⁴¹

Similarly, the 2014 National Inmate Survey, conducted by the US Bureau of Justice Statistics, found that 33.2 percent of transgender women in state and federal prisons reported experiencing sexual abuse by other prisoners, and 15.2 percent reported abuse by facility staff.⁴² During the same period, 15.8 percent of transgender women at local jails reported abuse by other prisoners, and 18.3 percent reported abuse by facility staff.⁴³

³⁹ National Center for Transgender Equality and the National LGBTQ Task Force, “Injustice at Every Turn: A Report of the National Transgender Discrimination Survey,” 2011, http://www.transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf, p. 81.

⁴⁰ National Center for Transgender Equality and the National LGBTQ Task Force, “Injustice at Every Turn,” 2011; National Coalition of Anti-Violence Programs, “Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence 2014,” http://www.avp.org/storage/documents/Reports/2014_HV_Report-Final.pdf; Noah Remnick, “Activists Say Police Abuse of Transgender People Persists Despite Reforms,” *New York Times*, September 6, 2015, http://www.nytimes.com/2015/09/07/nyregion/activists-say-police-abuse-of-transgender-people-persists-despite-reforms.html?_r=0 (accessed December 1, 2015).

⁴¹ US Government Accountability Office, “Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse,” (GAO-14-38), November 20, 2013, <http://www.gao.gov/products/GAO-14-38> (accessed December 1, 2015), p. 60.

⁴² US Department of Justice, 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, http://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf (accessed December 1, 2015), Table 2, p. 2.

⁴³ Ibid.

In total, approximately 40 percent of surveyed transgender people held in state and federal prisons during this period reported that they experienced sexual abuse, compared to 14 percent of gay, lesbian and bisexual prisoners, and 3.1 percent of heterosexual prisoners.⁴⁴

The financial and psychological impacts of detention can pose particular challenges for transgender women, who according to the 2011 National Transgender Discrimination Survey, face systemic levels of poverty, violence, and discrimination throughout the US.⁴⁵ Similarly, a 2013 survey by the TransLatin@ Coalition found that transgender immigrants in the US face structural barriers that severely limit their access to housing, medical care, and mental health services, and that many experience high rates of unemployment and depression.⁴⁶

Despite these challenging circumstances, community-based organizations throughout the US have developed a network of resources to support transgender women who face substantial barriers in their attempts to access housing, counseling, legal assistance, and other essential services when they are released from detention.

For several years, transgender immigrant activists and their allies have led local and national advocacy efforts seeking to improve treatment of transgender women and advocating their release from detention. Organizations such as Familia: Trans Queer Liberation Movement and the Transgender Law Center have organized public demonstrations and online social media efforts, including the #FreeMarichuy,⁴⁷

⁴⁴ Deborah Sontag, "Push to End Prison Rapes Loses Earlier Momentum," *New York Times*, May 12, 2015, http://www.nytimes.com/2015/05/13/us/push-to-end-prison-rapes-loses-earlier-momentum.html?_r=0 (accessed March 4, 2016).

⁴⁵ National Center for Transgender Equality and the National LGBTQ Task Force, "Injustice at Every Turn," 2011.

⁴⁶ TransLatin@ Coalition, "TransVisible: Transgender Latina Immigrants in US Society," January 2014, <http://www.chicano.ucla.edu/files/news/transvisiblereport.pdf> (accessed March 4, 2016), pp. 2-4.

⁴⁷ Jorge Rivas, "LGBT activists protest abuses suffered by transgender detainee," *Fusion*, August 8, 2014, <http://fusion.net/story/6237/lgbt-activists-protest-abuses-suffered-by-transgender-detainee/> (accessed December 1, 2015).

#FreeNicoll,⁴⁸ and #FreeChristina⁴⁹ campaigns, which have brought new attention to the plight of detained transgender immigrants.⁵⁰

Transgender Women and the Call for Alternatives to Detention

While ICE plans to begin collecting data relating to sexual orientation and gender identity of people in immigration detention, there is currently very limited statistical data available on these populations.⁵¹

ICE officials estimate that among a nationally detained population of approximately 30,000 migrants and asylum seekers, there are approximately 65 transgender women in detention on any given day.⁵² According to a December 2015 investigation by *Univision*, ICE officials stated that there were 36 transgender women held in the segregated unit at Santa Ana, and 20 held in other detention facilities throughout the US at that time.⁵³

When Human Rights Watch requested the same information from ICE on February 2, 2016, officials said there were 26 transgender women at Santa Ana at that time. However, the officials claimed not to have information regarding the number of transgender women being held in other facilities, or their conditions of confinement.⁵⁴

A recent report by the Center for American Progress indicates that ICE does not effectively conduct individualized assessments when determining whether people who are mandated

⁴⁸ Adam Frankel, "Dispatches: Fighting to be Free in the US – Nicoll's Story," Human Rights Watch dispatch, March 18, 2015, <https://www.hrw.org/news/2015/03/18/dispatches-fighting-be-free-us-nicolls-story> (accessed November 11, 2015).

⁴⁹ "Trans Latina women demand ICE to #FreeChristina," November 18, 2015, video clip, YouTube, <https://www.youtube.com/watch?v=P5Rvm59-jSw> (accessed December 29, 2015).

⁵⁰ Liam Stack, "Activist Removed After Heckling Obama at L.G.B.T. Event at White House," *New York Times*, June 24, 2015, http://www.nytimes.com/2015/06/25/us/politics/activist-removed-after-heckling-obama-at-lgbt-event.html?_r=0 (accessed December 1, 2015).

⁵¹ According to a statement by ICE officials to Human Rights Watch in February 2016, "At this time, ICE is not able to provide such cumulative data. As part of the implementation of its Transgender Care Memorandum, ICE recently updated electronic data systems to capture a detainee's self-identification as Transgender. ICE is continuing to work on the next phase of implementation, which would allow for the generation of a report detailing the number of transgender individuals in ICE custody nationwide." Human Rights Watch email communication with Lana Khoury, ICE senior advisor for LGBTI care, February 2, 2016.

⁵² Brianna Lee, "Immigration Reform: Transgender Immigrants Skeptical of New Detention Guidelines Designed To Protect Them," *International Business Times*, July 9, 2015, <http://www.ibtimes.com/immigration-reform-transgender-immigrants-skeptical-new-detention-guidelines-designed-2000057> (accessed December 1, 2015).

⁵³ Norma Ribeiro, "Inmigrantes transgénero denuncian que el Centro de Detención de Santa Ana es un 'infierno,'" *Univision*, December 16, 2015, <http://www.univision.com/noticias/univision-investiga/inmigrantes-transgenero-denuncian-que-el-centro-de-detencion-de-santa-ana-es-un-infierno> (accessed December 29, 2015).

⁵⁴ Human Rights Watch email communication with Lana Khoury, ICE senior advisor for LGBTI care, February 2, 2016.

to detention should be held in institutional detention facilities or released to community-based alternatives to detention.⁵⁵

Since January 2013, ICE has used a computer-automated “risk classification assessment” tool to assess housing arrangements in detention facilities and to determine whether individuals should be released from ICE custody.⁵⁶

Despite automated recommendations to provide release as an option in 70 percent of cases where individuals expressed a fear of abuse in detention due to their sexual orientation or gender identity, ICE officers used their individual discretion and elected to detain people in 68 percent of these cases.⁵⁷

According to an analysis of ICE data obtained by the Center for American Progress, ICE officers elected to detain LGBT individuals in 19 percent of cases where they were explicitly recommended for release from detention.⁵⁸ Comparatively, a recent study by the Inspector General of the US Department of Homeland Security found that ICE officers only used their discretion to detain individuals who were explicitly recommended for release in 7.6 percent of all cases among the general population.⁵⁹

In June 2015, 35 members of Congress urged US Secretary of Homeland Security Jeh Johnson to develop community-based alternatives for transgender women and others who are uniquely vulnerable to abuse in detention.⁶⁰

Community-based alternatives to detention, which may involve individual case management and referrals to legal, medical, and psychological support services, could in

⁵⁵ “No Way Out: Congress’ Bed Quota Traps LGBT Immigrants in Detention,” Center for American Progress, May 14, 2015, <https://www.americanprogress.org/issues/lgbt/news/2015/05/14/111832/no-way-out-congress-bed-quota-traps-lgbt-immigrants-in-detention/> (accessed December 1, 2015).

⁵⁶ US Department of Homeland Security, Office of Inspector General, “US Immigration and Customs Enforcement’s Alternatives to Detention (Revised),” OIG-15-22, February 2015, https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf (accessed October 5, 2015), p. 4.

⁵⁷ “No Way Out: Congress’ Bed Quota Traps LGBT Immigrants in Detention,” Center for American Progress, May 14, 2015.

⁵⁸ Ibid.

⁵⁹ US Department of Homeland Security, Office of Inspector General, “U.S. Immigration and Customs Enforcement’s Alternatives to Detention (OIG-15-22),” February 2015, p. 14.

⁶⁰ Letter from Members of the United States Congress to US Homeland Security Secretary Jeh Johnson, June 23, 2015, http://grijalva.house.gov/uploads/2015_6_23_LGBT_Detainee_Letter.pdf (accessed October 7, 2015).

many cases ensure high rates of appearance in immigration proceedings without subjecting transgender women to dangerous abuse in detention.⁶¹

⁶¹. See United States Conference of Catholic Bishops and the Center for Migration Studies, “Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System,” 2015, <http://www.usccb.org/about/migration-and-refugee-services/upload/unlocking-human-dignity.pdf> (accessed October 7, 2015), pp. 28-29.

I. Sexual Assault of Transgender Women in Men's Detention Facilities

Transgender women experience disproportionately high rates of sexual assault when housed with men in confinement facilities. Such placements blatantly disrespect their gender identity and leave them extremely vulnerable to abuse by both male detainees and guards.

Sexual assault is widespread in US immigration detention facilities.⁶² Detained immigrants are “especially vulnerable” to sexual abuse due various factors, including language barriers, isolation, and fear of retaliation by immigration authorities, including possible deportation,⁶³ according to a 2009 report by the National Prison Rape Elimination Commission, which Congress set up when it passed the Prison Rape Elimination Act of 2003.

Despite these egregious conditions, until June 2015, transgender women in US immigration detention were routinely housed in men's facilities. ICE began moving away from this practice by creating a segregated housing unit in August 2015 for transgender women at the Santa Ana City Jail in Santa Ana, California, and plans to create others in other regions of the US in 2016.⁶⁴ As of February 2016, ICE officials were unable to state whether the

⁶². See Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, August 2010, <https://www.hrw.org/report/2010/08/25/detained-and-risk/sexual-abuse-and-harassment-united-states-immigration-detention>; US Government Accountability Office, “Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse,” November 2013, <http://www.gao.gov/products/GAO-14-38>; “Trans asylum seekers face appalling treatment in immigration detention,” *Fusion*, November 17, 2014, <http://interactive.fusion.net/trans/> (accessed November 11, 2015); “Mass Civil Rights Complaint Details Systemic Abuse of Sexual Minorities in U.S. Immigration Detention,” National Immigrant Justice Center, April 13, 2011, https://www.immigrantjustice.org/press_releases/mass-civil-rights-complaint-details-systemic-abuse-sexual-minorities-us-immigration-d (accessed December 1, 2015).

⁶³. National Prison Rape Elimination Commission, “National Prison Rape Elimination Commission Report,” June 2009, <https://www.ncjrs.gov/pdffiles1/226680.pdf> (accessed December 1, 2015), pp. 21-22.

⁶⁴. According to a statement by ICE officials to Human Rights Watch in February 2016, “Santa Ana City Jail is the only facility that currently operates a dedicated housing unit for transgender women detainees. [...] In order to reduce the number of cross-country transfers, ICE is also working on identifying an appropriate East Coast or Central United States facility to adopt these modifications.” Human Rights Watch email communication with Lana Khoury, ICE senior advisor for LGBTI care, February 2, 2016.

agency had abandoned the practice of housing transgender women in men's facilities, and they had not announced any concrete plans to do so.⁶⁵

Many of the women we interviewed who were detained in men's detention facilities described being sexually assaulted by male detainees or guards.⁶⁶ More than half of the 28 transgender women interviewed by Human Rights Watch were held in men's facilities at some point during their time in immigration detention.

Sara V., a transgender woman from Honduras, said she was sexually assaulted at the privately operated detention facility where she was held in Arizona in April 2014.⁶⁷ She said two men raped her while they were held in a cell during intake proceedings and a third stood in front of a window to ensure guards could not witness the assault.⁶⁸ She said:

Three Honduran men started touching themselves in front of me. They said, 'He thinks he's a woman but he's a faggot [...] in our country, we kill these people.' They made me feel bad and I started to cry. [After they raped me], the guard came to get me and took me to the [housing] pod. She didn't ask me if I was okay or if anything had happened.⁶⁹

Immediately after the assault, Sara was assigned to the same housing unit as her perpetrators. After reporting the abuse to facility staff, she was transferred to a separate housing unit, where a guard told her: "You [transgender women] are the ones that cause these problems and always call the men's attention."⁷⁰

Several women said they often had to shower in the same communal areas as dozens of men, including Monserrath López, a transgender woman from Honduras, who said a man

⁶⁵ According to a statement by ICE officials to Human Rights Watch in February 2016, "Other than dedicated housing units, transgender women detainees may be housed in any areas where general population detainees are held," Human Rights Watch email communication with Lana Khoury, ICE senior advisor for LGBTI care, February 2, 2016.

⁶⁶ See "Trans asylum seekers face appalling treatment in immigration detention," *Fusion*, November 17, 2014, <http://interactive.fusion.net/trans/> (accessed November 11, 2015).

⁶⁷ Sara's allegations were ultimately substantiated by an internal ICE investigation and by the facility's disciplinary board, which found that the three male detainees had sexually assaulted her. ICE Investigative Findings and Responsive Actions Notification, on file with Human Rights Watch.

⁶⁸ Human Rights Watch interview with Sara V. (pseudonym), New York, NY, August 11, 2015.

⁶⁹ Ibid.

⁷⁰ Ibid.

sexually assaulted her while she was showering in the male housing unit of a privately operated detention facility in Texas.

I was showering [by myself] and a man showed up. He came over and started to masturbate and then he grabbed my behind. I got the soap and started cleaning myself as quickly as possible, turned off the water, and he ejaculated on my back. ... There were supposed to be two guards in every tank [housing unit] to protect us, but there was nobody there.⁷¹

Interviewees, immigration attorneys, and community advocates said that transgender women held in men's facilities were routinely verbally or sexually harassed while they changed clothes and slept in shared dormitories. They also said that facility guards often stood idly by and declined to intervene during abuse or provide them protection, which emboldened perpetrators.

Emilia R., a transgender woman from Mexico, detained for approximately six weeks at a privately operated detention facility in Arizona in March 2015, said:

There was a man who would go masturbate when I went to shower. The guards would see him but they wouldn't do anything. I think because the guards would see him and not say anything, he wasn't afraid. I went to tell the guards about it and they said, 'You're crazy, how are you going to say that?'⁷²

In some cases, the guards themselves perpetrated abuse.

Jacqueline R.,⁷³ a transgender woman from Honduras, was sexually assaulted by a male guard in the laundry room of a privately operated men's detention facility in Texas in May

⁷¹ Human Rights Watch interview with Monserrath López, Houston, Texas, July 7, 2015.

⁷² Human Rights Watch interview with Emilia R. (pseudonym), August 17, 2015, Phoenix, Arizona.

⁷³ A pseudonym is used to protect the individual's identity.

2013,⁷⁴ where he “forcibly penetrat[ed] her [...] with his fingers,” touched her breasts, and forced her to touch his penis.⁷⁵

Laura Z., a 19-year-old transgender woman from El Salvador, also reported abuse at the hands of a male guard during her three months at a men’s detention center in Arizona in 2015. “He would make gestures with his hands over his mouth,” she said. “Every time I saw him, he would make [transphobic] comments. I don’t want to say the word [he used].”⁷⁶ Laura said that the sexual harassment by male guards extended beyond verbal abuse. “Whenever they [strip] searched me, they would grab between my legs. I would stay quiet because there was nothing I could do.”⁷⁷

Nicoll Hernández-Polanco, a transgender woman from Guatemala, was detained for approximately six months at a men’s detention center in Arizona after seeking asylum at a US Port of Entry in San Luis, Arizona in October 2014.⁷⁸ She said that a male detainee sexually assaulted her in December 2014 and that guards routinely verbally harassed and subjected her to invasive strip searches.

They would touch my genitals, my breasts. They would open my legs and touch my buttocks with a latex glove. [During a strip search], the guard pulled my hair, pushed me against the wall, and told me that I ‘should remember that I was in a men’s detention center.’ I would demand their respect and they would laugh at me.⁷⁹

Twelve women said that detention facility staff either ignored or failed to adequately resolve their attempts to seek help after they reported sexual assault.⁸⁰

⁷⁴ Plaintiff’s Second Amended Original Petition (name withheld), Cause No. 2013-DCL-6225-D, 103rd Judicial District Court, Cameron County, Texas, May 12, 2015.

⁷⁵ Ibid, para. 15, p.4.

⁷⁶ Human Rights Watch interview with Laura Z. (pseudonym), Los Angeles, California, June 12, 2015.

⁷⁷ Ibid.

⁷⁸ Fernanda Echavarrí, “Interview with Transgender Woman in Immigrant Detention,” *Arizona Public Media*, March 9, 2015, <https://www.azpm.org/p/top-news/2015/3/6/58478-media-allowed-inside-detention-center-to-interview-transgender-woman/> (accessed October 20, 2015).

⁷⁹ Ibid.

⁸⁰ Human Rights Watch interview with Carla Y. (pseudonym), San Diego, California, June 9, 2015; Human Rights Watch interview with Laura Z. (pseudonym), Los Angeles, California, June 12, 2015; Human Rights Watch interview with Liliana H. (pseudonym), June 12, 2015, Los Angeles, California; Human Rights Watch interview with Selena F. (pseudonym), June 29, 2015, Washington, DC; Human Rights Watch interview with Carolina D. (pseudonym), Washington, DC, July 1, 2015; Human

In Jacqueline’s case, despite submitting various written complaints of sexual abuse—the circumstances of which were allegedly “plainly visible” to supervisory staff “through monitoring of video cameras”—the facility neither transferred her out of the facility nor took any other effective steps to protect her from sexual assault.⁸¹

Talia S., a transgender woman from Mexico, said that in one instance during shower time—which she had to share with approximately 150 male detainees during the first six months in detention at a facility in Texas—a male detainee groped her buttocks and demanded oral sex. After reporting the incident, Talia said a male guard escorted her to the restrooms so that she could shower at another time but that he would himself stare at her while she changed.

The guard stares at my breasts. I asked him to open the laundry room for me so that I can change my underwear and he said, ‘No.’ I talked to the [ICE] supervisor and he told me I could change in the passageway in the bathroom, but there are men there. How can I change there? I might as well just change in my bed.⁸²

She subsequently filed a written complaint in July 2015 about the guard’s behavior,⁸³ a violation of ICE sexual assault policies prohibiting visual surveillance of detainees.⁸⁴

Carolina D., a transgender woman from El Salvador, said a male detainee physically and sexually assaulted her on two occasions in June 2014, when she was held for approximately six weeks at a men’s detention facility in Florida. She said facility staff to whom she reported both incidents declined to investigate the allegations, and that she did

Rights Watch interview with Monserrath López, Houston, Texas, July 7, 2015; Human Rights Watch interview with Talia S. (pseudonym), El Paso Processing Center, El Paso, Texas, July 9, 2015; Human Rights Watch interview with Nicoll Hernández-Polanco, July 16, 2015, Los Angeles, California; Human Rights Watch interview with Emilia R. (pseudonym), August 17, 2015, Phoenix, Arizona; Human Rights Watch interview with Marichuy Leal, August 17, 2015, Phoenix, Arizona; Human Rights Watch interview with Karolina López, August 18, 2015, Tucson, Arizona; Human Rights Watch interview with Ana D. (pseudonym), Santa Ana City Jail, August 26, 2015.

⁸¹ Plaintiff’s Second Amended Original Petition (name withheld), para. 16, p.5.

⁸² Human Rights Watch interview with Talia S. (pseudonym), El Paso Processing Center, El Paso, Texas, July 9, 2015.

⁸³ Copy of ICE detainee grievance form submitted on July 14, 2015, on file with Human Rights Watch.

⁸⁴ US Immigration and Customs Enforcement, 2011 PBNDS, “Sexual Assault Prevention,” section 2.11. This policy defines “staff on detainee abuse and/or sexual assault” to include “threats, intimidation, harassment, indecent, profane or abusive language, or other actions (including unnecessary visual surveillance) or communications aimed at coercing or pressuring a detainee to engage in a sexual act.”

not receive a medical exam or psychological counseling after the assaults. Instead, she said the perpetrator was allowed to remain in the same housing unit as her and continued to abuse other transgender women.⁸⁵

If the men want to abuse you, the guards won't do anything. Two times, he [a male detainee] hit me and grabbed my throat. He put his hand inside me and did everything to [sexually assaulted] me. I told a guard from ICE and he said, 'Well no, there are no cameras in the bathroom.' They didn't do an investigation. We were in the same dormitory, they left him there. New [transgender] girls would come [to the facility] and he would abuse them. I cried for more than a week [after it happened].⁸⁶

Several transgender women interviewed by Human Rights Watch told us they were afraid to report sexual abuse they experienced in men's detention facilities due to fear of retaliation by perpetrators or facility staff.⁸⁷

I had a problem in the cell where I was [being housed]. Two [male detainees] made very disrespectful comments towards me. They went to talk to the guard and told her that I was 'an awful person,' that I was 'the worst.' I went to complain [about it] to the guard and she responded, 'You have to act the way that you are. This place is for men, not for transgender people. [After that incident] I stayed quiet because there was nothing I could do.'⁸⁸

Some of these women and several others said that they were accused of soliciting sex from others when they attempted to report instances of sexual assault, and that rather than

⁸⁵. Human Rights Watch interview with Carolina D. (pseudonym), Washington, D.C., July 1, 2015.

⁸⁶. Ibid.

⁸⁷. Human Rights Watch interview with Carla Y. (pseudonym), San Diego, California, June 9, 2015; Human Rights Watch interview with Laura Z. (pseudonym), Los Angeles, California, June 12, 2015; Human Rights Watch interview with Liliana H. (pseudonym), June 12, 2015, Los Angeles, California; Human Rights Watch interview with Naty C. (pseudonym), July 23, 2015, Berkeley, California; Human Rights Watch interview with Emilia R. (pseudonym), August 17, 2015, Phoenix, Arizona; Human Rights Watch interview with Karolina López, August 18, 2015, Tucson, Arizona.

⁸⁸. Human Rights Watch interview with Laura Z. (pseudonym), Los Angeles, California, June 12, 2015.

receiving protection, guards put them in solitary confinement and told them they were being punished for engaging in sexual relations with other detainees.⁸⁹

Monserrath López said that after reporting sexual abuse she experienced in the shower, a guard threatened to place her in solitary confinement as “punishment” for having engaged in sexual contact with another detainee and refused to let her speak to an ICE official. “You are going to do what we tell you to do,”⁹⁰ she recounted him telling her. She was later moved to a separate housing unit.

⁸⁹ Human Rights Watch interview with Carla Y. (pseudonym), San Diego, California, June 9, 2015; Human Rights Watch interview with Monserrath López, Houston, Texas, July 7, 2015; Human Rights Watch interview with Nicoll Hernández-Polanco, July 16, 2015, Los Angeles, California; Human Rights Watch interview with Sara V., August 11, 2015, New York, NY; Human Rights Watch interview with Marichuy Leal, August 17, 2015, Phoenix, Arizona; Human Rights Watch interview with Karolina López, August 18, 2015, Tucson, Arizona.

⁹⁰ Ibid.

II. Abuse and Ill-Treatment in Segregated Detention

While the 2015 Transgender Care Memorandum takes the important step of allowing transgender women to be housed apart from male detainees, Human Rights Watch research found that ICE has failed to effectively implement its provisions and ensure that transgender women are protected from sexual abuse and harassment by guards, including for those housed in segregated units.

Transgender women continue to face trauma, abuse, and neglect under the agency's new policy, including at the segregated unit at Santa Ana, which ICE established in March 2012 with the intention of providing a secure and culturally sensitive environment where gay men and transgender women could be housed apart from the general detained population. The Santa Ana unit was initially designated to house 64 gay and bisexual men and transgender women.⁹¹

Transgender women who had spent time at Santa Ana told Human Rights Watch that male guards regularly subjected them to degrading and humiliating strip searches; made excessive and abusive use of solitary confinement as a disciplinary tool; and frequently denied them prompt and regular access to necessary medical treatment while in detention.

Until as recently as June 2015, gay men and transgender women were still being housed in the same unit at Santa Ana, demonstrating a limited understanding among ICE and jail officials regarding the particular needs of these two uniquely vulnerable groups.⁹² They were finally housed separately in August 2015.⁹³

⁹¹- Contract modification to the Inter-Governmental Service Agreement (IGSA) between ICE and the City of Santa Ana, California, March 4, 2012, on file with Human Rights Watch. See Annex III.

⁹²- Human Rights Watch visit to the Santa Ana City Jail, June 11, 2015.

⁹³- Responding to a public records request filed by Community Initiatives for Visiting Immigrants in Confinement (CIVIC) in January 2016, the Santa Ana jail administrator, Christina Holland, told advocates that she had decided several months earlier to establish separate housing modules for transgender women and gay and bisexual men "based on operational and safety concerns," and because "it was not worth the risks associated with mixing genders or adding a split dayroom time with other non-transgender detainees." However, she added, "[n]either decision was required in our contract [with ICE]." Email communication from Santa Ana jail administrator, Christina Holland, sent to Christina Fialho, co-executive director, CIVIC, January 22, 2016, <https://www.dropbox.com/s/1wcg03npdoiakmd/Public%20Records%20Act%20Request%20Letter%202.pdf?dl=0>.

In essence, many transgender women have simply traded one set of abusive conditions for another.⁹⁴

According to public records obtained by Human Rights Watch, the jail did not formally adhere to ICE's 2011 sexual assault standards until December 2012, nearly one year after the segregated unit was established.⁹⁵

At time of writing, the Santa Ana facility had not modified its operating agreement with ICE in order to adhere to the requirements of the June 2015 Transgender Care Memorandum. In fact, on February 2, 2016, members of the Santa Ana City Council voted unanimously against a proposed agreement with ICE that would have provided additional bed space for the detention of transgender, gay, and bisexual immigrants and provided the city an estimated \$2.2 million in annual revenue.⁹⁶

Human Rights Watch interviews with twelve transgender women either currently or recently held there found that they continue to face abusive and degrading treatment by guards.

⁹⁴ The unit was a response to a civil rights complaint filed in April 2011 by the National Immigrant Justice Center on behalf of 13 LGBT people who were then held in immigration detention facilities throughout the US. The complaint exposed the systemic abuse facing detained LGBT immigrants and asylum seekers at a time when no specific policies were in place to ensure their safety in detention. It included allegations that LGBT people held at the Theo Lacy Facility—a maximum security jail in Southern California which continues to detain immigrants today as part of a contracted agreement with ICE—were routinely placed in “protective custody” and locked in their cells for 22 hours per day. In one instance, a transgender woman at the facility “was repeatedly called a ‘faggot’ by guards, who also made jokes about her dying of AIDS.” The complaint adds that “[guards had] singled her out for public searches in which they forced her to remove her outer clothing and mocked her exposed breasts.”

⁹⁵ Contract modification to the Inter-Governmental Service Agreement (IGSA) between ICE and the City of Santa Ana, California, December 4, 2012, on file with Human Rights Watch. See Annex IV.

⁹⁶ City of Santa Ana, California, “Request for Council Action: Agreement Amendment with US Immigration and Customs Enforcement to Provide Housing for Federal Inmates [Strategic Plan No. 1, 4A],” February 2, 2016, The decision came after local activists and at least one immigrant transgender woman who was previously detained at Santa Ana provided detailed testimony to councilmembers about mistreatment facing detained immigrants held at the jail. http://santaana.granicus.com/MetaViewer.php?view_id=2&event_id=7191&meta_id=29745, p. 1; Jessica Kwong, “Santa Ana rejects expanded contract for housing immigrant detainees,” *Orange County Register*, February 2, 2016, <http://www.ocregister.com/articles/santa-702571-housing-detainees.html> (accessed February 4, 2016).

In particular, many of the women housed in the pod:

- Are routinely subjected to invasive strip searches that are conducted by male guards, which they describe as especially traumatic given that they are survivors of sexual assault;
- Have endured frequent “lockdowns” for mostly minor disciplinary infractions, where they are confined to their cells for 22 to 24 hours per day and placed under further emotional distress;
- Have received severely inadequate medical and mental health services to address their unique and particular vulnerabilities.

These issues are explored in greater detail in the following sections.

Strip Searches by Male Guards

Transgender women detained at the segregated unit at Santa Ana—including many survivors of sexual assault—told Human Rights Watch that they were subjected to degrading strip searches, during which they are required to bend over, spread their buttocks, and expose their genitalia to male guards.

Strip searches can be particularly traumatic for transgender women and others who are detained after fleeing sexual and gender-based violence. Many of the transgender women interviewed by Human Rights Watch were repeatedly sexually assaulted prior to fleeing their home countries and described the experience of being required to strip nude and undergo full cavity searches by male guards as painfully reminiscent of prior sexual assaults.

In September 2015, 22 transgender women detained in the pod at Santa Ana detailed their concerns about the procedure in a written complaint to ICE and the US Department of Homeland Security.⁹⁷ The women requested that ICE “stop the practice of abuse from authorities” which they described as an “unnecessary practice” that caused them to feel “humiliated and demoralized.”⁹⁸

⁹⁷ Confidential complaint on file with Human Rights Watch.

⁹⁸ Ibid.

ICE regulations regarding the use of strip searches are vaguely defined and allow transgender women to be searched by male guards. Specifically, they state that, “[w]henver possible, transgender detainees shall be permitted to choose the gender of the staff member conducting a body-cavity search”⁹⁹ and that such requests shall be “considered by the TCCC [Transgender Classification and Care Committee] [...] and followed by detention staff accordingly.”¹⁰⁰ Such unnecessarily vague provisions mean that facilities that do not allow transgender individuals to choose the gender of the guard conducting body searches are not in violation of ICE policy.

Transgender women detained at Santa Ana said that they were consistently subjected to strip searches by male guards following visits with attorneys or upon returning from off-site appearances in immigration court.

Natalia R., a transgender woman from Mexico, was admitted to the segregated unit at Santa Ana in March 2015.¹⁰¹ She had no prior criminal convictions or deportations from the US before being detained in February 2015.¹⁰² Natalia said that she had been raped by two men near the border in Tijuana only weeks before entering the US to seek asylum, and that she was deeply disturbed when soon after, she was required to undergo a nude strip search by a male guard in the segregated unit at Santa Ana.

Whenever we go to court, we [have to] undress for the searches. One time, a guard told me, ‘Pick up your balls and cough.’¹⁰³

Alba N., a transgender woman from Honduras, said that she was sexually abused as a child and physically assaulted by violent gang members as an adult. She was admitted to the segregated unit at Santa Ana in July 2015.¹⁰⁴

⁹⁹ US Immigration and Customs Enforcement, PBND 2011, “Searches of Detainees,” section 2.10, p. 144.

¹⁰⁰ US Immigration and Customs Enforcement, “Further Guidance Regarding the Care of Transgender Detainees,” Attachment 1: ICE Detention Facility Contract Modification for Transgender Care, section 3(e).

¹⁰¹ Human Rights Watch e-mail communication with Munmeeth Soni, immigration attorney, Los Angeles, California, October 6, 2015.

¹⁰² Ibid.

¹⁰³ Human Rights Watch interview with Natalia R. (pseudonym), Santa Ana City Jail, June 11, 2015.

¹⁰⁴ Human Rights Watch interview with Alba N. (pseudonym), Santa Ana City Jail, August 26, 2015.

The way [the guards] search us is horrible. It's not right for us. We come from experiences of sexual abuse, why do they treat us the same way here? The search was done by a man, they didn't give me the option to choose [the gender]. They don't have the capacity to be with us.¹⁰⁵

Ana D., a transgender woman from Mexico, said that she had originally come to the US as a minor in 1994, and that she was later deported after mistakenly failing to attend a court hearing in 2010. Ana said that approximately two years after being deported to Mexico in 2011, police officers kidnapped and sexually abused her in Tijuana. She then returned to the US to seek protection in August 2013 and was arrested on false identification charges in March 2015. She was transferred to the segregated unit at Santa Ana after serving approximately two-and-a-half months in county jail for her criminal sentence.¹⁰⁶

Aside from the trauma we have from being locked up here, we are traumatized by the daily mistreatment [we receive]. They make us get naked [...] You have to open up and they look all over your anus. They are not trained to do that. One time a guard laughed [at me] because he couldn't do it. They are always male guards and they don't give you the option [to choose the gender].¹⁰⁷

Julieta L., a transgender woman from Mexico, said gang members tortured and physically assaulted her in Guadalajara, in February and April 2015, before fleeing to seek asylum in the US. Julieta said that she presented herself to Border Patrol agents at the US Port of Entry in Laredo, Texas and requested asylum in June 2015. She was initially admitted to a privately operated detention center in Texas, and later transferred to Santa Ana.¹⁰⁸

¹⁰⁵ Ibid.

¹⁰⁶ Human Rights Watch interview with Ana D. (pseudonym), Santa Ana City Jail, August 26, 2015.

¹⁰⁷ Ibid.

¹⁰⁸ US Immigration and Customs Enforcement, "Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture," (Directive No. 11002.1), December 2009, available https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf, section 4.2. This policy states that "[a]rriving aliens who establish a credible fear of persecution or torture are to be detained for further consideration of the application of asylum [...] Such aliens, however, may be paroled on a case-by-case basis for 'urgent humanitarian reasons' or 'significant public benefit,' provided the aliens present neither a security risk nor a risk of absconding."

It depresses me so much when they search me. It makes everything feel unbearable. They make you strip naked and I don't like it. The guards make you undress and they search [between] your buttocks as if you were carrying a pistol. I have burns on my skin [from when I was tortured]. It's always been men for the searches and it makes me sad when they see me. They've only searched me once, but that's what makes me want to sign [the voluntary deportation form].¹⁰⁹

In January 2016, Community Initiatives for Visiting Immigrants in Confinement (CIVIC) and several of its partner organizations filed a formal complaint with ICE and the City of Santa Ana regarding the excessively frequent and degrading use of nude strip searches of both cisgender and transgender women by male guards.

Similarly to those interviewed by Human Rights Watch, these 31 women described the searches as deeply traumatic and many declined to reveal their identities due to fear of retaliation by guards.¹¹⁰ None of the transgender women included in the complaint had the option of undergoing searches with female guards.¹¹¹

¹⁰⁹. Human Rights Watch interview with Julieta L. (pseudonym), Santa Ana City Jail, August 26, 2015.

¹¹⁰. CIVIC complaint regarding the use of strip searches at the Santa Ana City Jail, January 25, 2015, http://www.endisolation.org/wp-content/uploads/2016/01/CIVIC_Complaint_SAC.pdf, p.3.

¹¹¹. Ibid, p. 6.

III. Lockdowns and Solitary Confinement

Solitary confinement and other forms of physical isolation are widely used throughout the US immigration detention system. Previous research by Human Rights Watch and others has found that the use of solitary confinement—which typically involves individuals being held in small, sometimes windowless, cells for 22 to 24 hours a day—can have severe psychological impacts that may extend well beyond time spent in detention.¹¹²

Indefinite solitary confinement is a form of human rights abuse and is not a legitimate way of protecting individuals in detention from other forms of abuse.

People who experience prolonged isolation—or a period exceeding 15 days—may experience a range of symptoms, including depression, anxiety, claustrophobia, and hallucinations.¹¹³ Solitary confinement can affect asylum seekers by compounding the existing effects of anxiety, depression, and post-traumatic stress disorder caused by previous traumatic experiences.¹¹⁴

Psychological trauma resulting from placements in solitary confinement has corresponded with higher rates of self-harm and suicide, and people held in solitary confinement can be more vulnerable to verbal and physical abuse by guards due to their physical isolation.¹¹⁵

¹¹². “US: Look Critically at Widespread Use of Solitary Confinement,” Human Rights Watch news release, June 18, 2012, <https://www.hrw.org/news/2012/06/18/us-look-critically-widespread-use-solitary-confinement>; National Immigrant Justice Center and Physicians for Human Rights, “Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention,” September 2012, <https://www.immigrantjustice.org/publications/report-invisible-isolation-use-segregation-and-solitary-confinement-immigration-detenti>; Ian Urbina and Catherine Rentz, “Immigrants Held in Solitary Cells, Often for Weeks,” *New York Times*, March 23, 2013, <http://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html>; Physicians for Human Rights, “Buried Alive: Solitary Confinement in the US Detention System,” April 2013, https://s3.amazonaws.com/PHR_Reports/Solitary-Confinement-April-2013-full.pdf (links accessed December 1, 2015).

¹¹³. “US: Look Critically at Widespread Use of Solitary Confinement,” Human Rights Watch news release, June 18, 2012.

¹¹⁴. National Immigrant Justice Center and Physicians for Human Rights, “Invisible in Isolation,” p. 13; “Mental health challenges of LGBT forced migrants,” Ariel Shidlo and Joanne Ahola, *Forced Migration Review* 42, April 2013, <http://www.fmreview.org/sogi/shidlo-ahola>, p. 9.

¹¹⁵. National Immigrant Justice Center and Physicians for Human Rights, “Invisible in Isolation,” pp. 11-13.

Dr. Terry Kupers, a forensic psychiatrist who has studied the use of solitary confinement and sexual abuse in prisons, told Human Rights Watch:

Putting gay or transgender prisoners who are vulnerable to assault in isolation in order to protect them is absolutely not okay. Being in isolation is a kind of trauma. And sexual abuse, whether it's just being stigmatized and objectified with misogynistic or homophobic slurs, and actual sexual assault, those are traumas too, and the traumas add up. It doesn't help to take someone who has been sexually traumatized and put them in isolation, which is itself traumatizing.¹¹⁶

Dr. Allen Keller, an associate professor of medicine at New York University School of Medicine and Director of the Bellevue/NYU Program for Survivors of Torture, raised concerns about the use of lockdowns and other forms of physical isolation among asylum seekers and survivors of previous traumatic experiences who are held in immigration detention. In an interview with Human Rights Watch, he noted, "Segregation potentially is another level of trauma. Human beings are social beings and isolation is traumatic."¹¹⁷

In US immigration detention facilities, transgender women, gay men, people with psychosocial disabilities, and people who have experienced sexual assault in detention are often placed in solitary confinement for weeks or months at a time, as an alleged form of "protection" that is often imposed against their wishes.¹¹⁸

One immigration attorney told Human Rights Watch about a transgender woman from Mexico whom she had represented who had been held in solitary confinement for approximately 18 months before being deported in May 2014.¹¹⁹ In another instance, a transgender woman from Mexico told Human Rights Watch that she was placed in solitary confinement for approximately six months after reporting a sexual assault in July 2011.¹²⁰

¹¹⁶. Human Rights Watch telephone interview with Terry Kupers, MD, MSP, Berkeley, California, October 21, 2015.

¹¹⁷. Human Rights Watch interview with Allen Keller, MD, New York, NY, October 20, 2015.

¹¹⁸. National Immigrant Justice Center and Physicians for Human Rights, "Invisible in Isolation," September 2012, p. 9; Immigrants Held in Solitary Cells, Often for Weeks," *New York Times*, March 23, 2013.

¹¹⁹. Human Rights Watch telephone interview with Tatiana Obando, immigration attorney, Houston, Texas, May 14, 2015.

¹²⁰. Human Rights Watch interview with Karolina López, August 8, 2015, Tucson, Arizona.

There is currently no disaggregated data available to indicate the prevalence or length of placements in solitary confinement among transgender women or other populations in immigration detention. A 2013 *New York Times* investigation found that approximately 300 detained immigrants are in solitary confinement on any given day, including many transgender women and gay men purportedly isolated for their protection.¹²¹

Human Rights Watch research has found that in most US jurisdictions, the criteria for determining entry to and exit from administrative segregation are so vague that arbitrariness and unfairness are inevitable.¹²²

In September 2013, ICE issued a policy directive intended to limit the use of solitary confinement and to improve oversight of its use in the approximately 250 facilities that hold detained immigrants throughout the US.¹²³ The policy places new limits on and oversight of the use of solitary confinement, but continues to allow transgender women and others to be kept in prolonged periods of isolation simply because authorities are unable to devise any less restrictive and abusive way to protect them from sexual assault or other forms of violence.

The policy states that an individual's "age, physical disability, sexual orientation, gender identity, race, or religion" cannot be the sole basis for placement in solitary confinement. However, it does allow for solitary confinement of individuals who have a "special vulnerability" or who have allegedly been victims of sexual assault, but specifies such placements should only be used "as a last resort and when no other viable housing options exist."¹²⁴

The policy further specifies that authorities should "conduct a review to assess whether any less restrictive housing or custodial options are available," including transfer to another facility, but does not require that alternatives actually be found.¹²⁵ The directive also calls for continuous reviews of placements in solitary confinement by ICE regional

¹²¹. Urbina and Rentz, "Immigrants Held in Solitary Cells, Often for Weeks," *New York Times*, March 23, 2013.

¹²². "US: Look Critically at Widespread Use of Solitary Confinement," Human Rights Watch news release, June 18, 2012.

¹²³. US Immigration and Customs Enforcement, "Review of the Use of Segregation for ICE Detainees" (Federal Enterprise Architecture Number 306-112-002b), September 2013, http://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

¹²⁴. US Immigration and Customs Enforcement, "Review of the Use of Segregation for ICE Detainees," section 5.2.

¹²⁵. *Ibid*, section 5.2 (6)(d).

supervisors and medical and mental health personnel.¹²⁶ The policy does not prescribe time limits on placements in solitary confinement.

Beyond these provisions, the 2015 Transgender Care Memorandum permits the continued use of solitary confinement solely on the basis of an individual's gender identity, stating that "placement into administrative segregation due to a detainee's identification as transgender should be used only as a last resort and when no other temporary housing option exists."¹²⁷

Half of the 28 transgender women interviewed by Human Rights Watch said that they had been held in solitary confinement at some point in time while they were in immigration detention. Several of these women were held in prolonged solitary confinement, or for more than 15 days, including two transgender women held at the Santa Ana City Jail for periods ranging from six to eight weeks.

For many transgender women held outside the segregated unit at Santa Ana, reality may include being housed with men or being held in prolonged isolation. In a February 2016 statement to Human Rights Watch, ICE officials clarified that these housing accommodations are permissible under the new transgender detention guidelines. Specifically, they noted that housing options for transgender women may include "general housing consistent with the detainee's biological sex, general housing consistent with the detainee's gender identity, a protective custody unit, and medical or administrative segregation."¹²⁸

Transgender women placed in prolonged solitary confinement described particularly severe psychological impacts resulting from their isolation.

Gloria L., a transgender woman from Honduras, was apprehended by Border Patrol agents near the US Port of Entry in Brownsville, Texas, in December 2014.¹²⁹ She had no prior

¹²⁶. Ibid, section 7.3.

¹²⁷. US Immigration and Customs Enforcement, "Further Guidance Regarding the Care of Transgender Detainees," section 3(c).

¹²⁸. Human Rights Watch email communication with Lana Khoury, ICE senior advisor for LGBTI care, February 2, 2016.

¹²⁹. Human Rights Watch interview with Gloria L. (pseudonym), Santa Ana City Jail, Santa Ana, California, June 11, 2015.

criminal convictions or deportations from the US at the time.¹³⁰ Gloria was initially held at a detention center in Texas, before being transferred to a privately operated detention facility in Louisiana, where she said that she was kept in solitary confinement for approximately four-and-a-half months.¹³¹ She said:

They told me I couldn't be housed with other people. They never asked me if I wanted to be in segregation [and] they never told me how long I would be there for. A guard told me it was 'because I had long hair and breasts.' They would only let me out of my cell for 20 or 30 minutes a day. I couldn't talk to anyone or I would be punished. One of the guards told me that he was 'tired of seeing faggots.' They treated me like an animal.¹³²

Maya E., a transgender woman from Mexico, was admitted to a privately operated detention facility in Texas after being arrested on charges for involvement in sex work and driving under the influence of alcohol in May 2015.¹³³ Maya said that she was transferred to the detention facility after serving approximately two weeks in county jail for her criminal sentence.¹³⁴ Upon arrival, she was immediately placed in solitary confinement and described living in an enclosed cell with a television, a shower, and a toilet. Maya said:

They asked me if I wanted to be [housed] with men or women. I told them I wanted to be with women but they said no because I haven't had [gender-affirming] surgery. I feel so alone, I want to talk to somebody. I can't even say 'hi' or 'bye' to the people who walk by my cell. There is a woman guard in the cell 24 hours a day, but they don't talk to me. I feel depressed when I'm alone for a long time and I wish I could talk to somebody.¹³⁵

Linda F., a transgender woman from El Salvador, was apprehended by Border Patrol agents near an unidentified US Port of Entry in South Texas in May 2015. She was then admitted to

¹³⁰- Human Rights Watch e-mail communication with Munmeeth Soni, immigration attorney, Los Angeles, California, October 6, 2015.

¹³¹- Human Rights Watch interview with Gloria L. (pseudonym), Santa Ana City Jail, Santa Ana, California, June 11, 2015.

¹³²- Ibid.

¹³³- Human Rights Watch telephone interview with Tatiana Obando, immigration attorney, Houston, Texas, May 14, 2015.

¹³⁴- Human Rights Watch interview with Maya E. (pseudonym), Houston Processing Center, Houston, Texas, July 7, 2015.

¹³⁵- Ibid.

a privately operated detention facility in Texas, where she said transgender women were housed in individual cells they could only leave for around four hours each day. She said:

I feel desperate, I want to hurt myself. They say this is a detention center, but it is a prison. I feel so marginalized ... we can't say anything [about our mistreatment] because we're afraid that they'll punish us and deport us. I feel like I'm a butterfly and they cut my wings, but I can't do anything about it because I'm afraid. Sometimes I dream about being back in El Salvador and being killed by gang members... Sometimes I think about signing a [voluntary] deportation form. I can't look backwards or forward.¹³⁶

Sara V., a transgender woman from Honduras, was admitted to a privately operated detention facility in Arizona, in March 2014.¹³⁷ She said she was put in solitary confinement for approximately one week in May 2014 after a guard accused her of having consensual sex with a male detainee. Sara asked to view surveillance footage of the alleged incident but was not allowed to do so.

I went to shower one day when the gay boys were there because I felt safer [with them]. A guard accused me of having sex in the bathroom and they took me to segregation. She said, 'We don't care about your sexuality. You're going to be in there until you leave.' I told them I couldn't go because I was claustrophobic. ... I hadn't eaten for a week because I was so depressed. I cut my wrists [with an ID card] and wanted to kill myself.¹³⁸

Talia S., a transgender woman from Mexico, was transferred to a detention facility in Texas after being held at a men's detention facility for approximately six months. She was then placed in solitary confinement for approximately two months. In a letter to regional ICE officials requesting her release from detention, Talia's attorney wrote that facility staff said that she had been placed in solitary confinement, "only because [s]he has breasts, not because of any threat [s]he poses or because of any behavioral issues."¹³⁹ Talia said:

¹³⁶. Human Rights Watch interview with Linda F. (pseudonym), South Texas Detention Complex, Pearsall, Texas, July 8, 2015.

¹³⁷. Human Rights Watch interview with Sara V. (pseudonym), New York, NY, August 11, 2015.

¹³⁸. Ibid.

¹³⁹. Letter from Jose Vela III (Talia's attorney) to El Paso Field Office Director Juan Munoz, March 25, 2015.

Do you see how much I'm suffering here? Do you think anyone deserves to be punished like this? [...] I've reached the point of wanting to kill myself with whatever knife I can find. I've thought about drowning myself in the water and cutting my throat with a razor. Sometimes I get anxious... I thought about killing myself once, but then I regretted it and told myself I wasn't going to do it. I said, 'Lord, you gave me my life, why am I going to take it away?' It's not His fault they have me suffering here like this.¹⁴⁰

Immigration authorities detained Carla Y., a transgender woman from Iran who was granted asylum in the US in August 2008, in January 2014, following an earlier conviction for nonviolent drug possession.¹⁴¹

Carla said that in one instance, she was lying in bed reading a book when a male detainee entered her cell, exposed himself, and made an obscene comment. She said that she reported the incident and told facility staff that she felt threatened, but that an investigator told her she had engaged in "sexual horseplay" and placed her in solitary confinement for two weeks.¹⁴² Carla said that she became increasingly depressed, and stopped making complaints because she was afraid of facing further retaliation.

I was only allowed to leave the cell once a day between 5 and 7 a.m. I would always sleep through and then I would have to spend the rest of the day in my cell. There was a tiny opening, only 2 inches wide, for light to come in. They would put the meals through a hole in the door. ... I feel traumatized by what I experienced. I still have flashbacks all the time.¹⁴³

Lockdowns and Solitary Confinement at Santa Ana

Several of the transgender women who had been at Santa Ana and were interviewed by Human Rights Watch said they had been subjected to arbitrary "lockdowns," raising

¹⁴⁰. Human Rights Watch interview with Talia S. (pseudonym), El Paso Processing Center, July 9, 2015.

¹⁴¹. Human Rights Watch telephone interview with Nanya Thompson, immigration attorney, San Diego, California, August 11, 2015.

¹⁴². Human Rights Watch interview with Carla Y. (pseudonym), San Diego, California, June 9, 2015.

¹⁴³. Ibid.

concerns that the facility is overusing lockdowns and solitary confinement in ways that violate the rights of the individuals held there and that subject them to additional trauma.

Women described being held in their cells for 22 to 24 hours a day—sometimes for multiple days in a row—due to minor disciplinary infractions. Many said they were placed on lockdown simply for having human contact, such as hugging or holding hands, with other people in detention. One woman said she was placed on lockdown because she forgot to turn off a light in the restroom¹⁴⁴ and another said that she was threatened with a lockdown when she asked a guard for a blanket.¹⁴⁵

Several interviewees said that in certain instances, the entire unit was placed on lockdown for a full day and that individuals would only be allowed to leave their cells during meal times.¹⁴⁶ Two transgender women who had not been subjected to such measures said that guards had nevertheless threatened to place them on lockdown.¹⁴⁷ They also described two instances in which transgender women in the unit were removed from the pod for disciplinary reasons and placed in administrative segregation for six to eight weeks.¹⁴⁸

Adela M., a transgender woman from Mexico, was admitted to the segregated unit at Santa Ana in March 2015.¹⁴⁹ She said: “They put us on lockdown all the time. One of the guards told me, ‘Be careful. This place is for men.’ They refer to us as men.”¹⁵⁰

Natalia R., a transgender woman from Mexico, was admitted to the specialized unit at Santa Ana in March 2015 and released from detention after being granted asylum in July

¹⁴⁴ Human Rights Watch interview with Sofia G. (pseudonym), Burbank, California, July 17, 2015.

¹⁴⁵ Human Rights Watch interview with Natalia R. (pseudonym), Santa Ana City Jail, Santa Ana, California, June 11, 2015.

¹⁴⁶ Human Rights Watch interview with Natalia R. (pseudonym), Santa Ana City Jail, Santa Ana, California, June 11, 2015; Human Rights Watch interview with Adela M. (pseudonym), Santa Ana City Jail, Santa Ana, California, June 11, 2015; Human Rights Watch interview with Jennifer N. (pseudonym), Santa Ana City Jail, Santa Ana, California, June 11, 2015; Human Rights Watch interview with Sara V. (pseudonym), New York, NY, August 11, 2015; Human Rights Watch interview with Elsa T. (pseudonym), Santa Ana City Jail, Santa Ana, California, August 25, 2015.

¹⁴⁷ Human Rights Watch interview with Natalia R. (pseudonym), Santa Ana City Jail, Santa Ana, California, June 11; Human Rights Watch interview with Alba N. (pseudonym), Santa Ana City Jail, Santa Ana, California, August 26.

¹⁴⁸ Human Rights Watch interview with Gloria L. (pseudonym), Santa Ana City Jail, Santa Ana, California, June 11, 2015; Human Rights Watch interview with Ana D. (pseudonym), Santa Ana City Jail, August 26, 2015.

¹⁴⁹ Human Rights Watch e-mail communication with Munmeeth Soni, immigration attorney, Los Angeles, California, October 6, 2015.

¹⁵⁰ Human Rights Watch interview with Adela M. (pseudonym), Santa Ana City Jail, Santa Ana, California, June 11, 2015.

2015.¹⁵¹ She said: “I have never been in prison before. Whenever they lock us up, I start crying. It makes me want to go back [to Mexico], but I’m afraid to go back.”¹⁵²

Jennifer N., a transgender woman from El Salvador, was admitted to the segregated unit at Santa Ana in April 2015 and released on parole in June 2015.¹⁵³

Some of the guards refer to me as ‘he.’ They lock us up because we’re laughing and we don’t even know why. It seems like they hate us. One time I sat down in the [recreational] yard and a guard told me, ‘If you’re tired, go back to your cell.’ I’m afraid to say anything because they’ll lock you up for anything. A friend of mine touched my arm and they put him on lockdown for 30 days. Sometimes we’re depressed and we want a hug or something ... but we can’t [do that] here.¹⁵⁴

Ana D., a transgender woman from Mexico, was detained by immigration authorities and admitted to the segregated unit at Santa Ana in June 2015. Ana said that shortly after being admitted to the facility, she was removed from the segregated unit and placed in solitary confinement for approximately six weeks.¹⁵⁵ Ana said:

This is where the psychological abuse started. They locked me up [in solitary confinement] for a month and a half because they accused me of picking caulk from the ceiling. They put me on the same as floor as the ‘dangerous’ [male detainees]. It’s so harmful ... they’re causing me psychological harm. I started seeing things and hearing voices. I talked to ICE and asked them to please get me out of here. They told me, ‘This is the best place for transgender women.’¹⁵⁶

¹⁵¹ Human Rights Watch e-mail communication with Munmeeth Soni, immigration attorney, Los Angeles, California, October 6, 2015.

¹⁵² Human Rights Watch interview with Natalia R. (pseudonym), Santa Ana City Jail, Santa Ana, California, June 11, 2015.

¹⁵³ Human Rights Watch e-mail communication with Munmeeth Soni, immigration attorney, Los Angeles, California, October 6, 2015.

¹⁵⁴ Human Rights Watch interview with Jennifer N. (pseudonym), Santa Ana City Jail, Santa Ana, California, June 11, 2015.

¹⁵⁵ Ana said that her isolation cell was located in a separate housing unit which held male detainees who had serious criminal convictions or a documented history of violent behavior. For more information, see US Immigration and Customs Enforcement, PBND 2011, “Custody Classification System,” section 2.2.

¹⁵⁶ Human Rights Watch interview with Ana D. (pseudonym), Santa Ana City Jail, August 26, 2015.

IV. Medical and Mental Health Care

The US immigration detention system has broadly failed to provide adequate medical care to detained immigrants. As a result, people in immigration detention have experienced unnecessary health complications and in extreme cases, even death.¹⁵⁷

In one such instance in July 2007, Victoria Arellano, a 23-year-old Mexican transgender woman, died in ICE custody after medical staff refused to provide her access to her HIV medication.¹⁵⁸ Previous research by Human Rights Watch and others have documented systemic failures in provision of basic medical care to women,¹⁵⁹ people living with HIV/AIDS,¹⁶⁰ and mothers and their children held in US immigration detention.¹⁶¹

Transgender women in immigration detention—including those housed in the segregated unit at Santa Ana—have faced obstacles in their attempts to access essential services including gender-affirming hormone replacement therapy and life-sustaining HIV/AIDS medications. They have also experienced discriminatory interactions with medical providers, delays or denial of access to routine care, and breaches of confidentiality.

A 2013 study on mental health challenges facing LGBT forced migrants found that many “have significant and sometimes incapacitating psychological scars” resulting from years of verbal harassment, physical, and sexual abuse. Commonly viewed symptoms among

¹⁵⁷. American Civil Liberties Union, Detention Watch Network, and National Immigrant Justice Center, “Fatal Neglect: How ICE Ignores Death in Detention,” February 2016, <https://www.aclu.org/report/fatal-neglect-how-ice-ignores-death-detention> (accessed March 1, 2016).

¹⁵⁸. Human Rights Watch, *Chronic Indifference: HIV/AIDS Services for Immigrants Detained by the United States*, pp. 25-26.

¹⁵⁹. Human Rights Watch, *Detained and Dismissed: Women’s Struggles to Obtain Health Care in United States Immigration Detention*, March 2009, <http://www.hrw.org/report/2009/03/17/detained-and-dismissed/womens-struggles-obtain-health-care-united-states>.

¹⁶⁰. Human Rights Watch, *Chronic Indifference: HIV/AIDS Services for Immigrants Detained by the United States*, December 2007, <https://www.hrw.org/report/2007/12/05/chronic-indifference/hiv/aids-services-immigrants-detained-united-states>; “HIV screening and care for immigration detainees,” by Homer D. Venters, Jennifer McNeely, and Allen S. Keller, *Health and Human Rights* 11/2, December 2009, <http://www.hhrjournal.org/2013/08/hiv-screening-and-care-for-immigration-detainees/>.

¹⁶¹. Human Rights First, “U.S. Detention of Families Seeking Asylum: A One-Year Update,” June 2015, <http://www.humanrightsfirst.org/sites/default/files/hrf-one-yr-family-detention-report.pdf>; “Deplorable Medical Treatment at Family Detention Centers: Mothers Lodge Complaint with DHS Offices for Civil Rights and Civil Liberties and Inspector General,” Women’s Refugee Commission news release, July 30, 2015, <https://womensrefugeecommission.org/news/press-releases-and-statements/2297-deplorable-medical-treatment-at-family-detention-centers-mothers-lodge-complaint-with-dhs-offices-for-civil-rights-and-civil-liberties-and-inspector-general>.

this population include “recurrent depression, dissociative disorders, panic disorder, generalised anxiety disorder, social anxiety, traumatic brain injury and substance abuse.” Moreover, the study finds that children who others perceive to express gender variant behaviors at a young age often experience trauma and abuse early in childhood.¹⁶²

Similarly, a 2003 study conducted by researchers at the Bellevue/NYU Program for Survivors of Torture and Physicians for Human Rights, found that most detained asylum seekers included in the study experienced depression, anxiety, and post-traumatic stress disorder.¹⁶³ The study concluded that “detaining asylum seekers exacerbates symptoms of depression, anxiety, and post-traumatic stress disorder in this vulnerable population.”¹⁶⁴

All of the transgender women whom Human Rights Watch interviewed described mental health problems associated with their time in detention, including depression, anxiety, sleep problems, and in certain cases, thoughts of self-harm or suicidal ideation that for many compounded lifelong histories of trauma at home and during flight.

Transgender women held in the segregated unit at Santa Ana said that they experienced lengthy delays in accessing mental health services and only had the option to meet with providers through a videoconferencing system, rather than in person. Several of these women said that they were prescribed psychiatric medications but that mental health providers did not grant them adequate time or attention to address their chronic and severe emotional distress.

Access to HIV Medication and HIV-Related Care

While there is no public data available regarding HIV-prevalence among people held in US immigration detention, studies suggest that transgender women are nearly 50 times as likely to become infected with HIV than other adults of reproductive age.¹⁶⁵

¹⁶². Ariel Shidlo and Joanne Ahola, “Mental health challenges of LGBT forced migrants,” *Forced Migration Review* 42, April 2013, available: http://www.fmreview.org/sogi/tabak-levitan-detention#_edn1.

¹⁶³. Allen S. Keller, Barry Rosenfeld, Chau Trinh-Shevrin, Chris Meserve, Emily Sachs, Jonathan A Leviss, Elizabeth Singer, Hawthorne Smith, John Wilkinson, Glen Kim, Kathleen Allden, and Douglas Ford, “Mental health of detained asylum seekers,” *The Lancet*, vol. 362, November 22, 2003, http://www.survivorsoftorture.org/files/pdf/keller_et_al2003.pdf, pp. 1721-23.

¹⁶⁴. *Ibid.*, p. 1722.

¹⁶⁵. US Centers for Disease Control and Prevention, “HIV Among Transgender People,” <http://www.cdc.gov/hiv/group/gender/transgender/> (accessed October 29, 2015).

According to the US Department of Health and Human Services, strict adherence to antiretroviral therapy is “key to sustained HIV suppression, reduced risk of drug resistance, improved overall health, quality of life, and survival, as well as decreased risk of HIV transmission.”¹⁶⁶ If individuals do not have consistent access to treatment, they can develop resistance to their HIV medications, which can put them at increased risk for opportunistic infections and other serious HIV-associated illnesses.¹⁶⁷

Recognizing the potential risks caused by inconsistent or delayed access to treatment, ICE medical standards require uninterrupted access to HIV/AIDS medication for detained immigrants.¹⁶⁸ Nevertheless, medical researchers have found that detention facilities often fail to identify individuals who are living with HIV/AIDS because HIV testing is only conducted when a detainee specifically requests it.¹⁶⁹

The Inspector General of the US Department of Homeland Security has recently raised concerns about medical screenings at immigration detention facilities, noting that they can be conducted by medical personnel or by detention officers who “may not have the necessary medical training” to conduct proper assessments.¹⁷⁰

Several transgender women told Human Rights Watch that they were unable to access their HIV medications for periods ranging from two to three months after entering detention, including one transgender woman who was held in the segregated unit at Santa Ana. In another case, a transgender woman held at Santa Ana said that she had been provided medication in detention for a tuberculosis infection that an external physician later informed her had temporarily reduced the effectiveness of her HIV medication.¹⁷¹

¹⁶⁶. US Department of Health and Human Services, “Guidelines for the use of antiretroviral agents in HIV-1-infected adults and adolescents,” section K-1, p. 187. Available: <http://www.aidsinfo.nih.gov/ContentFiles/AdultandAdolescentGL.pdf> (accessed October 29, 2015).

¹⁶⁷. Homer D. Venters, Jennifer McNeely, and Allen S. Keller, “HIV screening and care for immigration detainees,” *Health and Human Rights* 11/2, December 2009.

¹⁶⁸. US Immigration and Customs Enforcement, PBND 2011, “Medical Care,” section 4.3.

¹⁶⁹. Venters, McNeely, and Keller, “HIV screening and care for immigration detainees,” *Health and Human Rights* 11/2, December 2009.

¹⁷⁰. US Department of Homeland Security, Office of Inspector General, “U.S. Immigration and Customs Enforcement’s Alternatives to Detention (OIG-15-22),” February 2015, p. 12.

¹⁷¹. For further information on treatment of tuberculosis in HIV-infected patients, see: US Department of Health and Human Services, *AIDSinfo*, “Guidelines for the Use of Antiretroviral Agents in HIV-1-Infected Adults and Adolescents, Considerations for Antiretroviral Use in Patients with Coinfections,” March 27, 2012, available: <https://aidsinfo.nih.gov/guidelines/html/1/adult-and-adolescent-arv-guidelines/27/hiv-tb>.

Linda F., a transgender woman from El Salvador, said that a Border Patrol agent confiscated her HIV medication when she was apprehended near an unidentified US Port of Entry in South Texas in May 2015. She said that she did not see a physician until disclosing her HIV-status to a guard during an intake screening at an immigration detention facility where she was transferred several days later.

The [Border Patrol] officer took my medication and told me it ‘wasn’t his responsibility to hold on to my things.’ I was afraid to tell them that I had HIV because I thought they could discriminate against me. I told one of the guards [at the facility where I was transferred] about the HIV medication the week I got here. When I saw the doctor, I told her that I was missing my medication and that I felt something strange in my body. It took them two months [to provide me my medication]. I just started receiving the medication today.¹⁷²

Linda was also concerned about confidentiality and said that a facility guard reviewed her medical records without her authorized consent. When Linda asked the guard not to do so, she was told she would be sent to the “hole,” or solitary confinement.¹⁷³

ICE medical policy requires “the highest degree of confidentiality regarding HIV status and medical condition,” and states that medical records may only be accessed by “authorized individuals and only when necessary.”¹⁷⁴

Medical researchers have cautioned that “[t]here are substantial overlapping drug toxicities and drug-drug interactions that must be considered when cotreating HIV and TB,” and that “[t]he risk of adverse reactions to TB treatment is higher in HIV-infected individuals than in HIV-uninfected individuals.”¹⁷⁵

¹⁷²- Human Rights Watch interview with Linda F. (pseudonym), South Texas Detention Complex, Pearsall, Texas, July 8, 2015.

¹⁷³- Ibid.

¹⁷⁴- US Immigration and Customs Enforcement, PBNDS 2011, “Medical Care,” section 4.3.

¹⁷⁵- Annie Luetkemeyer, MD, “Tuberculosis and HIV,” HIV InSite Knowledge Base Chapter, University of California San Francisco, January 2013. Available: <http://hivinsite.ucsf.edu/InSite?page=kb-05-01-06#S6.2X> (accessed November 4, 2015).

Access to Gender-Affirming Care

Several transgender women also reported experiencing lengthy delays in their attempts to access gender-affirming hormone replacement therapy while in detention.

The World Professional Association for Transgender Health (WPATH) advises that hormone replacement therapy “is a medically necessary intervention for many transsexual, transgender, and gender-nonconforming individuals with gender dysphoria,”¹⁷⁶ and that transgender people in institutionalized settings should be able to receive the same level of care they would be able to access within the community.¹⁷⁷ WPATH guidelines further advise that “[t]he consequences of abrupt withdrawal of hormones or lack of initiation of hormone therapy when medically necessary include a high likelihood of negative outcomes such as surgical self-treatment by autocastration, depressed mood, dysphoria, and/or suicidality.”¹⁷⁸

ICE medical policy largely adheres to these guidelines by stating that transgender women who were previously undergoing hormone replacement therapy should have continued access to treatment in detention, and that a medical professional should assess those who had not already begun treatment prior to detention and that hormones should be provided when appropriate.¹⁷⁹

Despite these regulations, more than half of the transgender women who spoke to Human Rights Watch—including more than half of those we interviewed who were detained in the segregated unit at Santa Ana—told Human Rights Watch that they were unable to access hormones for periods ranging from one to five months after entering detention. In two other cases, transgender women housed in the pod were given the option of receiving hormone therapy in pill form, but decided to discontinue treatment because they preferred hormonal injections. These women said the oral supplements had caused them symptoms

¹⁷⁶. World Professional Association for Transgender Health, “Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People,” version 7, (2012), http://www.wpath.org/uploaded_files/140/files/IJT%20SOC,%20V7.pdf, p. 33.

¹⁷⁷. Ibid, p. 67.

¹⁷⁸. Ibid, p. 67.

¹⁷⁹. US Immigration and Customs Enforcement, “Further Guidance Regarding the Care of Transgender Detainees,” Attachment 1: ICE Detention Facility Contract Modification for Transgender Care, section 3(e).

such as stomach pain and dizziness, which they did not experience with hormonal injections.

Carla Y., a transgender woman from Iran, was held at a privately operated men’s detention center in California for approximately four months, beginning in January 2014.¹⁸⁰ She said that she “had to beg to get hormones,” and faced lengthy delays in scheduling medical appointments. Ultimately, she was only able to receive hormone replacement therapy during the last two weeks that she was in detention.

Monserrath López, from Honduras, said that she was undergoing hormone replacement therapy prior to entering immigration detention in Texas in December 2014. She repeatedly requested access to hormones during the five months that she was in detention, but was never able to access them. Monserrath also said that facility medical staff verbally harassed her on two occasions.

I was taking hormones before I was detained. I would always ask for them and they would say, ‘We don’t have them.’ The only thing they gave me was ibuprofen. We [the other transgender women and I] would go to the doctor almost every day because we had headaches and we were feeling really sick. One time a doctor told us, ‘We’re tired of seeing you here, you need to drink six glasses of water an hour. We’re sick of it, either drink water or we’ll send you to the hole [solitary confinement]. Another doctor told us, ‘You all think you’re women, but you’re really men. You’re acting ridiculous.’ The other doctors and nurses just laughed.¹⁸¹

Elsa T., a transgender woman from Mexico, was subject to mandatory custody due to an earlier criminal conviction and admitted to the segregated unit at Santa Ana in June 2015.¹⁸² She said that she was receiving prescribed hormone replacement therapy prior to entering detention but was unable to access hormones at the facility for at least two months. She also said that a nurse at the facility had referred to her with male pronouns, which discouraged her from seeking further medical care.

¹⁸⁰. Human Rights Watch telephone interview with Nanya Thompson, immigration attorney, San Diego, California, August 11, 2015.

¹⁸¹. Human Rights Watch interview with Monserrath López, Houston, Texas, July 7, 2015.

¹⁸². Human Rights Watch interview with Elsa T. (pseudonym), Santa Ana City Jail, Santa Ana, California, August 25, 2015.

But I don't want to make any more medical requests. [The nurses] don't have the sensitivity to deal with our community. One of them called me 'he.' I said, 'Don't you see that you're talking to a woman?'¹⁸³

Alba N., a transgender woman from Honduras admitted to the segregated unit at Santa Ana in June 2015, said she still had not received hormones one month after requesting them.

I feel depressed. The personal changes make me feel worse about being here, it's really hard. We have to fight [to take care of] our intimate needs.¹⁸⁴

Access to Routine and Emergency Medical Care

Routine and emergency medical care in US immigration detention is often widely inadequate. This has particular consequences for transgender women, who are often detained after fleeing physical and sexual abuse, and who may have been unable to access adequate medical care in their home countries due to discrimination among medical providers.

Transgender women held in the segregated unit at Santa Ana told Human Rights Watch they were often required to make repeated written requests and experienced lengthy delays when seeking medical care. Many of the women also said that the facility's nursing staff often told them to drink water or take ibuprofen for any range of symptoms, regardless of the severity of their condition, including vomiting, diarrhea, and indigestion.

Sofia G., a transgender woman from El Salvador who was housed in the segregated unit at Santa Ana was taken to a local hospital for an emergency appendectomy on May 7, 2015. Sofia told Human Rights Watch that she and her cellmate had made repeated requests to facility guards before she was ultimately transported to a hospital for the emergency procedure. She says that despite notifying guards that she was experiencing unbearable abominable pain, they shackled her around her waist, hands, and feet while transporting her to the hospital.

¹⁸³. Ibid.

¹⁸⁴. Human Rights Watch interview with Alba N. (pseudonym), Santa Ana City Jail, Santa Ana, California, August 26, 2015.

Previous Human Rights Watch research found that the use of restraints among detained pregnant women was typical during transportation between detention facilities and to and from off-site medical providers.¹⁸⁵ ICE’s current medical policy, revised in 2011 to include new restrictions on the use of restraints, states they should be used “only as a precaution against escape during transfer” or “for medical reasons, when directed by the medical officer.”¹⁸⁶ The policy also requires that facilities document medical approval when using restraints for medical and mental health reasons. Nevertheless, there is no written record of the use of restraints included within this patient’s medical records.

Timeline from Sofia G.’s medical record¹⁸⁷

5/7/2015 (2:05 AM): Patient seen by nurse on previous evening (5/6/2015) after reportedly vomiting three times after dinner. Nurse observed pain level of 8/10 and abdominal distention; provided patient with Pepto-Bismol.

5/7/2015 (7:05 AM): Patient seen by nurse and complained of stomach discomfort. Begun crying during medical assessment. Nurse provided patient with Tums.

5/7/2015 (7:45 AM): Nurse visited patient for follow-up; patient is currently sleeping.

5/7/2015 (2:44 PM): Patient seen by nurse and states that pain level is 10/10 and cannot be tolerated. Patient states that pain started on way back from court yesterday morning.

5/7/2015 (2:58 PM): Nurse contacts hospital emergency room.

¹⁸⁵. Human Rights Watch, *Detained and Dismissed: Women’s Struggles to Obtain Health Care in United States Immigration Detention*, pp. 34-35.

¹⁸⁶. US Immigration and Customs Enforcement, PBND 2011, “Use of Force and Restraints,” section 2.15.

¹⁸⁷. Provided by Sofia G.’s immigration attorney to Human Rights Watch with her consent.

I started feeling pain in my appendix [on May 6, 2015]. I asked for help many times and they didn't give it to me. The next day I felt like I was going to die from pain. I had complained [to guards] the day before ... I couldn't lay down, I couldn't sleep. My roommate asked them to take me to the hospital [on May 7, 2015], and the guards laughed at me. ... They took me to the hospital with shackles around my hands, feet, and stomach. I told them the shackles were too tight and they didn't pay attention to me. I couldn't bear the pain. My stomach burst at the hospital because they didn't take me in time. I felt it. I still had the shackles [on] and everything.¹⁸⁸

In another instance, Julieta L., a transgender woman from Mexico who was tortured and physically assaulted by violent gang members in Guadalajara, Mexico in 2015, said that she was unable to continue receiving antibiotics that she had been taking before being transferred from a detention facility in Arizona to the segregated unit at Santa Ana. A physician told her that one of her breast implants had burst during the assault and that she needed chest surgery. Julieta says that she began to receive death threats several days after the surgery, and that she immediately fled, without time to see her doctor and have her sutures removed, to seek protection in the US.

Several days later, Julieta presented herself to Border Patrol agents at the US Port of Entry in Laredo, Texas, and requested asylum. She was then transferred to a privately operated detention center in Texas.

I had to wait twelve days until they took the stitches out of my chest. The thread was getting buried underneath my skin. I asked them for antibiotics because I was afraid my body would reject the [silicone] implant. They gave me anti-inflammatory [medication] but they refused to give me the antibiotics.¹⁸⁹

Julieta says that she was unable to receive antibiotics during the 20 days she was held at the South Texas detention facility, or at the Santa Ana City Jail to which she was subsequently moved.

¹⁸⁸. Human Rights Watch interview with Sofia G. (pseudonym), July 17, 2015, Burbank, California.

¹⁸⁹. Human Rights Watch interview with Julieta L. (pseudonym), Santa Ana City Jail, August 26, 2015

I told them my chest was hot and that I needed antibiotics. It was burning inside. I wrote requests but they won't give me the medication.¹⁹⁰

¹⁹⁰. Ibid.

V. Alternatives to Detention

The Executive Committee of the UN Refugee Agency (UNHCR) has recognized that governments have a range of legitimate interests that can justify the detention of individual asylum seekers, while emphasizing that detention of asylum seekers should “normally be avoided” in view of the hardship it causes.¹⁹¹

As this report describes, the potential hardships of detention are particularly acute for transgender women. UNHCR has further observed that “lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals are frequently at risk while held in immigration detention facilities.”¹⁹²

Moreover, the agency’s detention guidelines state that LGBTI individuals should be provided the opportunity to present their claims for asylum in a “supportive environment throughout the refugee status determination procedure,”¹⁹³ and highlight that credibility assessments should be conducted in an “individualized and sensitive” manner.¹⁹⁴

Lastly, UNHCR advises that “solitary confinement is not an appropriate way to manage or ensure the protection of such individuals,” and that “release or referral to alternatives to detention” should be considered wherever the safety of LGBTI migrants cannot be guaranteed in detention.¹⁹⁵

The best way for governments to accommodate both the rights of asylum seekers and their own security and other relevant interests is to develop alternatives to detention, including supervised release and open centers. The same programs can be effective as alternatives

¹⁹¹ UN Refugee Agency (UNHCR), “Detention of Refugees and Asylum-Seekers,” October 13, 1986, ExCom Conclusions, No. 44. (XXXVII) – 1986, available <http://www.unhcr.org/3ae68c43co.html>.

¹⁹² UNHCR, “Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR’s Efforts to Protect Lesbian, Gay, Bisexual, Transgender, and Intersex Asylum-Seekers and Refugees,” December 2015, available <http://www.refworld.org/docid/566140454.html> (accessed December 18, 2015) p. 28.

¹⁹³ UNHCR, “Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees,” October 2012, available <http://www.unhcr.org/50ae466f9.pdf>, para. 58.

¹⁹⁴ Ibid, para. 62.

¹⁹⁵ UNHCR, “Detention Guidelines: Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention,” 2012, <http://www.unhcr.org/refworld/docid/503489533b8.html>, Guideline 9.7.

to detention for other categories of potential immigration detainees, particularly individuals who would face undue risk of abuse, trauma or other hardship in detention.

Immigration detention can add to existing psychological trauma among those fleeing torture, sexual violence, and other forms of abuse.¹⁹⁶ Detention also often impedes non-citizens from accessing attorneys, obtaining evidence in support of their claims, and staying in touch with families and other community support systems.¹⁹⁷

Authorities should refrain from detaining particularly vulnerable non-citizens when they are unable to guarantee their safety in detention, or where governments are more broadly unable to detain them in conditions that ensure respect for their human rights. This includes non-citizens with treatment or other health needs that authorities cannot or will not ensure prompt, adequate, and reliable access to in detention.

In situations where authorities do hold particularly vulnerable people in immigration detention, they should develop specific protocols to continuously evaluate the possibility of their release to non-custodial alternatives to detention.

According to a 2015 report by the International Detention Coalition, national governments in North and South America, Europe, and Asia have developed alternatives to detention with the intention of providing a more humane and cost-effective method to manage the flow of refugees, asylum seekers, and other irregular migrants.¹⁹⁸ In some instances, countries including Australia and Canada have developed supervision programs that allow authorities to monitor individuals who are released to the community but who may still be considered a flight risk.¹⁹⁹

For example, the Toronto Bail Program in Canada gives undocumented migrants who face possible deportation after completing a prison sentence, or asylum seekers who are

¹⁹⁶ See for example, The Center for Victims of Torture, Torture Abolition Survivor Support Coalition, International, and Unitarian Universalist Service Committee, “Tortured and Detained: Survivor Stories of US Immigration Detention,” November 2013, http://www.uusc.org/sites/default/files/report_torturedanddetained_nov2013.pdf.

¹⁹⁷ Human Rights Watch, *A Price Too High*, p. 58.

¹⁹⁸ International Detention Coalition, “There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention” (Revised Edition), September 2015, <http://idcoalition.org/publications/there-are-alternatives-revised-edition/>, pp. 7-15.

¹⁹⁹ *Ibid*, p. 52.

believed to pose a flight risk, the option of being placed under intensive case management and supervision as an alternative to institutional detention.²⁰⁰

In November 2014, President Obama used his executive authority to make sweeping, if non-permanent, changes to the US immigration system without legislative action by Congress. The actions include directions for immigration enforcement officers not to detain immigrants who are “suffering from serious physical or mental illness, who are disabled, elderly, pregnant, or nursing, who demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest.”²⁰¹

Nevertheless, this policy does not prescribe specific alternatives to detention for those who are subject to mandatory custody and does not explicitly discourage the detention of transgender women.

²⁰⁰. “Alternatives to Detention in Canada,” International Detention Coalition, September 2015, <http://idcoalition.org/alternatives-to-detention-in-canada/> (accessed December 17, 2015).

²⁰¹. US Department of Homeland Security, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” November 20, 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf (accessed December 1, 2015), Section C, p. 5.

VI. US Law and International Human Rights Obligations

Immigration Detention

The United States has a legitimate interest in holding some non-citizens in immigration detention, including in order to guarantee their appearance at hearings and to ensure the deportation of those judged to be removable.

However, the power of immigration authorities to detain people under current US immigration law is too broad, leading to the unnecessary detention of many migrants and asylum seekers, including long-time US residents.²⁰²

Each year, ICE detains hundreds of thousands of immigrants in jails and prison-like facilities across the US. Many—and in some years, most—of those individuals are held without any individualized determination that the government has any legitimate interest in doing so.²⁰³

At the same time, the discretion of US immigration authorities to refrain from keeping non-citizens in detention has been drastically and needlessly constrained. The United Nations Working Group on Arbitrary Detention has argued that “immigration detention should gradually be abolished ... If there has to be administrative detention, the principle of proportionality requires it to be a last resort.”²⁰⁴

The US government has taken the opposite approach, embracing mandatory and indiscriminate detention above all other alternatives.

US law requires mandatory detention for non-citizens who commit a broad array of criminal offenses, including minor drug possession and involvement in sex work, pending deportation proceedings.²⁰⁵ This requires authorities to detain tens of thousands of

²⁰² For a broader discussion of these issues, see Human Rights Watch, *Costly and Unfair: Flaws in US Immigration Detention Policy*, May 2010; Human Rights Watch, *A Price Too High*, June 2015.

²⁰³ For a broader discussion of this issue, see Human Rights Watch, *You Don't Have Rights Here*, October 2014.

²⁰⁴ UN Human Rights Council, Report of the Working Group on Arbitrary Detention, A/HRC/13/30, January 18, 2010, http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.30_en.pdf (accessed November 17, 2015).

²⁰⁵ USC 8 1226(c).

immigrants every year without any individualized consideration of whether they are a threat to public safety or a flight risk.

The US Congress has mandated that ICE “maintain a level of not less than 34,000 detention beds.”²⁰⁶ ICE and many members of Congress have interpreted this as requiring ICE to ensure that at least 34,000 immigrants are detained at any given point in time.²⁰⁷

These detention practices violate international human rights norms. All individuals in civil immigration custody should be afforded individualized assessments that consider whether their detention is necessary in light of legitimate government interests that cannot be achieved through some other, less restrictive alternative.²⁰⁸

Asylum seekers in particular should not be held in detention, absent clear and compelling reasons to do so. Governments should refrain from detaining asylum seekers on grounds of illegal entry or stay.²⁰⁹ They should instead prioritize the development and use of alternatives to detention for asylum seekers, including supervised release and open reception centers. Detention should never be used to deter would-be asylum seekers from seeking protection.

ICE has discretion to refrain from holding many asylum seekers in detention, but does not exercise that discretion as widely as it should.²¹⁰ In addition, many asylum seekers are subject to the broad categories of mandatory detention described above.

The UN special rapporteur on torture has observed that “[l]esbian, gay, bisexual and transgender persons who are deprived of their liberty are at particular risk of torture and ill-

²⁰⁶. H.R. 2029, 114th Congress (2015-2016).

²⁰⁷. See Human Rights Watch letter to US Department of Homeland Security Secretary Jeh Johnson, May 14, 2014, <https://www.hrw.org/news/2014/05/14/us-examine-us-removal-and-return-policies-compliance-international-law>. Human Rights Watch has argued that ICE can and should interpret this provision differently: as requiring a level of funding adequate to detain 34,000 people but not to actually fill that many beds at any given point in time.

²⁰⁸. UNHCR has noted that that “[m]andatory or automatic detention is arbitrary as it is not based on an examination of the necessity of the detention in the individual case.” United Nations Refugee Agency (UNHCR), “Detention Guidelines: Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention,” 2012, Guideline 4, available: <http://www.unhcr.org/refworld/docid/503489533b8.html>

²⁰⁹. The Executive Committee of the UN Refugee Agency (UNHCR) has recognized that governments do have a range of legitimate interests that can justify the detention of individual asylum seekers, while correctly emphasizing that detention of asylum seekers should “normally be avoided” in view of the hardship it causes. UN Refugee Agency (UNHCR), “Detention of Refugees and Asylum-Seekers,” October 13, 1986, ExCom Conclusions, No. 44. (XXXVII) – 1986, available <http://www.unhcr.org/3ae68c43co.html>.

²¹⁰. See Human Rights Watch, *You Don't Have Rights Here*; October 2014.

treatment, both within the criminal justice system and in other contexts such as immigration detention, medical establishments and drug rehabilitation centres. Criminal justice systems tend to overlook and neglect their specific needs at all levels. Transgender persons tend to be placed automatically in male or female prisons or wards without regard to their gender identity or expression.”²¹¹

The special rapporteur on torture has also stated that “[l]esbian, gay, bisexual and transgender detainees report higher rates of sexual, physical and psychological violence in detention on the basis of sexual orientation and/or gender identity than the general prison population.”²¹² Moreover, a “[f]ear of reprisals and a lack of trust in the complaints mechanisms frequently prevent lesbian, gay, bisexual and transgender persons in custody from reporting abuses.”²¹³

In light of these observations, governments should consider whether transgender women and other non-citizens are particularly vulnerable to abuse, ill treatment or—particularly in the case of migrants or asylum seekers who have suffered human rights abuse—retraumatization in detention. Transgender women and others who are particularly vulnerable to abuse should be continuously assessed for release to alternatives to detention.

Solitary Confinement

Indefinite solitary confinement is a form of human rights abuse, and is not a legitimate way of protecting individuals in detention from other forms of abuse.

International treaty bodies and human rights experts—including the Human Rights Committee,²¹⁴ the Committee against Torture,²¹⁵ and both the current and former UN special

²¹¹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/31/57, January 2016, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G16/000/97/PDF/G1600097.pdf?OpenElement>, para. 34.

²¹² Ibid, para 35.

²¹³ Ibid, para 35.

²¹⁴ UN Human Rights Committee, General Comment 20, Article 7, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994).

²¹⁵ UN Committee Against Torture, Consideration of reports submitted by States parties under Article 19 of the Convention, Conclusions and Recommendations of the Committee Against Torture, United States of America, U.N. Doc. CAT/C/USA/CO/2 (2006).

rapporteurs on torture²¹⁶—have concluded that depending on the specific conditions, the duration, and the prisoners on whom it is imposed, solitary confinement may amount to cruel, inhuman, or degrading treatment that violates human rights.

In a public address to the UN General Assembly in October 2011, UN Special Rapporteur on Torture, Juan E. Méndez, stated that “[i]ndefinite and prolonged solitary confinement, in excess of fifteen days, should also be subject to an absolute prohibition,” due to its scientifically proven negative effects on the mental health of those who are subjected to such forms of isolation.²¹⁷

The special rapporteur on torture has also stated that placement of lesbian, gay, bisexual and transgender individuals “in solitary confinement or administrative segregation for their own ‘protection’ can constitute an infringement on the prohibition of torture and ill-treatment. Authorities have a responsibility to take reasonable measures to prevent and combat violence against lesbian, gay, bisexual and transgender detainees by other detainees.”²¹⁸

In September 2015, the UN Economic and Social Council (ECOSOC) issued the Revised Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), providing specific limitations on the use of solitary confinement and prohibiting its use for disciplinary purposes. The rules define solitary confinement as “confinement of prisoners for 22 hours or more a day without meaningful human contact,” and identify prolonged solitary confinement as placement in “solitary confinement for a time period in excess of 15 consecutive days.”²¹⁹ The rules also explicitly prohibit the use of prolonged or indefinite solitary confinement under all circumstances, including for disciplinary purposes.

²¹⁶. UN General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment: Note by the Secretary-General, U.N. Doc. A/63/175, July 28, 2008, p. 18-21.

²¹⁷. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/19/61, January 2012, <http://www.ohchr.org/Documents/Issues/SRTorture/A-HRC-19-61.pdf>, para. 18.

²¹⁸. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/31/57, January 2016, para. 35.

²¹⁹. UN Economic and Social Council (ECOSOC), “United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules),” A/C.3/70/L.3, Resolution 2015/20, http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/70/L.3, Rules 43-44.

Sexual Assault and Degrading and Humiliating Treatment

International human rights authorities have addressed the general prohibition on rape and sexual assault of persons in detention. Specifically, the UN special rapporteur on torture has observed that “[i]t is widely recognized ... that rape constitutes torture when it is carried out by or at the instigation of or with the consent or acquiescence of public officials.”²²⁰ International human rights authorities have also specifically addressed the subject of body searches in custody.

The UN special rapporteur on torture has stated that, “[h]umiliating and invasive body searches may constitute torture or ill-treatment, particularly for transgender detainees.”²²¹ Moreover, the UN Office on Drugs and Crime has stated that in some prison systems, “strip searches and intimate body searches” may cause “humiliation and distress to those being searched.”²²² Moreover, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules) advise that, “Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.”²²³

Like international law, the US Constitution and federal law contain particular protections for individuals in state custody. The Eighth Amendment prohibits cruel and unusual punishment, which has been interpreted to include deliberate indifference by prison officials to the rape and sexual assault of prisoners.²²⁴

While the standard of treatment in the immigration detention context under the Fifth Amendment continues to be defined, federal case law has largely established that it at least prohibits conduct that would violate the Eighth Amendment in the prison context.²²⁵

²²⁰ Special Rapporteur on Torture report before the Human Rights Council, January 2008, A/HRC/7/3, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/Go8/101/61/PDF/Go810161.pdf?OpenElement>, para. 34.

²²¹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/31/57, January 2016, para. 36.

²²² UN Office on Drugs and Crime (UNODC), Handbook on Women and Imprisonment, 2nd edition, 2014, https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf, p. 44.

²²³ UN Economic and Social Council (ECOSOC), “United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules),” Resolution 2010/16, <https://www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf>, Rule 20.

²²⁴ *Farmer v. Brennan*, 511 U.S. 825 (1984).

²²⁵ *Jones v. Blanas*, 393 F. 3d 918, 931-934 (9th Cir. 2004).

Immigration detainees, who are in administrative custody, are also protected from rape and sexual assault in detention under the Fifth Amendment's restrictions on the handling of individuals in legal procedures. In addition, the Fourth Amendment's privacy protections are relevant to practices that may facilitate sexual harassment of individuals in custody. Federal law also contains specific criminal penalties for both sexual assault of federal prisoners and detainees, and prohibits any sexual contact with detained persons by guards in federal facilities.²²⁶

Medical Care

The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”²²⁷ The US, as a signatory, has an obligation not to undermine the object and purpose of the treaty.²²⁸

The US is additionally committed to protecting the right to health as a member of the United Nations under the Universal Declaration of Human Rights. The right to health is inseparable from provisions on the right to life and the right to freedom from degrading treatment that are included in the International Covenant on Civil and Political Rights and the Convention against Torture, both of which the US has ratified.²²⁹

The US Constitution establishes a right to medical care for individuals in government custody. The Eighth Amendment prohibition on cruel and unusual punishment entitles individuals convicted of crimes to medical care. However, since immigration detention is not punitive, the right to medical care for individuals held by ICE derives from the Fifth

²²⁶. 18 U.S.C.A. § 2243(b).

²²⁷. International Covenant on Economic, Social, and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 12(1).

²²⁸. Vienna Convention on the Law of Treaties, adopted May 29, 1969, UN Doc. A/Conf. 39/27, 1155 UNTS 331, entered into force January 27, 1980, art. 18(1).

²²⁹. International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21, U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 99 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, art. 10; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc., A/39/51 (1984), entered into force June 26, 1987, ratified by the United States on October 21, 1994, art. 10, 11, 16 (1).

Amendment, which states that no person shall “be deprived of life, liberty, or property, without due process of law.”²³⁰

In *Estelle v. Gamble*, the landmark case defining custodial responsibility for medical care, the US Supreme Court held that the Eighth Amendment prohibits “deliberate indifference” on the part of detention authorities to a “serious medical need” of a prisoner in their custody.²³¹

On several occasions, federal courts have applied this standard to transgender people’s right to access gender-affirming care in prison. The US Court of Appeals for the Seventh Circuit upheld a district court ruling which found that a Wisconsin state law barring transgender prisoners’ access to hormone replacement therapy and gender-affirming surgery constituted deliberate indifference to a serious medical need.²³²

Similarly, the US District Court for the Northern District of New York found that the state’s use of a so called freeze-frame policy, which only allowed transgender prisoners to access the level of gender-affirming care they received prior to incarceration, failed to address a serious medical need.²³³ The court added that “[t]here is no exception to this rule for serious medical needs that are first diagnosed in prison.”²³⁴

In April 2015, the US Department of Justice filed a statement of interest in the Middle District of Georgia in the case of *Diamond v. Owens, et al.*, involving a transgender woman who had been denied access to gender-affirming hormone therapy while incarcerated by the Georgia Department of Corrections. The Justice Department held that “[f]ailure to provide adequate treatment for transgender inmates with gender dysphoria constitutes cruel and unusual punishment under the Eighth Amendment,” and that “[f]reeze-frame and other policies that apply blanket prohibitions to such treatment are facially unconstitutional because they fail to provide individualized assessment and treatment of a serious medical need.”²³⁵

²³⁰ US Const., amend. V.

²³¹ *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

²³² *Fields v. Smith*, 653 F. 3d 550, 555 (7th Cir. 2011).

²³³ *Brooks v. Berg*, 270 F. Supp. 2d 312.

²³⁴ *Ibid.*

²³⁵ *Ashley Diamond v. Brian Owens, et al.*, Statement of Interest of the United States, April 3, 2015, pp. 17-18, available <http://www.justice.gov/file/387296/download> (accessed December 1, 2015).

In the case of HIV/AIDS, correctional health experts in the US and internationally consider that prison health care should meet the “equivalence standard,” which means it should meet at least the same standards of health care applicable in the community. The Revised Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) state that “[p]risoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.”²³⁶ Moreover, the rules state that health care services in confinement settings should provide “continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.”²³⁷

In line with human rights standards, US correctional health experts have made clear that this standard reflects the principle that “the medical management of HIV-positive inmates ... should parallel that offered to individuals in the non-correctional community.”²³⁸ Specifically, “medical care must meet the professional standards of the community and be performed by appropriately trained and credentialed providers who are properly supervised and who use clinical protocols.”²³⁹

²³⁶. UN Economic and Social Council (ECOSOC), “United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules),” Resolution 2015/20, Rule 24.

²³⁷. Ibid.

²³⁸. National Commission on Correction Health Care, Standards for Health Services in Jails, 2003.

²³⁹. American Public Health Association, Standards for Health Care in Correctional Institutions, (2003), p.2.

Recommendations

To the United States Congress

Pass legislation:

- Barring ICE from holding transgender women in men’s detention facilities;
- Barring ICE from placing any immigration detainees in administrative segregation for indefinite periods as a form of protection or for any other reason;
- Requiring ICE to provide prompt and uninterrupted access to HIV/AIDS treatment and to hormone therapy for all individuals in immigration detention who require it, and barring ICE from detaining individuals in facilities that are unable to meet these requirements;
- That will facilitate efforts to develop alternatives to immigration detention for transgender women and other individuals who are particularly vulnerable to abuse in detention, as well as for individuals who require higher standards of treatment than is available in detention facilities. These alternatives should also be available to individuals who are subject to mandatory custody.
- To ensure that transgender women and other individuals considered members of vulnerable populations are continuously assessed for release or alternatives to detention.

Amend:

- Immigration laws to eliminate mandatory custody and ensure all non-citizens are given an opportunity for an individualized assessment that weighs all relevant factors when determining the need for detention.
- Congressional appropriations language to abolish the 34,000 immigration detention bed requirement in order to enable immigration authorities to more effectively conduct individualized assessments.

To the Department of Homeland Security

- Stop holding transgender women in immigration detention if the US government cannot or will not take all of the necessary steps to ensure that transgender women are detained in a setting that is free of abuse and respectful of their specific medical and mental health needs.
- Prioritize the development and expansion of alternatives to detention for transgender women and other non-citizens considered members of vulnerable populations, including those subject to mandatory custody.
- Expand and improve independent oversight of facility compliance with existing detention standards, including the 2015 Transgender Care Memorandum. Monitoring should be carried out by multiple independent, nongovernmental organizations that do not contract with ICE for other services.
- Investigate the alleged patterns of abuse and maltreatment of people in immigration detention at the Santa Ana City Jail described in this report, and ensure any responsible parties are held accountable.

To Immigration and Customs Enforcement

- Wherever possible and appropriate, release from detention or make use of alternatives to detention in individual cases involving transgender women and members of other vulnerable groups.
- Wherever possible and appropriate, refrain from detaining asylum seekers on grounds of illegal entry or stay.
- Revise the June 2015 Transgender Care Memorandum from a voluntary contract modification to a binding regulatory framework. Require any immigration detention facility holding transgender women to implement its provisions into its operating agreement with ICE. Monitoring should be carried out by multiple independent, nongovernmental organizations that do not contract with ICE for other services.
- Wherever transgender women or members of other vulnerable groups are detained, conduct routine assessments to determine eligibility for release to alternatives to detention.
- Wherever transgender women are detained, ensure that they have the ability to choose, on an individualized basis, whether they wish to be housed in a women's facility or in a segregated housing unit reserved exclusively for

transgender women. Women's facilities should make whatever reasonable accommodations are necessary to facilitate these arrangements, while ensuring that transgender women are provided the same access to the facility as others in detention. Under no circumstances should transgender women be held in men's facilities, or placed in indefinite administrative segregation for lack of alternatives.

- Wherever transgender women are detained, ensure that they are provided prompt and adequate access to all necessary medical and mental health care services, including hormone replacement therapy, HIV-related care, and psychological counseling.
- As a matter of urgency, track in real time the locations where all transgender women in immigration detention are held. With immediate effect, proactively monitor all of these facilities to ensure that these individuals are held in conditions that align with the recommendations of this report or are moved to another facility where this can be ensured.
- Take immediate steps to ensure that no transgender women in immigration detention are being held in men's facilities, or in indefinite administrative segregation, anywhere in the US.
- Take immediate steps to end abusive practices at the Santa Ana City Jail, including strip searches of transgender women carried out by male guards, and ensure that transgender women detained there are able to freely access hormone therapy and other necessary medical treatment. If these issues cannot be promptly and comprehensively addressed, stop housing transgender women at the Santa Ana City Jail altogether and identify an alternative site.
- If an alternative site is identified to hold transgender women in a segregated unit, articulate clear and specific steps that will ensure the same abuses do not occur there. Ensure that safe and humane conditions are provided in a respectful environment.
- Ensure that all reports of sexual assault of people in immigration detention are thoroughly investigated. Investigations should include an independent inquiry into the actions or failures to act by all ICE employees, facility staff, and contractors responsible for that facility.
- End the use of prolonged or indefinite solitary confinement and other forms of physical isolation in detention facilities. Develop alternative measures of protection for transgender women and members of other vulnerable groups,

including release to alternatives to detention or placement in segregated units. Ensure that segregated units provide the same access to programming, recreation, and out-of-cell time appropriate to civil detention.

Acknowledgments

This report was researched and written by Adam Frankel, coordinator in the LGBT Rights Program at Human Rights Watch.

It was reviewed and edited by Graeme Reid, LGBT Rights Program director; Antonio Ginatta, US Program advocacy director; Clara Long, US Program researcher; Grace Meng, senior US Program researcher; Bill Frelick, Refugee Rights Program director; Meghan Rhoad, Women's Rights Division researcher; Megan McLemore, senior researcher in the Health and Human Rights Division; Dan Baum, senior editor/researcher in the Americas Division; Christopher Albin-Lackey, senior legal advisor; and Danielle Haas, senior program editor.

Rebecca Balis and Katie Lynn Anderson, interns in the US Program, obtained public records from the City of Santa Ana, California, included as an appendix to this report.

W. Paul Smith, US Program associate; Olivia Hunter, publications associate; Grace Choi, publications director; and Fitzroy Hepkins, administrative manager, provided production assistance.

We thank the many immigrant transgender women who generously shared their stories for this report. We also thank the many lawyers, community advocates, immigrant rights organizations, and others who shared their expertise with us for this report. Human Rights Watch thanks the Center for American Progress, Community Initiatives for Visiting Immigrants in Confinement (CIVIC), Immigration Equality, National Immigrant Justice Center (NIJC), and Transgender Law Center for their years of work in documenting human rights violations against detained immigrant transgender women.

Human Rights Watch would also like to extend particular thanks to the individuals and community organizations who shared their expertise with us, helped us to identify research participants, and facilitated interviews, including AIDS Center of Queens County (New York), Arcoíris Liberation Team (Phoenix), Casa Ruby (Washington, DC), El/La Para TransLatinas (San Francisco), Familia: Trans Queer Liberation Movement (Los Angeles), Lorena Borjas Community Fund (New York), Mariposas sin Fronteras (Tucson), TransLatin@ Coalition (Los Angeles), and Translatina Network (New York).

Human Rights Watch offers its sincere gratitude to Isa Noyola and Flor Bermudez of Transgender Law Center, as well as Jorge Gutiérrez of Familia: Trans Queer Liberation Movement, who provided extensive background information and expertise, helped to identify and facilitate interviews, and read and commented on a draft version of this report. We also thank Olga Tomchin, formerly of Transgender Law Center and currently of the National Day Laborer Organizing Network, for providing expertise and extensive consultation at the start of this research.

Annexes I-IV

1. Annex 1: Human Rights Watch email communication with ICE officials
2. Annex 2: Human Rights Watch letter to ICE Director Sarah Saldaña
3. Annex 3: Contract modification between ICE and the city of Santa Ana, California – establishment of segregated unit for gay men and transgender women at the Santa Ana City Jail
4. Annex 4: Contract modification between ICE and the city of Santa Ana, California – implementation of ICE sexual assault standards

Adam Frankel

From: Khoury, Lana <Lana.Khoury@ice.dhs.gov>
Sent: Tuesday, February 02, 2016 4:01 PM
To: Adam Frankel
Cc: Rocha, Richard A
Subject: RE: HRW questions re: transgender women

Follow Up Flag: Follow up
Flag Status: Flagged

Good afternoon Adam:

Please find responses to your remaining questions below. We look forward to reading your report.

1. How many transgender women in ICE custody are currently housed in the protective custody unit at the Santa Ana City Jail?
 - As you may know, Santa Ana City Jail currently places all transgender women detainees in a separate housing unit capable of housing 62 individuals in single and double rooms. As of February 2, 2016, there are 26 transgender women in this unit; of course, the number of detainees fluctuates depending on the number of transfers and/or release.
2. How many transgender women in ICE custody are currently housed in facilities other than the dedicated unit at Santa Ana? How many and in which facilities are they being held?
 - At this time, ICE is not able to provide such cumulative data. As part of the implementation of its [*Transgender Care Memorandum*](#), ICE recently updated electronic data systems to capture a detainee's self-identification as Transgender. ICE is continuing to work on the next phase of implementation, which would allow for the generation of a report detailing the number of transgender individuals in ICE custody nationwide.
3. What housing arrangements are provided to transgender women who are held outside of the protective custody unit at Santa Ana? Are any of these transgender women being housed among general male population? If so, how many?
 - The decision of where to place a particular detainee is made on a case-by-case-basis, taking into account several factors, including the transgender woman's preference and the safety and well-being of the detainee. Other than dedicated housing units, transgender women detainees may be housed in any areas where general population detainees are held.
4. Is the Santa Ana City Jail the only facility which currently operates a protective custody unit for transgender women? Does ICE plan to establish protective custody units at any other facilities?
 - Santa Ana City Jail is the only facility that currently operates a dedicated housing unit for transgender women detainees.
 - ICE is working with several facilities to accept the voluntary contract modification contained in the [*Transgender Care Memorandum*](#). The contract modification requires the facility to create a Transgender Care Classification Committee, responsible for determining best housing for each transgender detainee. Housing options would include: general housing consistent with the detainee's biological sex, general housing consistent with the detainee's gender identity, a protective custody unit, and medical or administrative segregation.
 - ICE anticipates Santa Ana City Jail will accept the contract modification soon.

- In order to reduce the number of cross-country transfers, ICE is also working on identifying an appropriate East Coast or Central United States facility to adopt these modifications.
5. Does ICE ultimately plan to house all transgender women in protective custody units? When do you estimate that all transgender women will be housed in protective custody units and what are the remaining steps to reach this point?
- The decision of where to house a transgender detainee is made on a case-by-case basis, taking into account several factors.
 - ICE is working with some facilities to accept the voluntary contract modification contained in the *Transgender Care Memorandum*. The contract modification requires the facility to create a Transgender Care Classification Committee, responsible for determining best housing for each transgender detainee. Housing options would include: general housing consistent with the detainee's biological sex, general housing consistent with the detainee's gender identity, a protective custody unit, and medical or administrative segregation.
 - ICE hopes to have at least two facilities adopt the contract modification in 2016.

Feel free to reach out if you have additional questions.

Sincerely,

Lana Khoury

Senior Advisor for LGBTI Care, and
ERO Language Access Coordinator
Custody Programs
DHS/ICE/ERO

From: Adam Frankel [mailto:frankea@hrw.org]
Sent: Wednesday, January 27, 2016 9:38 AM
To: Khoury, Lana
Cc: Rocha, Richard A
Subject: HRW questions re: transgender women

Dear Lana,

I hope this e-mail finds you well.

I am writing to you with a few background questions as I finalize the forthcoming Human Rights Watch report on transgender women in US immigration detention.

We plan to release the report in early March. Prior to publication, I will share a letter with you and Andrew, outlining our findings and inviting comment.

I would appreciate your prompt response to these important questions. Would it be possible to please get back to me by **Wednesday, February 3**?

I look forward to hearing from you and please feel free to contact me if you need any further clarification.

Thank you for your assistance.

Best,
Adam

1. How many transgender women in ICE custody are currently housed in the protective custody unit at the Santa Ana City Jail?
2. How many transgender women in ICE custody are currently housed in facilities other than the dedicated unit at Santa Ana? How many and in which facilities are they being held?
3. What housing arrangements are provided to transgender women who are held outside of the protective custody unit at Santa Ana? Are any of these transgender women being housed among general male population? If so, how many?
4. Is the Santa Ana City Jail the only facility which currently operates a protective custody unit for transgender women? Does ICE plan to establish protective custody units at any other facilities?
5. Does ICE ultimately plan to house all transgender women in protective custody units? When do you estimate that all transgender women will be housed in protective custody units and what are the remaining steps to reach this point?

Adam Frankel
Coordinator, LGBT Rights Program
Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, NY 10118
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frankea@hrw.org | www.hrw.org

Annex 2: Human Rights Watch letter to ICE Director Sarah Saldaña

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300; 917-591-3452

February 10, 2016

The Honorable Sarah R. Saldaña
Director
US Immigration and Customs Enforcement
U.S Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536-5600



HRW.org

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Sent by e-mail to: sarah.saldana@hq.dhs.gov

Dear Director Saldaña:

In March, Human Rights Watch will be releasing a report on abuse and maltreatment of transgender women in US immigration detention. As you know, in June 2015, US Immigration and Customs Enforcement (ICE) released the Transgender Care Memorandum, containing a new set of guidelines for the detention of transgender individuals in ICE custody. The guidelines recognize the vulnerability of transgender people in detention and instruct immigration officials to “consider whether the use of detention resources is warranted” and to assess “on a case by case basis, all relevant factors in this determination, including whether an individual identifies as transgender.”¹ While these guidelines are an important step toward improving the treatment of transgender women in detention, they fall short of the necessary steps to ensure that these uniquely vulnerable individuals are held in a setting that is free of abuse and respectful of their specific medical and mental health needs.

For this report, Human Rights Watch interviewed 28 transgender women who were held in US immigration detention at various points in time from 2011-2015, including three transgender women who were then being held at men’s detention centers in Texas, and 12 transgender women who were either then or had recently been held in the protective custody unit used exclusively to house transgender women at the Santa Ana City Jail in Santa Ana, California. We also interviewed 13 transgender women who had been held in men’s immigration detention facilities at various points in time between

¹ US Immigration and Customs Enforcement, “Further Guidance Regarding the Care of Transgender Detainees,” June 19, 2015, available <https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf>, p. 1.

2011 and 2015, one transgender woman who was detained in Virginia in 2010, and one transgender man who was detained in Texas in 2013.

We remain deeply concerned that ICE policy continues to permit placements of transgender women in US immigration detention among the general population in men's facilities, or in solitary confinement for indefinite periods of time.² This was confirmed to Human Rights Watch by Lana Khoury, ICE's senior advisor for LGBTI care, who explained in an email dated February 2, 2016 that placements for transgender women in ICE custody may include "general housing consistent with the detainee's biological sex, general housing consistent with the detainee's gender identity, a protective custody unit, and medical or administrative segregation."³ In light of all this, it is particularly troubling that ICE is unable to identify the number or locations of transgender women being held outside of the protective custody unit at Santa Ana, and have failed to monitor the conditions under which they are being held elsewhere. Khoury's email to Human Rights Watch stated that, "At this time, ICE is not able to provide such cumulative data."⁴

For many or perhaps even all of the transgender women who are held outside of the Santa Ana facility, it appears their only options of detention are to be housed among the general male population or to be placed in indefinite solitary confinement. ICE officials stated to Human Rights Watch that the "decision of where to place a particular detainee is made on a case-by-case-basis,"⁵ but the reality is that many facilities may have no capacity to hold transgender women in safe and humane conditions. More than half of the transgender women interviewed by Human Rights Watch said that they had either been held in solitary confinement or among the general male population at some point while they were in detention. In some of these cases, transgender women were held in solitary confinement for prolonged periods of time simply because authorities could not or would not devise a way to house them safely and humanely.

Human Rights Watch research found that transgender women housed in men's facilities face an extremely high risk of sexual assault and other forms of violence by both guards and male detainees. Those interviewed by Human Rights Watch who were placed in solitary confinement had experienced severe psychological impacts resulting from their isolation. In several instances, these placements exceeded a period of fifteen days and lasted as long as three to six months, therefore constituting prolonged solitary confinement.

² Ibid, "Attachment 1: ICE Detention Facility Contract Modification for Transgender Care," sections 3(e).

³ Human Rights Watch email communication with Lana Khoury, ICE senior advisor for LGBTI care, February 2, 2016.

⁴ Ibid.

⁵ Ibid.

We also remain concerned that transgender women held in the protective custody unit at the Santa Ana City Jail, in Santa Ana, California, continue to face abusive and humiliating treatment at that facility. Despite having established a protective unit for transgender women, which has been used to house detained transgender women and gay and bisexual men since April 2012, the facility has not yet modified its operating agreement with ICE in order to formally adhere to the requirements of the June 2015 Transgender Care Memorandum.

Transgender women interviewed by Human Rights Watch who were held at Santa Ana alleged that they had been subjected to degrading strip searches by male guards;⁶ that they were unable to access necessary medical and mental health care services, including hormone replacement therapy; and that they had been subjected to frequent “lockdowns” for mostly minor disciplinary infractions, where they were confined to their cells for 22 to 24 hours per day.

Human Rights Watch urges ICE to promptly investigate the alleged patterns of abuse and maltreatment of people in immigration detention at the Santa Ana City Jail, and to ensure that any responsible parties are held accountable. Moreover, Human Rights Watch recommends that ICE prioritize the development and expansion of alternatives to detention for transgender women and other non-citizens considered members of vulnerable populations, including those who are subject to mandatory detention. In addition, Human Rights Watch urges ICE to take immediate and proactive measures to ensure that no transgender women in immigration detention are held in men’s facilities, or in indefinite solitary confinement, anywhere in the United States.

In June 2015, 35 members of Congress urged US Secretary of Homeland Security Jeh Johnson to develop community-based alternatives for transgender women and others who are uniquely vulnerable to abuse in detention.⁷ Ultimately, if the US government is unable or unwilling to take all of the aforementioned necessary steps to ensure that transgender women are detained in a setting that is free of abuse and respectful of their specific medical and mental health needs, Human Rights Watch recommends that it should no longer hold transgender women in immigration detention at all.

We would greatly appreciate if you could respond in writing by February 24, 2016, in order to allow us to integrate your response into our forthcoming report. Lastly, we welcome an opportunity to meet with you in person to discuss the extent to which

⁶ For reference, please see January 2016 complaint submitted by Community Initiatives for Visiting Immigrants in Confinement (CIVIC), regarding the use of strip searches at the Santa Ana City Jail, January 25, 2015, available http://www.endisolation.org/wp-content/uploads/2016/01/CIVIC_Complaint_SACJ.pdf.

⁷ Letter from Members of the United States Congress to US Homeland Security Secretary Jeh Johnson, June 23, 2015, available http://grijalva.house.gov/uploads/2015_6_23_LGBT_Detainee_Letter.pdf.

your agency has considered releasing transgender women from detention, as well as other possible steps your agency could take to expand the use of alternatives to detention for this uniquely vulnerable population.

We look forward to meeting with you and your relevant staff, preferably between the dates of March 3 and March 7. Please share with us your availability during those dates.

Best regards,

A handwritten signature in blue ink, appearing to be 'AG', with a stylized flourish extending to the right.

Antonio Ginatta
US Advocacy Director
Human Rights Watch

Cc: Andrew Lorenzen-Strait, Deputy Assistant Director, Custody Programs Division, Enforcement and Removal Operations; Lana Khoury, Senior Advisor for LGBTI Care, Enforcement and Removal Operations; Richard Rocha, Communications Advisor, Enforcement and Removal Operations

Annex 3: Contract modification between ICE and the city of Santa Ana, California – establishment of segregated unit for gay men and transgender women at the Santa Ana City Jail

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1 CONTRACT ID CODE		PAGE OF PAGES	
2 AMENDMENT/MODIFICATION NO ICE/DM		3 EFFECTIVE DATE See Block 16C		4 REQUISITION/PURCHASE REQ NO. PRO-12-L057	
6 ISSUED BY ICE/Detent Mngt/Detent Contract-LAG Immigration and Customs Enforcement Office of Acquisition Management 24000 Avila Road, Room 3104 Attn: Natasha Nguyen, (949)425-7030 Laguna Niguel CA 92677		CODE ICE/DM/DC-LAGUNA		5 PROJECT NO (if applicable)	
8. NAME AND ADDRESS OF CONTRACTOR (No. street, county, State and ZIP Code) SANTA ANA CITY OF 20 CIVIC CENTER PLAZA M-87 SANTA ANA CA 927014058		7 ADMINISTERED BY (If other than Item 6) ICE/Detent Mngt/Detent Contract-LAG Immigration and Customs Enforcement Office of Acquisition Management 24000 Avila Road, Room 3104 Attn: Natasha Nguyen, (949)425-7030 Laguna Niguel CA 92677		CODE ICE/DM/DC-LAGUNA	
CODE 0831532470000		FACILITY CODE		9A. AMENDMENT OF SOLICITATION NO. 9B DATED (SEE ITEM 11)	
				10A MODIFICATION OF CONTRACT/ORDER NO. DROIGSA-06-0003//	
				10B DATED (SEE ITEM 13) 07/03/2006	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended. is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment, (b) By acknowledging receipt of this amendment on each copy of the offer submitted, or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (if required)

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	A THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO IN ITEM 10A.
	B THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
X	C THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Bilateral Agreement in Accordance with IGSA
	D OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not. is required to sign this document and return 1 copies to the issuing office

14 DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings including solicitation/contract subject matter where feasible)

DUNS Number: 083153247

COR POC: Daniel Pomplun, (661) 940-3555
Finance/Program POC: Tina Komatz, (213) 830-7984

This modification is issued to add provisions to separate and dedicate 1 POD (64 bed spaces) for Lesbian, Gay, Bisexual and Transgender (LGBT) to the Inter-Governmental Service Agreement (IGSA). See Attached Provisions.

LIST OF CHANGES:
Continued ...

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as herein changed, remains unchanged and in full force and effect

15A NAME AND TITLE OF SIGNER (Type or print) <i>Ann Mathew, Manager</i>		16A NAME AND TITLE OF CONTRACTING OFFICER (Type or print) <i>Virginia L. Collier, Roberta J. Halls</i>	
15B CONTRACTOR/OFFEROR <i>[Signature]</i>	15C DATE SIGNED 3-14-12	16B UNITED STATES OF AMERICA <i>[Signature]</i>	16C DATE SIGNED

NSN 7540-01-152-8070
Previous edition unusable

STANDARD FORM 30 (REV 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

Annex 4: Contract modification between ICE and the city of Santa Ana, California

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 1
2. AMENDMENT/MODIFICATION NO. P	3. EFFECTIVE DATE See Block 16	4. REQUISITION/PURCHASE REQ. NO	5. PROJECT NO. (If applicable)	
6. ISSUED BY Immigration and Customs Enforcement Office of Acquisition Management 24000 Avila Road, Room 3104 Laguna Niguel CA 92677	CODE ICE/DM/DC-LAGUNA	7. ADMINISTERED BY (IF OTHER THAN ITEM 6) Immigration and Customs Enforcement Office of Acquisition Management 24000 Avila Road, Room 3104 Laguna Niguel CA 92677	CODE ICE/DM/DC-LAGUNA	
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State, and Zip Code) SANTA ANA CITY OF 20 CIVIC CENTER PLAZA M-17 SANTA ANA CA 927014058		<input type="checkbox"/>	9A. AMENDMENT OF SOLICITATION NO.	
			9B. DATED (SEE ITEM 11)	
		<input checked="" type="checkbox"/>	10A. MODIFICATION OF CONTRACT/ORDER NO. DROIGSA-06-0003//	
CODE: 0831532470000		FACILITY CODE:	10B. DATED (SEE ITEM 11) 07/03/2006	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered, solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers is extended is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods:

(a) By completing Items 8 and 15, and returning copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers, FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If Required)
N/A

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO., AS DESCRIBED IN ITEM 14

<input type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify Authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
<input type="checkbox"/>	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43,103 (b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input checked="" type="checkbox"/>	D. OTHER (Specify type of modification and authority) Mutual Agreement of the Parties

E. IMPORTANT: Contractor is NOT is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.
The purpose of this modification is to incorporate ICE 2011 Performance Based Detention Standard 2.11 - Sexual Abuse and Assault Prevention and Intervention.
Should there be a conflict with between this standard and any other term and condition of the agreement identified in Block 10A on this modification, you are to contact the Contracting Officer for clarification.
All other terms and conditions remain unchanged.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER <i>Alan Martin, Jail Administrator</i>	16A. NAME AND TITLE OF CONTRACTING OFFICER Roberta J Halls
15B. CONTRACTOR/OFFEROR <i>(Signature of person authorized to sign)</i>	16B. UNITED STATES OF AMERICA <i>(Signature of Contracting Officer)</i>
15C. DATE SIGNED <i>12/04/08</i>	16C. DATE SIGNED

INSTRUCTIONS

Instructions for items other than those that are self-explanatory, are as follows:

(a) Item 1 (Contract ID Code). Insert the contract type identification code that appears in the title block of the contract being modified.

Item 3 (Effective date)

- (1) For a solicitation amendment, change order, or administrative change, the effective date shall be the issue date of the amendment, change order, or administrative change.
- (2) For a supplemental agreement, the effective date shall be the date agreed to by the contracting parties.
- (3) For a modification issued as an initial or confirming notice of termination for the convenience of the Government, the effective date and the modification number of the confirming notice shall be the same as the effective date and modification number of the initial notice.
- (4) For a modification converting a termination for default to a termination for the convenience of the Government, the effective date shall be the same as the effective date of the termination for default.
- (5) For a modification confirming the contracting officer's determination of the amount due in settlement of a contract termination, the effective date shall be the same as the effective date of the initial decision.

Item 6 (Issued By). Insert the name and address of the issuing office. If applicable, insert the appropriate issuing office code in the code block.

Item 8 (Name and Address of Contractor). For modifications to a contract or order, enter the contractor's name, address, and code as shown in the original contract or order, unless changed by this or a previous modification.

Item 9. (Amendment of Solicitation No. – Dated) and 10. (Modification of Contract/Order No.-Dated). Check the appropriate box and in the corresponding blanks insert the Number and date of the original solicitation, contract, or order.

Item 12 (Accounting and Appropriation Date). When appropriate, indicate the impact of the modification on each affected accounting classification by inserting one of the following entries.

- (1) Accounting classification.....
 Net Increase \$.....
- (2) Accounting classification
 Net Decrease \$.....

NOTE: If there are changes to multiple accounting classifications that cannot be placed in block 12, insert an asterisk and the words "See continuation sheet."

Item 13. Check the appropriate box to indicate the type of modification. Insert in the corresponding blank the authority under which the modification is issued. Check whether or not contractor must sign this document. (See FAR 43.103).

Item 14 (Description of Amendment/Modification).

(1) Organize amendments or modifications under the appropriate Uniform Contract Format (UCF) section headings from the applicable solicitation or contract. The UCF table of contents, however, shall not be set forth in this document.

(2) Indicate the impact of the modification on the overall total contract price by inserting one of the following entries:

- (i) Total contract price increased by \$.....
- (ii) Total contract price decreased by \$.....
- (iii) Total contract price unchanged.

(3) State reason for modification.

(4) When removing, reinstating, or adding funds, identify the contract items and accounting classifications.

(5) When the SF 30 is used to reflect a determination by the contracting officer of the amount due in settlement of a contract terminated for the convenience of the Government, the entry in Item 14 of the modification may be limited –

- (i) A reference to the letter determination; and
- (ii) A statement of the net amount determined to be due in settlement of the contract.

(6) Include subject matter or short title of solicitation/contract where feasible.

Item 16B. The contracting officer's signature is not required on solicitation amendments. The contracting officer's signature is normally affixed last on supplemental agreements.



“Do You See How Much I’m Suffering Here?”

Abuse against Transgender Women in US Immigration Detention

At any given point in time, dozens of transgender women, including asylum seekers who have come to the United States seeking protection from abuse in their home countries, are locked up in jails or prison-like detention centers across the country. Once there, many are subjected to sexual assault and ill-treatment. Some are placed in indefinite solitary confinement because authorities cannot devise any acceptable way to protect them from these abuses.

Based on interviews with 28 transgender women, *“Do You See How Much I’m Suffering Here?”* examines abuse and ill-treatment of transgender women in US immigration detention. It advocates the development and expansion of alternatives to detention for transgender women and other individuals who are vulnerable to abuse in detention.

US Immigration and Customs Enforcement (ICE), the federal agency responsible for immigration detention, announced a new set of guidelines in June 2015 intended to improve detention conditions for transgender women. However, these efforts have so far failed to address widespread abuse facing these uniquely vulnerable individuals. The US government must ensure that transgender women are detained in a setting that is free of abuse and respectful of their specific medical and mental health needs. If it is unable or unwilling to take the necessary steps to do so, it should not hold transgender women in immigration detention at all.

*(above) A support group meets at the El/La Para TransLatinas community center in San Francisco, California. The organization advocates and provides services for immigrant transgender women.
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*(front cover)
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