

PROTECTING TRANS RIGHTS



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Acknowledgments

1. Nonbinary Lawyers
2. Who's Not in the Room
3. Abolitionist Movement Lawyering





TRANS RIGHTS BEHIND BARS

Sexual Violence and the Eighth Amendment

Conditions of Confinement

Gender-Affirming Medical Care

Americans with Disabilities Act

Transformative Justice / Alternatives to
Incarceration

SEXUAL VIOLENCE AND THE EIGHTH AMENDMENT

Farmer v. Brennan, 511 U.S. 825 (1994)

Shorter v. United States, 12 F.4th 366 (3d Cir. 2021)

Prison Rape Elimination Act

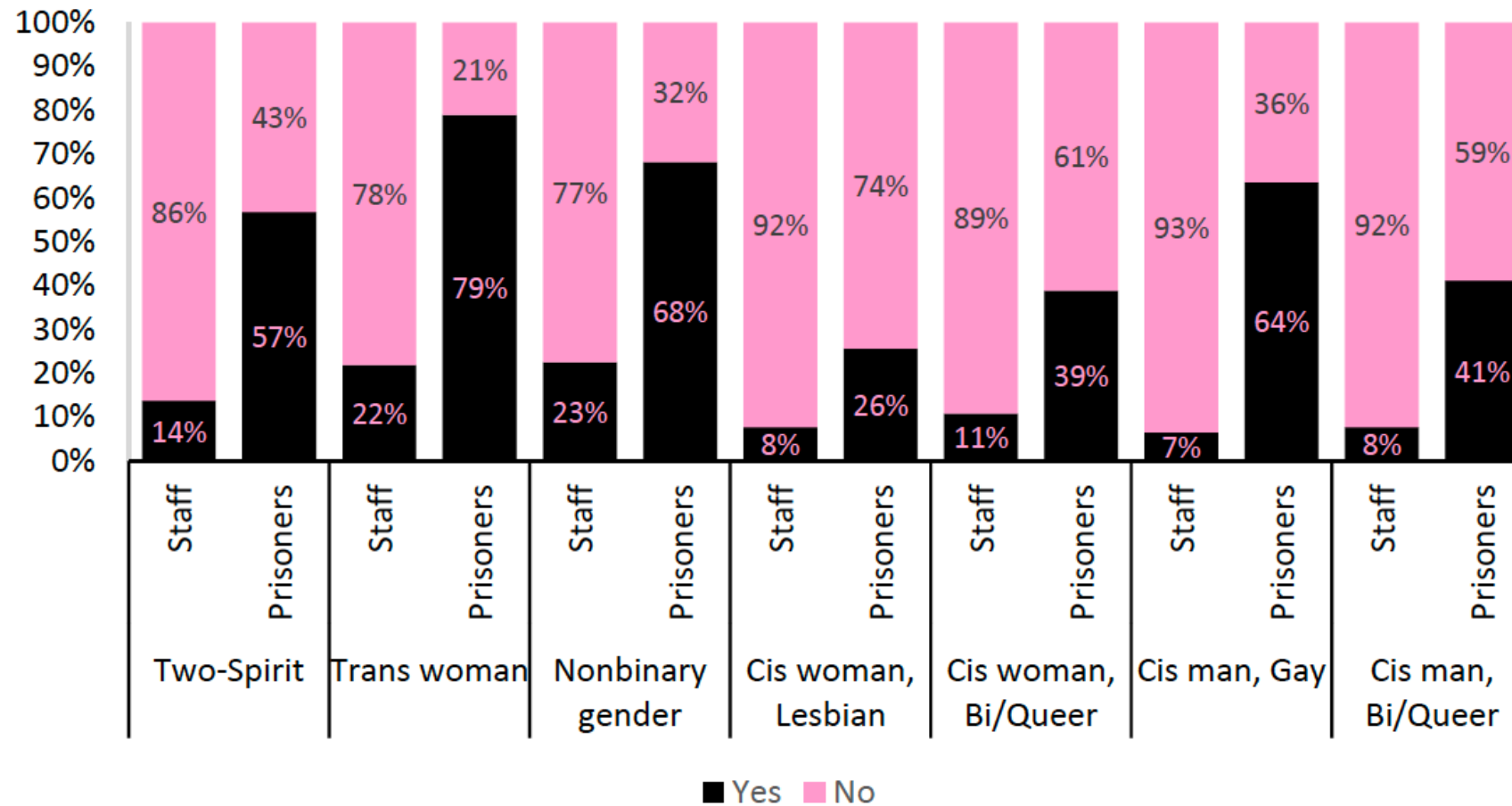
By the Numbers

- As of 2020, according to NBC News, 4,890 trans people were incarcerated in state prisons across 45 states and D.C. only 15 of them were reported as housed according to their gender.
- In 2021, 1,200 trans people in federal prison. The DOJ found in 2012 that 40% of trans prisoners have been sexually assaulted, ten times the rate of the general prison population.



COMING OUT OF CONCRETE CLOSETS

A REPORT ON BLACK & PINK'S NATIONAL LGBTQ PRISONER SURVEY



Whether respondents experienced sexual assault/rape by prison staff or by other prisoners, by gender/sexuality

Respondents: 51, 137, 62, 39, 36, 198, & 410, respectively

PREA generally seen as ineffective

- False PREA allegations
- “Cell mate threatened me. I reported the situation to the guard per PREA and published policy. I was punished by 18 days in the hole solitary confinement in disciplinary segregation unit.”
- Consensual sex:
- “It’s nice to not be alone in here, but we have to be very secretive. Now with P.R.E.A. staff use it against Homosexuals. If they think we're together, they separate us permanently.”
- MA LGBTQ Commission



Is *Bivens* dead?

Carlson v. Green, 446 U.S. 14 (1980)

Farmer v. Brennan

Shorter v. United States



CONDITIONS OF CONFINEMENT



Separate Shower Time

Single-Cell Housing

Shaving, Electrolysis, Hair length

Commissary Items

Massachusetts and Maryland Bills

GENDER-AFFIRMING MEDICAL CARE

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

World Professional Association for Transgender Health (WPATH) Standards of Care

Dr. Stephen Levine

Timeline

Denied deliberate indifference claim for gender-affirming surgery (GAS) because there were two “adequate” options.

Kosilek (1st Cir. 2014) (en banc)

Texas’s de facto ban on GAS did not violate the Eighth Amendment because of ongoing controversy of medical necessity of surgery.

Gibson (5th Cir. 2019)

Critiquing Gibson, held that GAS was medically necessary and that prison medical official was deliberately indifferent to serious medical needs.

Edmo (9th Cir. 2019)

Rooted in Kosilek, found denial of hormone therapy grooming and clothing was not deliberately indifferent; GD doesn’t necessitate social transition

Keohane (11th Cir. 2020)

SCOTUS?

GENDER DYSPHORIA AND THE AMERICANS WITH DISABILITIES ACT

Blatt v. Cabela's Retail Inc., 5:14-cv-04822, 2017 WL 2178123 (E.D. Pa. May 18, 2017)
(not a prison case)

Doe v. Massachusetts DOC, No. 17-12255, 2018 WL 2994403 (D. Mass. June 14, 2018)

Williams v. Kincaid, 45 F.4th 759 (4th Cir. 2022)

Baker Botts case

D Danganan, *Abolition as Lodestar: Rethinking Prison Reform from a Trans Perspective*, 44 Harv. J. L. & Gender 161 (note) (2021)

Carceral Interventions

- “Gender-Affirming” Housing Placement
- Habeas petition for housing transfer: JJS v. Plile, 1:19-cv-02020 (S.D.N.Y. Aug. 3, 2022)
- LGBTQ-Only Facilities

Non-Carceral Interventions

- Name-Change Petitions
- Gender-Affirming Medical Care
- Conditions of Confinement Litigation

De-Carceral Interventions

- Diversions (Prosecutorial and Judicial Discretion) – Sentence reductions
- Post-Conviction Counsel, Parole, and Compassionate Release (USSG Amendments)
- Broadening Housing Options

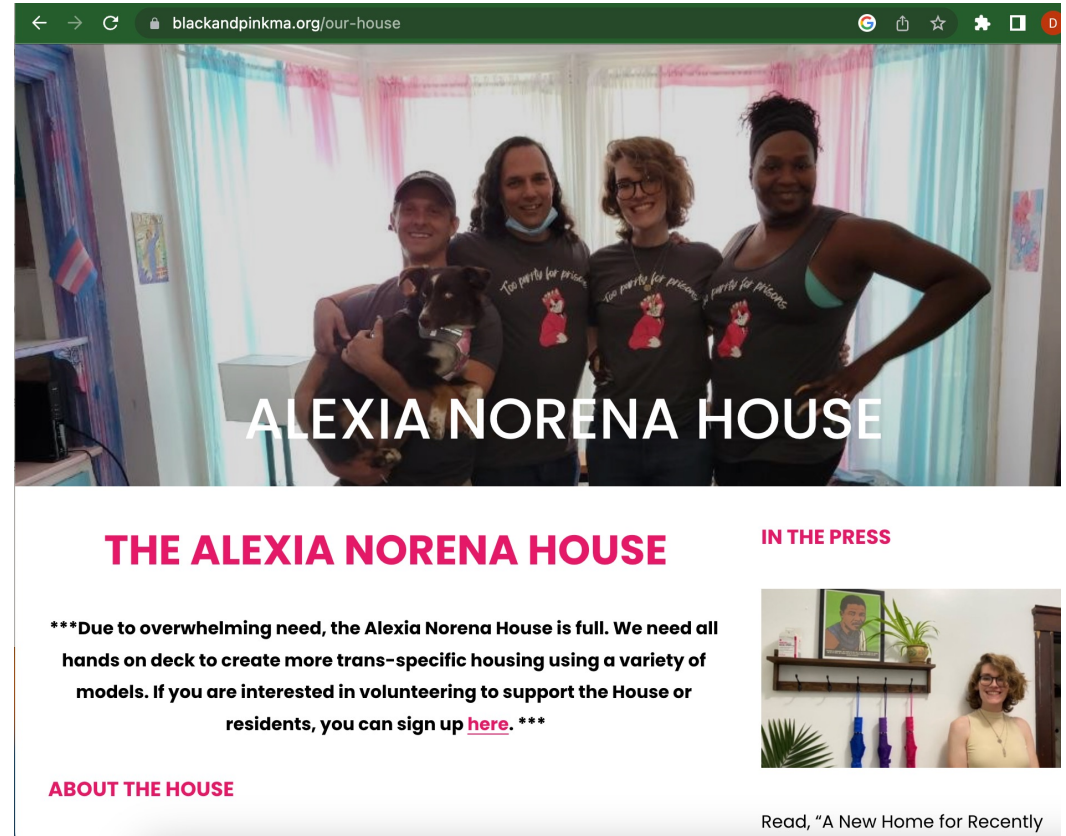
D Dangan, *Abolition as Lodestar: Rethinking Prison Reform from a Trans Perspective*, 44 Harv. J. L. & Gender 161 (note) (2021)

Transformative Justice

Transformative justice is “a political framework and approach for responding to violence, harm and abuse.”

Compared to traditional reforms, transformative justice “do[es] not rely on the state . . . ; do[es] not reinforce or perpetuate violence such as oppressive norms or vigilantism; and most importantly, . . . actively cultivate[s] the things we know prevent violence[,] such as healing, accountability, resilience, and safety for all involved.”

-Mia Mingus, Transformative Justice: A Brief Description, TRANSFORMHARM.ORG



blackandpinkma.org/our-house

ALEXIA NORENA HOUSE

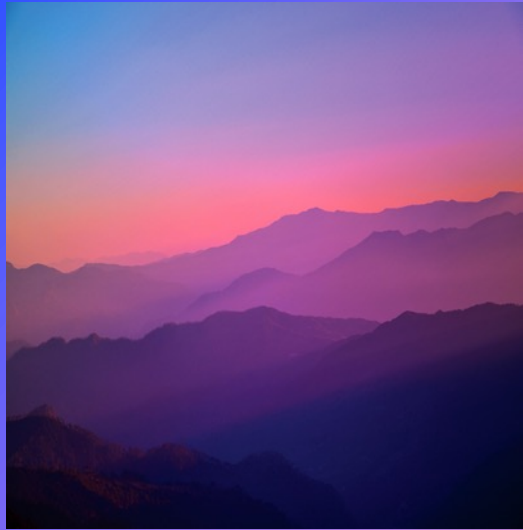
THE ALEXIA NORENA HOUSE

Due to overwhelming need, the Alexia Norena House is full. We need all hands on deck to create more trans-specific housing using a variety of models. If you are interested in volunteering to support the House or residents, you can sign up [here](#).

ABOUT THE HOUSE

IN THE PRESS

Read, "A New Home for Recently



Closing Thoughts

“The here and now is a prison house. We must strive, in the face of the here and now’s totalising rendering of reality, to think and feel a then and there.”

–José Esteban Muñoz, *Cruising Utopia: The Then and There of Queer Futurity*

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THANK YOU

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