IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.G.B., f/k/a D.G.B.; A.F., f/k/a O.E.R.F.; M.M.S-M., f/k/a A.H.S-M.; L.R.A.P., f/k/a E.A.P.; K.S., f/k/a J.H.S.; K.M., f/k/a G.M.; R.H., f/k/a F.A.H.; L.M., f/k/a S.M.; M.J.J., f/k/a O.H.J.; D.B.M.U., f/k/a W.E.M.U.; K.R.H., f/k/a W.D.R.H.; G.P., f/k/a O.A.P.; and M.R.P., f/k/a J.N.R.P.,

Petitioners,

v.

Chad WOLF, in his official capacity as the acting Secretary of the U.S. Department of Homeland Security; and

William BARR, in his official capacity as the Attorney General of the United States,

Respondents.

Case No.

Case: 1:20–cv–01072
Assigned To : Cooper, Christopher R.
Assign. Date : 4/23/2020
Description: TRO/PI (D–DECK)

MOTION FOR TEMPORARY RESTRAINING ORDER

EMERGENCY HEARING REQUESTED

MOTION FOR TEMPORARY RESTRAINING ORDER AND REQUEST FOR EMERGENCY HEARING

Pursuant to Fed. R. Civ. P. 65 and LCvR 65.1, Petitioners, C.G.B., f/k/a D.G.B., et al., hereby move this Court to issue a Temporary Restraining Order requiring Respondents to: (i) immediately release on parole or other supervised release Petitioners and all transgender detainees in Immigration and Customs Enforcement Detention Centers (collectively, "Detention Centers"); (ii) immediately order Respondents to implement all protocols designed to prevent the transmission of COVID-19; and (iii) prohibit the placement of new transgender detainees in the Detention Centers until all protocols designed to prevent the transmission of COVID-19 have been implemented.

In support of this motion, Petitioners rely upon the attached memorandum of points and authorities.[1] A proposed order is attached. Petitioners also request an emergency hearing on this matter.

April 23, 2020

Respectfully submitted,

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*** Application for admission pro hac vice forthcoming*

[1] Pursuant to LCvR 65.1(a), Petitioners have provided Respondents actual notice of the filing, including copies of all pleadings and papers.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.G.B., f/k/a D.G.B.; A.F., f/k/a O.E.R.F.; M.M.S-M., f/k/a A.H.S-M.; L.R.A.P., f/k/a E.A.P.; K.S., f/k/a J.H.S.; K.M., f/k/a G.M.; R.H., f/k/a F.A.H.; L.M., f/k/a S.M.; M.J.J., f/k/a O.H.J.; D.B.M.U., f/k/a W.E.M.U.; K.R.H., f/k/a W.D.R.H.; G.P., f/k/a O.A.P.; and M.R.P., f/k/a J.N.R.P., *Petitioners*, v. Chad WOLF, in his official capacity as the acting Secretary of the U.S. Department of Homeland Security; and William BARR, in his official capacity as the Attorney General of the United States, *Respondents.*	Case No.	Case: 1:20–cv–01072 Assigned To : Cooper, Christopher R. Assign. Date : 4/23/2020 Description: TRO/PI (D–DECK)

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PETITIONERS' MOTION
FOR TEMPORARY RESTRAINING ORDER AND
REQUEST FOR AN EMERGENCY HEARING

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Pursuant to Fed. R. Civ. P. 65 and Loc. Civ. R 65.1, Petitioners, by and through undersigned counsel, respectfully request that this Court enter an Order: (1) immediately releasing, on parole or other supervised release, Petitioners and all transgender detainees in the Immigration and Customs Enforcement Detention Centers ("Detention Centers") pending the completion of these proceedings, pursuant to the Court's inherent powers; (2) immediately ordering Respondents to implement, without exception, all protocols designed to prevent the transmission of COVID-19 coronavirus as indicated in the attached expert declarations and/or protocols of the CDC[2] and the WHO;[3] and (3) prohibiting the placement of any and all new transgender detainees in the Detention Centers until all protocols designed to prevent the transmission of the COVID-19 coronavirus have been implemented sufficient to adequately protect detainees from contracting COVID-19.

The grounds for this Motion are set forth below and in the accompanying declarations.

INTRODUCTION

Although federal authorities recognize the severe risks posed by outbreaks of the COVID-19 virus in immigration detention centers, Immigration and Customs Enforcement (ICE) has done little more than pay lip service to protecting those in its custody. Transgender people in civil immigration detention – many of whom came to this country seeking safety from violence and persecution in their home countries because of their gender identities – are among the most vulnerable to infection, disease and death during the current pandemic. This lawsuit seeks the parole or supervised release of all transgender people in civil immigration detention because ICE

[2] https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-prevent-spread.html

[3] https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public

has not provided and cannot implement even the most basic measures to curb the spread of COVID-19 in its facilities.

Transgender detainees are particularly susceptible to COVID-19 infection because as a group they are more likely to have underlying medical conditions making them vulnerable, such as infection with HIV, diabetes and high blood pressure. Further, transgender detainees have not only suffered the trauma of being discriminated against, persecuted, tortured and raped because of their gender identity, but they also live with the constant stress of continuing discrimination, harassment and the risk of sexual assault. Such stress lowers their immune systems' response to infection, meaning transgender detainees are more likely to become infected, become sick, and die from COVID-19.

Immigration detention centers are congregate facilities in which detainees live in close proximity. That fact makes them especially dangerous during pandemics such as COVID-19, which easily spreads from person to person, both through the air and on commonly used surfaces such as tables and toilets.

In fact, since ICE first reported a COVID-19 infection in one of its detention centers on March 19, 2020, outbreaks have spread to at least 32 detention centers across the country. As of April 22, 2020, ICE had publicly reported 322 confirmed cases of COVID-19 in those facilities, including 287 detainees and 35 staff members. At least ten facilities where transgender detainees are housed are experiencing reported outbreaks with 103 detainees and 12 staff members infected.

On April 10, 2020, a month after the World Health Organization declared a global pandemic, ICE finally issued rules for its detention centers to take some steps designed to reduce the risk of COVID-19 outbreaks, and also required its facilities to follow guidance for detention

centers published by the Centers for Disease Control and Prevention. But ICE has systematically failed to provide even these fundamental protections to civil immigration detainees. Indeed, in precisely the scenario envisioned by public health experts, a transgender detainee in Arizona is being treated for a suspected case of COVID-19 after her bunkmate spent several nights uncontrollably coughing. The health workers at that detention center only cursorily examined the bunkmate, sending him right back to the general population.

Transgender detainees report that it is often impossible to practice social distancing and take other necessary measures that are required to protect from COVID-19. Beds and tables are bolted to the floor, forcing detainees to sleep and sit only a few feet from each other, and some detainees are still lining up in large groups for meals as they did before the outbreak. Few guards and staff members wear face masks when interacting with detainees, and some wear no protective equipment at all – including a doctor who performed a physical examination of a transgender woman without even wearing gloves. Most detainees have not been provided with face masks; some do not have access to soap and must wash their hands with shampoo. Many detainees must clean their own living spaces without disinfectant. Detainees exhibiting symptoms such as coughing or fever on occasion are not given medical examinations or isolated from the rest of the population.

On top of these failures, transgender detainees continue to be subject to harassment and threats of assault from other detainees, further making social distancing an impossibility. Transgender detainees that live with HIV report that detention center staff do not provide needed medications at the prescribed intervals, compromising their immunity. And transgender

detainees on medically necessary hormone replacement therapy must interact frequently with medical staff, further exposing them to infection.

The COVID-19 outbreak has spread to several ICE detention centers, including those in which transgender detainees are held. As of April 22, 2020, ICE reported at least 322 confirmed COVID-19 cases in its detention centers, including 287 detainees and 35 ICE staff members. *See ICE Guidance on COVID-19, Confirmed Cases*, Immigration and Customs Enforcement, www.ice.gov/coronavirus (last visited Apr. 22, 2020). Eleven detention centers known to house transgender detainees have outbreaks, including the Prairieland Detention Center in Texas, where 33 detainees have tested positive; the Otay Mesa Detention Center in San Diego, where 42 detainees and eight staff members have confirmed COVID-19 infections; and the La Palma Correctional Facility in Arizona, where there are 18 detainees with confirmed cases of COVID-19. *Id.* The official figures likely underestimate the actual number of COVID-19 infections at ICE detention centers, because detainees report that not all of those with symptoms of the virus are treated, let alone tested, and some detainees have been informed of COVID-19 infections at detention centers that ICE has not publicly acknowledged. K.S. Decl. ¶¶ 20, 27, Ex 5.[4]

ICE's failures have made detention centers death traps for transgender detainees. That situation violates detainees' Fifth Amendment due process rights and the Administrative Procedure Act. Therefore, this Court should issue an injunction mandating the release on parole or other supervised release of all transgender people in civil immigration detention so they may

[4] Because they contain the names and other highly personal information about Petitioners, who are seeking asylum because of fear of persecution because of their transgender status, Petitioners' declarations have been filed under seal, accompanied by a motion to seal pursuant to Local Civil Rule 5.1(h). Additionally, because in-person access to Petitioners is not allowed, and given the exigent circumstances, the declarations were signed by attorneys or their representatives who had phone access to Petitioners and received their consent to execute the declarations on their behalf.

take the necessary precautions against COVID-19. The nonprofit organizations and other groups supporting transgender detainees have the resources and plans necessary to support all of the transgender detainees so that, if released, they can protect themselves and other from COVID-19.

FACTUAL BACKGROUND

I. The COVID-19 Global Pandemic

Although there is much about the novel coronavirus that causes COVID-19 that is still a mystery, the basic facts about the viral pandemic and its effects on nearly every aspect of our society are well known. Since the first confirmed case of COVID-19 in the United States in late January 2020, the number of infected people in this country has exploded to more than 802,000 as of April 20, with nearly 45,000 deaths, according to the federal Centers for Disease Control and Prevention ("CDC"). *See Cases of Coronavirus Disease (COVID-19) in the U.S.*, Centers for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html (last visited Apr. 22, 2020). State and local governments across the country have implemented measures intended to curb the spread of the disease, including banning large gatherings, closing non-essential businesses, ordering people to stay home except for essential activities, and requiring the use of face masks where large groupings of strangers are unavoidable, such as in grocery stores.

COVID-19 is a respiratory illness that is spread through airborne droplets, such as those expelled when a person coughs or sneezes, or via contact with contaminated surfaces such as doorknobs and countertops. *See What You Should Know About COVID-19 to Protect Yourself and Others*, Centers for Disease Control and Prevention (Apr. 15, 2020) ("CDC Factsheet"), *available at* https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf. Some people who are infected with the novel coronavirus that causes COVID-19 do not experience symptoms, but may nonetheless be contagious, as are those who exhibit symptoms

before, during and after they are ill. *Id.*; *see also* Decl. of R. Nick Gorton, M.D. ("Gorton Decl.") ¶ 4, Ex 14. Those who do suffer illness from the disease experience flu-like symptoms such as fever, coughing, body aches, and difficulty breathing, and in severe cases the infection can cause pneumonia, multiple organ failure, and death. Gorton Decl. ¶ 4, Ex 14.; *see also* Decl. of Carlos Franco-Paredes ("Franco-Paredes Decl.") ¶ 16, Ex 15. Severe cases require hospitalization, often with breathing assistance ranging from supplemental oxygen to use of a ventilator; those who survive severe illness may have permanent lung damage and other disability. Gorton Decl. ¶ 4, Ex 14. There is no vaccine or cure. *Id.* ¶ 6; *see also* CDC Factsheet, Ex 16.

Preventative measures recommended by public health experts include frequent and thorough hand washing; wearing a face mask in public; frequently disinfecting surfaces on which the virus could be deposited; and the now-familiar tactic of "social distancing" – staying at least six feet away from other people. CDC Factsheet, Ex 16; Gorton Decl. ¶ 6, Ex 14. Although young and otherwise healthy people can become ill and die from COVID-19, those at the highest risk for illness and death include those over age 55 and people with underlying medical issues such as asthma or other lung ailments; high blood pressure; suppressed immune systems; and diabetes. Franco-Paredes Decl. ¶ 10, Ex 15; CDC Factsheet, Ex 16.

II. Transgender Detainees Have A High Risk Of Becoming Infected, Experiencing Severe Illness, and Dying From COVID-19

Transgender detainees, as a group, are at a greater risk of contracting the virus that causes COVID-19 than the general population and, if they do become infected, are more likely to become seriously ill or die. Gorton Decl. ¶ 10, Ex 14; Franco-Paredes Decl. ¶ 17, Ex 15. It is no exaggeration to state that during this pandemic, ICE detention facilities are death traps for the transgender people being held there. Gorton Decl. ¶¶ 12-13, Ex 14 ("[B]ecause transgender

people are at much higher risk due to the above described clinical vulnerabilities in this group, I also expect that if kept in detention, transgender detainees will have a disproportionately higher risk of severe or critical COVID-19 and death or permanent pulmonary disability as a consequence."); *see also* Franco-Paredes Decl. ¶¶ 5-6, 28, Ex 15.

Several well documented, preexisting factors combine to make transgender detainees a high-risk group for developing severe illness and death from COVID-19.

First, transgender people are more likely to have underlying health conditions that put them at high risk for developing the most serious complications from COVID-19, including health conditions caused by tobacco use, immune suppression caused by HIV or viral hepatitis, diabetes, high blood pressure, and obesity. Gorton Decl. ¶ 10, Ex 14; Franco-Paredes Decl. ¶ 17, Ex 15. For example, some studies have found that 20% to 25% of transgender women are HIV-positive, with even higher rates among transgender women of color and those who live in urban areas. Gorton Decl. ¶ 10(B), Ex 14. Ronica Mukerjee, a nurse practitioner who treats transgender patients in Tijuana, Mexico for an immigrant rights organization, estimates that 30% of her patients are HIV-positive, and in most the infection is not well controlled. Mukerjee Decl. ¶¶ 5, 8, Ex 17. In this case, two of the named Petitioners are HIV-positive.

Second, transgender detainees also are far more likely to suffer from mental health issues such as depression, anxiety and post-traumatic stress disorder that cause immune suppression and other physical ailments. Gorton Decl. ¶ 10(F), Ex 14; Franco-Paredes Decl. ¶ 17, Ex 15; *see also Doe v. Barr*, No. 20-02141-LB, 2020 U.S. Dist. LEXIS 64459, at *7 (N.D. Cal. Apr. 12, 2020) ("weakened immunity due to mental-health disorders can put detainees 'at increased risk of contracting and suffering from more severe forms of COVID-19'"). One common factor for transgender people is the mental and emotional trauma caused by the endemic discrimination,

violence and social stigma against transgender people – a phenomenon known generally as "minority stress" – which, in turn, can further suppress the immune system and exacerbate other underlying medical conditions. Gorton Decl. ¶ 10(D), Ex 14.

Transgender people in ICE custody are especially vulnerable to mental health problems due to the fact that they left their native countries because of violence and persecution, and thus have "a profound history of trauma leading to high rates of depression, anxiety, and post-traumatic stress disorder." Franco-Paredes Decl. ¶ 17, Ex 15. For example, a detainee at La Palma reports that harassment by other detainees and staff is exacerbating her depression. A.F. Decl. ¶ 20, Ex 2. Another La Palma detainee reports being depressed by being called anti-transgender and anti-gay slurs by staff and other detainees, and being terrified when staff let men into the bathroom while she was showering. L.R.A.P. Decl. ¶¶ 13-15, Ex 4. In other words, transgender immigrants are at higher risk of infection for precisely the same reasons they fled their home countries and came to be in ICE custody.

Third, that discrimination, violence and social stigma means transgender people also are more likely to live in poverty and less likely to have health insurance or the ability to pay for health care, and therefore are less likely to have received proper, ongoing medical care for their underlying medical conditions prior to their detention. Gorton Decl. ¶ 10, Ex 14.

Fourth, because transgender detainees are not allowed to self-administer their injectable hormone treatments while in ICE custody, they must have more frequent interactions with medical staff, who themselves are at higher risk of contracting – and thus spreading – the Coronavirus because of their contact with sick people. Gorton Decl. ¶ 11, Ex 14. One detainee in Aurora, for example, was examined by a doctor at the facility who was not wearing gloves or a face mask. L.M. Decl. ¶ 105, Ex 8. Another Aurora detainee has observed that the medical

staff who distribute medication do so wearing gloves but not face masks. D.B.M.U. Decl. ¶ 22, Ex 10.

Fifth, transgender people in ICE custody are far more likely to be victims of abuse and sexual assault than other detainees – indeed, ICE's own data show that lesbian, gay, bisexual and transgender detainees are 97 times more likely to be sexually victimized than non-LGBT detainees. Gorton Decl. ¶ 11, Ex14; *see also* Franco-Paredes Decl. ¶ 17, Ex 15. That abuse – and the fear of falling victim to it – only compounds the stress transgender detainees experience and exacerbates their other mental and physical health problems. *See* M.M.S-M. Decl. ¶¶ 8, 16-17 (transgender woman describing sexual harassment and assault in ICE detention and having panic attacks when housed with cisgender men because of her past history of surviving rape), Ex 3. And, needless to say, physical and sexual assaults by definition involve the kind of close contact that can spread Coronavirus and are more likely to occur when detainees are kept in close quarters. See Gorton Decl. ¶ 11, Ex 14 (noting that "even if a transgender person wanted to attempt social distancing [while in ICE custody], it might not be an option because of the high likelihood of getting sexually assaulted.").

In sum, the distressing reality for transgender people in ICE custody is that they are more likely to be exposed to the Coronavirus; more likely to become infected if they are exposed; more likely to experience severe illness if they become infected; and more likely to die if they experience severe illness. Gorton Decl. ¶¶ 10-13, Ex 14. And the heightened susceptibility of transgender detainees to COVID-19 means that releasing them from detention will not only help curb their risks of illness and death, it will help protect any remaining detainees, guards and staff who might otherwise be exposed to enhanced spread of the virus and avoid further burdening area health care facilities. Franco-Paredes Decl. ¶¶ 28-29, Ex 15; Gorton Decl. ¶ 13, Ex 14.

III. ICE's Failure to Provide the Most Basic Pandemic Precautions Has Increased Transgender Detainees' Risk of Illness and Death

Despite the fact that transgender detainees are at high risk for contracting and suffering severe illness from COVID-19, ICE has not taken the steps necessary to protect transgender detainees from the disease, nor have the detention centers holding transgender detainees followed even the minimal COVID-19 response requirements that ICE itself sets forth. To the contrary, ICE's actions and inactions have unacceptably and unconstitutionally put transgender detainees at *increased* risk of suffering and dying from this pandemic.

A. Social Distancing

As government and private sector medical experts have repeatedly emphasized, limiting the spread of the pandemic requires "social distancing" – keeping at least six feet away from other people. *See, e.g.*, Gorton Decl. ¶ 6, Ex 14; Franco-Paredes Decl. ¶ 14, Ex 15. ICE detention centers have not and cannot provide sufficient space to do so. *See id.*

The consequences of the lack of opportunity for social distancing in ICE custody are dramatically illustrated by the experience of C.G.B., who became ill with a suspected case of COVID-19 after a newly arrived bunkmate spent days coughing before being seen by a doctor and then was returned to the general population. C.G.B. Decl. ¶¶ 7-8, Ex 1. The pod where C.G.B. became ill has beds spaced approximately three feet apart. Id. ¶ 6.

At Winn, detainees stay in pods of approximately 44 people, sleeping in beds that are approximately four or five feet apart. M.M.S-M. Decl. ¶ 30, Ex 3. At La Palma, some 100 to 120 detainees eat meals together, where they must sit approximately one foot away from each other and cannot keep a six-foot distance while waiting in line. A.F. Decl. ¶ 12, Ex 2; see also L.R.A.P. Decl. ¶ 8, Ex 4 (another La Palma detainee explaining social distancing is impossible because detainees must sit at tables one foot apart). Approximately 60 detainees at a time are

allowed on a patio, where they also do not have enough room to stay six feet apart. A.F. Decl. ¶ 13, Ex 2.

At the El Paso Processing Center, detainees sleep in beds four feet apart. M.R.P. Decl. ¶ 34, Ex 13. At Aurora, beds, as well as the tables and seating where detainees eat, are bolted to the floor and cannot be moved to increase the distance between detainees. L.M. Decl. ¶¶ 92-93, Ex 8; D.B.M.U. Decl. ¶ 17, Ex 10. Detainees are not able to practice social distancing. M.J.J. Decl. ¶ 17, Ex 9.

At Southern Nevada, the beds are close enough for detainees to reach across the aisle and touch the adjacent bed. K.M. Decl. ¶ 22, Ex 6. Detainees eat at tables seating four people that are too small to accommodate all four food trays at once. Id. ¶ 26. At the Caroline detention facility in Virginia, detainees cannot maintain proper social distancing because they sleep four to a room in close quarters, in dormitories of approximately 35-40 people. R.H. Decl. ¶ 20, Ex 7. Detainees from each dorm at Caroline travel as a group to the cafeteria for meals and to the law library, providing additional opportunities for disease to spread. Id. ¶ 21.

ICE regulations acknowledge that "[b]oth good hygiene practices and social distancing are critical in preventing further transmission" of COVID-19. *ERO COVID-19 Pandemic Response Requirements* at 11, U.S. Immigration and Customs Enforcement (Version 1.0, Apr. 10, 2020), *available at* https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf (hereinafter, "ICE Pandemic Requirements"). In practice, however, neither are being implemented at ICE detention facilities. ICE's failure to follow its own regulations and inability to take the most basic precautions against the spread of this deadly virus pose dangers to

transgender detainees that can be remedied only by the detainees' immediate release to safer areas.

B. Hand-washing and Hygiene

Since the beginning of the pandemic, public health experts have emphasized that proper hand washing, cleaning and other hygiene practices are key preventative measures that everyone should follow. *E.g.*, *How to Protect Yourself and Others*, U.S. Centers for Disease Control and Prevention (last updated Apr. 18, 2020), https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html; *see also* Gorton Decl. ¶ 6, Ex 14. ICE's pandemic response requirements – issued on April 10, 2020, a month after the World Health Organization declared COVID-19 a global pandemic – mandate that detention facilities require everyone in the facility, staff and detainees alike, "to maintain good hand hygiene by regularly washing their hands with soap and water for at least 20 seconds," and to provide at no cost sufficient supplies such as hand soap and tissues to allow detainees to meet these requirements.[5] ICE also requires its detention facilities to follow the guidance for detention facilities published by the CDC. ICE Pandemic Requirements at 5-6. The CDC guidance also mandates that facilities provide staff and detainees with sufficient supplies and opportunities for frequent and adequate hand washing.[6]

Despite these basic requirements, ICE detention centers lack sufficient facilities to allow all detainees to practice frequent hand washing. For example, at the Imperial Regional Detention

[5] *ERO COVID-19 Pandemic Response Requirements* at 9, U.S. Immigration and Customs Enforcement (Version 1.0, Apr. 10, 2020), *available at* https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf (hereinafter, "ICE Pandemic Requirements").

[6] *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* at 10, U.S. Centers for Disease Control and Prevention (last updated Mar. 23, 2020), available at https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf (hereinafter, "CDC Guidance.").

Facility in California, 32 detainees residing on one floor of a dormitory share four sinks and one soap dispenser, G.P. Decl. ¶ 19, Ex 12, while at Southern Nevada, 46 detainees share one bathroom with eight sinks and toilets. K.M. Decl. ¶ 23, Ex 6. The conditions are worse at Winn, where approximately 44 detainees share one bathroom with three sinks and toilets. M.M.S-M. Decl. ¶ 30, Ex 3. The only regular cleaning is sweeping by detainees once per day. *Id.* ¶ 31.

At Aurora, the bathroom sink in a dormitory housing transgender detainees has been clogged for an extended period of time, and the detainees do not have the equipment to fix it. D.B.M.U. Decl. ¶ 21, Ex 10. Detainees use a container to capture the dirty water and pour it in the shower. *Id.*

ICE also fails to provide detainees with sufficient supplies. La Palma, for example, provides shampoo, but detainees have to purchase soap—which indigent detainees are unable to do. A.F. Decl. ¶ 14, Ex 2; L.R.A.P. Decl. ¶ 9, Ex 4; K.R.H. Decl. ¶ 15, Ex 11. Detainees at Southern Nevada also have to purchase soap at the commissary, K.M. Decl. ¶ 30 Ex 6, as do detainees at Caroline, R.H. Decl. ¶ 25, Ex 7.

ICE also requires that its detention centers use household cleaners and disinfectants several times a day to "clean and disinfect surfaces and objects that are frequently touched, especially in common areas (*e.g.*, doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreation equipment.)" ICE Pandemic Requirements at 10.[7] However, ICE detention facilities holding transgender immigrants are not even coming close to fulfilling this mandate.

[7] The mandatory CDC guidelines also require this kind of cleaning and disinfecting several times per day. CDC Guidance at 9.

Frequently used surfaces such as sinks and toilets are cleaned, at most, once a day, and detainees are not provided with the cleaning and disinfecting supplies necessary to protect themselves. For example, detainees in Aurora, who are responsible for cleaning their own living areas, attempt to clean three times daily but staff provides only two rags, one for the living area and one for the bathroom. M.J.J. Decl. ¶ 22, Ex 9; D.B.M.U. Decl. ¶ 20, Ex 10. Sinks and bathrooms in the El Paso facility are cleaned only once daily, and the detainees are not provided with disinfectant to clean more often. M.R.P. Decl. ¶¶ 33, 37, Ex 13.

ICE has failed to provide detainees with the supplies to permit them to follow the most basic hygiene measures required by its own regulations. The agency's inability to sufficiently provide for such common-sense and low-tech preventative measures shows that supervised release from detention is the only way to remedy the unacceptable risk of infection, disease and death ICE has created for transgender detainees.

C. Protective Equipment

ICE regulations mandate that "[c]loth face coverings should be worn by detainees and staff . . . to help slow the spread of COVID-19." ICE Pandemic Requirements at 9. ICE facilities are not complying with this requirement, either.

Many detainees report that they have not been provided with face masks, despite asking for them. M.M.S-M. Decl. ¶ 23, Ex 3; L.M. Decl. ¶ 51, Ex 8; M.J.J. Decl. ¶ 19, Ex 9; R.H. Decl. ¶¶ 22, 26, Ex 7; M.R.P. Decl. ¶ 30, Ex 13; *cf.* D.B.M.U. Decl. ¶ 18, Ex 10 (stating she has not asked for a mask because she assumes they are unavailable since guards do not wear them). Detainees at La Palma were provided with one paper mask each on April 14, 2020, and were told that it would not be replaced if it were damaged. A.F. Decl. ¶ 15, Ex 2. Facility staff initially tried to require detainees to sign a liability waiver to obtain a mask, but relented after detainees refused to sign the waiver. *Id.*; *see also* K.R.H. Decl. ¶ 9 (same), Ex 11. Detainees at Nevada

Southern were not provided with cloth masks until April 16, 2020. K.S. Decl. ¶ 20, Ex 5; K.M. Decl. ¶ 31, Ex 6.

Guards, medical personnel, and other staff frequently interact with detainees without wearing protective equipment.

A doctor at Aurora performed a hands-on medical examination without wearing gloves or a mask. L.M. Decl. ¶ 105, Ex 8. So did a doctor at La Palma. A.F. Decl. ¶ 16, Ex 2. Medical personnel delivering medication to detainees at Aurora also do not wear masks. D.B.M.U. Decl. ¶ 22, Ex 10.

Ironically, a guard giving detainees a presentation on COVID-19 at Southern Nevada did so without wearing a mask or gloves. K.S. Decl. ¶ 18, Ex 5. Guards at Southern Nevada also perform pat-down searches of detainees without wearing gloves or masks. K.M. Decl. ¶¶ 33-34, Ex 6. Several detainees report that guards do not wear gloves or masks. A.F. Decl. ¶ 17, Ex 2; L.R.A.P. Decl. ¶ 12, Ex 4; K.R.H. Decl. ¶ 11, Ex 11; D.B.M.U. Decl. ¶ 22, Ex 10. Other detainees report observing guards wearing gloves, but not masks. M.J.J. Decl. ¶ 23, Ex 9; K.M. Decl. ¶¶ 33-34, Ex 6.

ICE's failure to provide protective gear such as face masks to detainees and to ensure that staff members use the required equipment further heightens the unconstitutional risk of infection to which transgender detainees are subjected through their continued detention.

D. Information and Training

Both the ICE rules and the CDC guidance require that detainees be provided with accurate and up to date information about COVID-19, precautions they can take to reduce the risk of infection, and the presence of the virus in their facility. ICE Pandemic Requirements at 7, 9; CDC Guidance at 6, 10, 12, 22. The CDC Guidelines, which ICE facilities are required to follow, require that information about COVID-10 must be provided "in a manner that can be

understood by non-English speaking people and those with low literacy." CDC Guidelines at 22; *see also id.* at 6, 10 (same).

ICE has failed to provide *any* of this required lifesaving information to many detainees, has not provided regular updates to the limited amount of information it has provided to other detainees, and in some instances has misled detainees by falsely denying the presence of COVID-19 at their facility.

Many current and recently released detainees report that guards or other staff gave them *no* information about COVID-19. They include C.G.B., who received no information about COVID-19 from the staff at La Palma despite being quarantined with a suspected case of the disease. C.G.B. Decl. ¶ 11, Ex 1; *see also* L.R.A.P. Decl. ¶ 6 (same), Ex 4; A.F. Decl. ¶ 10 (La Palma detainee stating she has not received any information from staff regarding COVID-19 and guards refuse to answer questions about the virus), Ex 2. This problem also has occurred at Aurora. D.B.M.U. Decl. ¶ 12, Ex 10.

One detainee at Aurora said that the only information she received was a suggestion to wash her hands. M.J.J. Decl. ¶ 12, Ex 9. At Southern Nevada, a guard gave a COVID-19 presentation in the morning while some detainees were sleeping and did not ensure that all detainees attended. K.M. Decl. ¶ 18, Ex 6.

Some statements made by facility staff have contradicted ICE's public statements. For example, staff informed detainees at Nevada Southern on April 15, 2020 that there was one person with COVID-19 at the facility, but ICE has not reported one to the public. K.S. Decl. ¶ 20, Ex 5.

Worse, ICE has violated the CDC Guidelines by affirmatively misinforming detainees about the presence of COVID-19 at their facility. Although ICE now reports that two staff

members at Aurora have tested positive for the COVID-19 virus,[8] officials falsely denied to detainees that anyone at the facility had been infected. *See* M.J.J. Decl. ¶ 14, Ex 9; D.B.M.U. Decl. ¶ 14, Ex 10.

By failing to provide any information about the virus to many detainees and providing incomplete, false and misleading information to others, ICE has not only violated its own rules and mandatory CDC guidance, but also has further heightened the risk of COVID-19 transmission to transgender detainees.

IV. ICE's Inadequate Medical Care For Transgender Detainees Enhances Their Risk

ICE detention centers are plagued by chronic and well-documented failures to provide proper medical care to transgender detainees – problems that have been exacerbated by the pandemic and pose another enhanced risk of infection, disease and death for transgender detainees. ICE's past handling of infectious disease outbreaks in detention centers has been inept—foreshadowing the impact COVID-19 will have if transgender detainees are not released. Just last year, for example, a mumps outbreak across 57 immigration detention facilities throughout the country led to almost 900 cases of mumps overwhelmingly contracted inside the facilities before the outbreak spread to surrounding communities. As explained by Dr. Carlos Franco-Paredes, an infectious disease expert who has treated HIV-positive transgender detainees at the Aurora facility:

> [I]t is my professional opinion that the medical care available in immigration detention centers cannot properly accommodate the needs of patients should there be an outbreak of COVID-19 in these facilities. Immigration detention centers are often poorly equipped to diagnose and manage infectious disease outbreaks. Many of these centers lack onsite medical facilities or 24-hour medical care.

[8] *See ICE Guidance on COVID-19*, https://www.ice.gov/coronavirus (last visited Apr. 19, 2020).

Franco-Paredes Decl. ¶ 5, Ex 15.

Besides C.G.B., whose bunkmate was not isolated for many days despite showing classic COVID-19 symptoms, several other transgender detainees report that they or other detainees showing possible COVID-19 symptoms have not been tested, quarantined or isolated. A.F. Decl. ¶ 16 (reporting that fellow detainee with fever and flu-like symptoms was told to make a regular medical request rather than receiving immediate attention), Ex 2; M.J.J. Decl. ¶ 30 (reporting that when she had a cough, she saw medical personnel who gave her aspirin and returned her to the general population), Ex 9; K.R.H. Decl. ¶ 12 (stating that when she suffered COVID-19-like symptoms including a fever, she had to wait a week before seeing a nurse, who told her she was fine, did not test her or provide any medication, and did not schedule a follow-up appointment), Ex 11.

This is a violation of ICE regulations and CDC guidance, which require that individuals suspected or confirmed to have COVID-19 must be placed in medical isolation and their close contacts must be quarantined. ICE Pandemic Requirements at 14-16; CDC guidance at 10-11.

Another alarming example of ICE's bungling of medical care during the pandemic is the failure to provide adequate treatment to transgender detainees living with HIV, which further threatens their already compromised immune response. Prior to the outbreak, Dr. Franco-Paredes, a doctor specializing in infectious diseases, was treating transgender detainees living with HIV at Aurora. Franco-Paredes Decl. ¶ 3, Ex 15. Since the outbreak began, authorities at Aurora have barred Dr. Franco-Paredes from providing care to any if his patients there; as a result, Dr. Franco-Paredes has been unable to see any of his patients in person, and even has had difficulty in scheduling virtual evaluations. *Id.*; *see also id.* ¶ 29. Dr. Franco-Paredes is concerned that the lack of adequate treatment will expose HIV-positive detainees to a high risk

of contracting COVID-19, noting that one patient he evaluated had been given prescriptions for medications that negatively interacted with each other and thus could suppress the patient's immune response. *Id.*

Multiple transgender detainees living with HIV report that they do not receive their medication at regular times, which, because it can lessen their immune response, puts them at greater risk of contracting life-threatening infections such as COVID-19. *See* K.S. Decl. ¶ 12, Ex 5; K.M. Decl. ¶ 14; *see also* M.J.J. Decl. ¶ 27 (Aurora detainee stating that fellow detainees who are HIV-positive have gotten their medication at varying times during the day), Ex 9. Other transgender detainees have had their medically necessary gender-affirming hormone treatments or other prescribed medications denied or changed without explanation. M.M.S-M. Decl. ¶¶ 12, 14, Ex 3; R.H. Decl. ¶¶ 11-13, 17, Ex 7; M.R.P. Decl. ¶¶ 17-18, Ex 13; L.M. Decl. ¶¶ 15-21, Ex 8; A.F. Decl. ¶ 18, Ex 2; K.R.H. Decl. ¶¶ 12, 16, Ex 11.

The COVID-19 outbreak has exacerbated the problems with a system that was already ill equipped to provide adequate medical care to transgender detainees. Although ICE has stated that discrimination against transgender detainees is prohibited,[9] detainees report continued discrimination from health workers; one detainee reports that when she complained about harassment, a facility psychologist said there was nothing to be done because "we aren't big on trans rights here." L.R.A.P. Decl. ¶ 13, Ex 4.

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[9] Thomas Homan, Executive Associate Director, U.S. Immigration and Customs Enforcement, *Further Guidance Regarding the Care of Transgender Detainees* (June 19, 2015), *available at* https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf.

A June 2019 Department of Homeland Security Office of Inspector General report[10] found inadequate medical care at the Adelanto, California facility and other egregious health and safety violations at facilities in Aurora; Essex County, New Jersey; and LaSalle, Louisiana. A 2017 OIG report of inspections of six facilities found inadequate medical care including long delays for detainees to receive care, inadequate documentation of the care they received, and failure to use translation services to allow detainees to communicate their symptoms to medical workers and to understand and knowingly consent to medical treatment.[11]

Congress has expressed concern about treatment of transgender detainees when approving the fiscal 2020 appropriations for the Department of Homeland Security. The congressional report accompanying the appropriations directs ICE to limit the detention of transgender people to facilities operating under contracts that comply with ICE's 2015 guidance on best practices for transgender detainees. *See* H. R. Rep. No. 116-180 at 37 (2019), Ex 18. Despite Congressional urging to push ICE to implement its own best practices, no ICE detention contracts so far have incorporated those improvements.

In the last six months, two U.S. Senators and 45 members of the House of Representatives have written to the acting directors of ICE and the Department of Homeland Security, citing "overwhelming evidence of systemic neglect and mistreatment of transgender individuals in immigration and detention facilities," including a lack of adequate medical care,

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10 Report No. OIG-19-47, *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*, U.S. Department of Homeland Security, Office of Inspector General (June 3, 2019), *available at* https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf.

11 Report No. OIG-18-32, *Concerns about ICE Detainee Treatment and Care at Detention Facilities*, U.S. Department of Homeland Security, Office of Inspector General (Dec. 11, 2017), *available at* https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf .

that "demonstrate ICE's inability to provide adequate conditions for transgender immigrants." Letter from Sens. Elizabeth Warren and Tammy Baldwin to Kevin McAleenan, Acting Secretary, U.S. Department of Homeland Security (Oct. 15, 2019), available at https://www.warren.senate.gov/imo/media/doc/2019.10.15%20Letter%20to%20DHS%20ICE%20and%20CPB%20regarding%20transgender%20migrants%20and%20asylum%20seekers.pdf; Letter from Rep. Mike Quigley, et al. to Chad Wolf, Acting Secretary, U.S. Department of Homeland Security (Jan. 14, 2020), available at https://quigley.house.gov/sites/quigley.house.gov/files/01.14.20%20ICE%20Letter.pdf.

Advocacy organizations also have filed several complaints with DHS and ICE in the past year citing egregious examples of medical neglect and mistreatment of transgender detainees. Just last month, a coalition of eight groups led by the Santa Fe Dreamers Project filed a complaint with ICE, the DHS Office of Inspector General, and the DHS Office for Civil Rights and Civil Liberties over conditions for transgender detainees at the Winn Correctional Center in Winnfield, Louisiana. *See* Ex 19. The complaint documented severe abuse and mistreatment of transgender detainees and medical care failings including interrupted and inconsistent provision of HIV medication; refusal to provide gender-affirming hormone treatments; delayed or denied dental care causing extreme pain and weight loss; and refusal to allow a woman to perform physical therapy exercises after her leg was broken by another inmate because she was transgender. *Id.*; *see also* Declaration of Allegra Love, Esq. ("Love Decl.") ¶¶ 15-20 (describing these incidents), Ex 20. The Transgender Law Center and a dozen other nonprofit organizations filed a complaint with DHS and its inspector general's office in September 2019 over ICE's failure to provide adequate medical and mental health care to LGBT and HIV positive detainees,

citing the maltreatment of 19 current and former detainees, most of them transgender. *See* Ex 21 (copy of complaint).

ICE's failures to provide adequate medical care during the pandemic—building upon its inability to do so even in the best of times—put transgender detainees at further risk of serious illness or death should they become infected with the Coronavirus. Because ICE cannot provide adequate medical care to them, transgender detainees should be released immediately to safer environments.

V. ICE Protocols for Dealing With Suspected and Confirmed COVID-19 Infections Do Not Adequately Protect Detainees and Put Them at Greater Risk

Even if it followed its own requirements, ICE could not adequately protect transgender detainees from unconstitutional risks of infection posed by suspected or confirmed COVID-19 infections of other detainees or facility staff. Indeed, the shortcomings of these rules actually increase the risk that transgender detainees would contract, suffer and die from the virus. *See* Gorton Decl. ¶ 7 ("The ICE COVID-19 guidelines place persons in detention at significant risk."), Ex 14.

The screening procedures ICE has announced are insufficient to keep those infected with COVID-19 from spreading the disease. Gorton Decl. ¶ 9, Ex 14. The ICE rules require facilities to screen employees and detainees upon entry for COVID-19 symptoms – fever, cough, and shortness of breath – and to bar entry to staff with those symptoms and to isolate incoming detainees with those symptoms. ICE Pandemic Requirements at 12. However, as Dr. R. Nick Gorton explains, many infected with the Coronavirus either never show symptoms or become infectious before they develop symptoms; and many with COVID-19 have gastrointestinal or other symptoms, not respiratory symptoms like a cough. Gorton Decl. ¶ 9, Ex 14. Thus, Dr.

Gorton concludes, "[a] significant number of infections which could spread extensively in a crowded detention situation would be missed by ICE's screening." *Id.*

ICE's website states that in detention centers, "cohorting" – keeping people together in a contained group – "serves as an alternative to self-monitoring at home" for those potentially exposed to the virus who do not have symptoms. *See Ice Guidance on COVID-19*, www.ice.gov/coronavirus (last visited Apr. 20, 2020). The agency's rules for its detention centers say "facilities should consider cohorting" all detainees who arrive on one or more days. ICE Pandemic Requirements at 14.[12]). The CDC Guidelines, which the ICE Pandemic Requirements make mandatory, state that cohorting should only be used as a last resort, however. CDC Guidelines at 16.

Cohorting is a dangerous practice for detention facilities because it could amplify, rather than prevent, an outbreak, because unless the detainees are able to stay six feet away from each other, one infected person could spread the virus to the entire cohort. Gorton Decl. ¶¶ 7-8, Ex 14. The risk is particularly acute for anyone in the cohort with increased susceptibility to the virus, such as transgender detainees or others with underlying medical conditions. *Id.* As Dr. Gorton explains, "[f]or example, if you have 10 people, 8 with COVID-19 and 2 with flu or another virus, soon you will have 10 very sick people with all three conditions." *Id.* ¶ 8, Ex 14.

C.G.B.'s experience illustrates this problem. Although she has been separated from the general population, she is not isolated in a single room but stays in a room with a dozen patients, two of whom have confirmed cases of COVID-19. C.G.B. Decl. ¶ 10, Ex 1. Thus, even if she

[12] For suspected or confirmed COVID-19 cases, the rules state that "[c]ohorting should only be practiced if there are no other available options" and that only those who have tested positive should be "cohorted" together. ICE Pandemic Requirements at 14.

and the other nine detainees without confirmed COVID-19 infections did not have the virus when they went into quarantine, their risk of contracting COVID-19 has risen exponentially.

Because ICE's own guidelines are insufficient to reduce the risk of infection facing transgender detainees and would actually enhance that risk, this Court should order the parole of transgender detainees to safer quarters.

VI. Sufficient Private Resources Exist to Support the Release of All Transgender Detainees Into Safer Settings

A coalition of organizations supporting transgender detainees has amassed funding and put together a plan to support the sheltering in place of transgender detainees upon their immediate release. The Santa Fe Dreamers Project is a non-profit legal services organization that has resettled transgender detainees released from ICE detention to 11 states and 20 major U.S. cities. As set forth in the letter of Allegra Love, Executive Director of the Santa Fe Dreamers Project, attached hereto as Ex 22, the project has experience with large-scale releases and has put together a plan to support the release of transgender immigrants in this case, to ensure that all of their needs are met, including shelter, food, clothing, medical care and transportation. This plan will allow the safe shelter of all released detainees and will allow them to follow all CDC and WHO guidelines to prevent the spread of COVID-19.

The Santa Fe Dreamers project together with the Transgender Law Project and a group of foundations have already secured nearly $100,000 in funds to implement the release plan. *See* Exhibits 22 - 26 . Moreover, a number of detainees have secured private sponsors. Thus, adequate plans are in place for all transgender detainees to be immediately released and moved to safer settings.

ARGUMENT

I. Legal Standard

The standard for obtaining injunctive relief through either a temporary restraining order or a preliminary injunction is well established. "A moving party must show: (1) a substantial likelihood of success on the merits, (2) that it would suffer irreparable injury if the injunction were not granted, (3) that an injunction would not substantially injure other interested parties, and (4) that the public interest would be furthered by the injunction." *Council on American-Islamic Relations v. Gaubatz*, 667 F. Supp. 2d 67, 74 (D.D.C. 2009) (citing *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006); *Hall v. Johnson*, 599 F. Supp. 2d 1, 3 n.2 (D.D.C. 2009) ("[t]he same standard applies to both temporary restraining orders and to preliminary injunctions")).

A district court considering a motion for preliminary injunction must balance the strengths of the requesting party in each of the four areas. *Sibley v. Obama*, 810 F. Supp. 2d 309, 311 (D.D.C. 2011). "In applying this four-factored standard, district courts employ a sliding scale under which a particularly strong showing in one area can compensate for weakness in another." *Citizens for Responsibility & Ethics in Washington v. Cheney*, 577 F. Supp. 2d 328, 334-35 (D.D.C.).[13]

Here, each of the factors weighs in favor of granting Petitioners the injunctive relief sought.

[13] The Court of Appeals for the D.C. Circuit has not definitively stated whether this sliding-scale approach was displaced by *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). *See, e.g., Save Jobs USA v. U.S. Dep't of Homeland Sec.*, 105 F. Supp. 3d 108, 112 (D.D.C. 2015). Petitioners respectfully submit that they are entitled to injunctive relief regardless of whether the likelihood of success is an independent requirement.

II. Petitioners Are Entitled to Injunctive Relief

A. Petitioners Are Likely to Succeed on the Merits of Their Claims

Petitioners are likely to succeed on the merits of their claims because the law is clear that exposure to a high risk of infection with a deadly pathogen violates detainees' constitutional rights. Ordering parole for transgender detainees, who are particularly susceptible to COVID-19 infection, is well within the Court's authority; the Supreme Court has held that "[w]hen necessary to ensure compliance with a Constitutional mandate, courts may enter orders placing limits on a prison's population." *Brown v. Plata*, 563 U.S. 493, 511 (2011).

i. Violation of Constitutional Rights and the Administrative Procedure Act (APA)

When the government detains or incarcerates a person, it has an affirmative duty to guarantee conditions of reasonable health and safety: "when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being." *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 199-200 (1989). As a result, the government must provide those in its custody with "food, clothing, shelter, medical care, and reasonable safety." *Id.* at 200.

The Supreme Court has held that the Eighth Amendment protects against future harm to inmates, as "it would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them." *Helling v. McKinney*, 509 U.S. 25, 33 (1993). Further, "[t]he science is well established – infected, asymptomatic carriers of the coronavirus are highly contagious," and therefore "[t]he Government cannot be deliberately indifferent to the Petitioners' potential exposure to [COVID-19] on the ground that they are not, now, infected or showing current symptoms." *Castillo v. Barr*, No. 20-

00605, 2020 U.S. Dist. LEXIS 54425, at *13–14 (C.D. Cal. Mar. 27, 2020) (citing *Helling*, 509 U.S. at 33).

The Eighth Amendment requires that "inmates be furnished with the basic human needs, one of which is 'reasonable safety.'" *Helling*, 509 U.S. at 33 (quoting *DeShaney*, 489 U.S. at 200). The Supreme Court in *Helling* recognized that the risk of contracting a communicable disease may constitute such an "unsafe, life-threatening condition" that threatens "reasonable safety." *Id*.

These Constitutional protections also apply in the context of immigration detention because immigrant detainees, even those with prior criminal convictions, are civil detainees held pursuant to civil immigration laws. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Because detained immigrants are civil detainees, they are entitled to the due process protections derived from the Fifth Amendment, which prohibit punishment. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) ("Due process requires that a pretrial detainee not be punished."). "The touchstone of due process is protection of the individual against arbitrary action of government … whether the fault lies in the denial of fundamental due process fairness [procedural due process],… or in the exercise of power without any reasonable justification in the service of a legitimate government objective [substantive due process]…." *City of Sacramento v. Lewis*, 523 U.S. 833 (1998) (citations and internal quotations omitted). "'Substantive due process' prevents the government from engaging in conduct that 'shocks the conscience,' ... or interferes with rights 'implicit in the concept of ordered liberty.'" *United States v. Salerno*, 481 U.S. 739, 746 (1987). (internal citations omitted).

Because the Fifth Amendment rather than the Eighth Amendment governs civil detention, the "deliberate indifference" standard required to establish a constitutional violation in the latter context does not apply to civil detainees like Petitioners. *Jones v. Blanas*, 393 F.3d 918, 934 (9th Cir. 2004), cert. denied, 546 U.S. 820 (2005). Still, the Eighth Amendment's guarantees represent

a "constitutional floor" that must also be met for detainees who are not being punished, such as those jailed prior to trial and civil immigration detainees. *United States v. Moore*, No. 1:18-cr-198 (JEB), 2019 U.S. Dist. LEXIS 104300, at *6-7 (D.D.C. June 21, 2019).

A condition of confinement for a civil immigration detainee violates the Constitution "if it imposes some harm to the detainee that significantly exceeds or is independent of the inherent discomforts of confinement and is not reasonably related to a legitimate governmental objective or is excessive in relation to the legitimate governmental objective." *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 U.S. Dist. LEXIS 189767, at *13 (D. Ariz. Nov. 18, 2016), *aff'd sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017). This Court has held that detaining individuals during the COVID-19 pandemic in such a manner that they are unable to practice social distancing or take other precautions necessary to contain the spread of the virus creates an unreasonable risk of damage to detainees' health. *Banks v. Booth*, No. 20-849, 2020 U.S. Dist. LEXIS 68287, at *27–30 (D.D.C. Apr. 19, 2020) (holding that pre-trial detainee plaintiffs established a likelihood of success on the merits on their Fifth Amendment due process claim). Other courts addressing TRO motions for civil detainees during the COVID-19 pandemic have found that detaining people under conditions such that they are unable to practice social distancing or take other precautions necessary to contain the spread of the virus is sufficient to establish a likelihood of success on the merits of a Fifth Amendment due process claim. *See, e.g.*, *Castillo*, 2020 U.S. Dist. LEXIS 54425, at *16 (plaintiffs established more than a mere likelihood of success on the merits of their due process claim where the conditions of confinement did not allow detainees to socially distance); *Thakker v. Doll*, No. 1:20-480, 2020 U.S. Dist. LEXIS 59459, at *25 (M.D. Pa. Mar. 31, 2020) (plaintiffs established likelihood of success on the merits of their

due process claim where plaintiffs were detained in "tightly-confined, unhygienic spaces" and unable to socially distance).

Similarly, here, Plaintiffs have established that they are unable to practice social distancing or take other precautions to contain the spread of the virus under their current conditions of confinement. Therefore, they have established a likelihood of success on the merits of their Fifth Amendment Due Process claim.

Respondents are also in violation of the Fifth Amendment Due Process Clause by depriving detainees the rights guaranteed under the COVID-19 regulations enacted by ICE. When the government has promulgated "[r]egulations with the force and effect of law," those regulations "supplement the bare bones" of federal statutes. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266, 268 (1954) (reversing in immigration case after review of warrant for deportation). Agencies must follow their own "existing valid regulations," even where government officers have broad discretion, such as in the area of immigration. *Id.* at 268; *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("[I]t is incumbent upon agencies to follow their own procedures . . . even where [they] are possibly more rigorous than otherwise would be required."); *Battle v. FAA*, 393 F.3d 1330, 1336 (D.C. Cir. 2005) ("Accardi has come to stand for the proposition that agencies may not violate their own rules and regulations to the prejudice of others."). Breaches of Accardi's rule constitute violations of both the Administrative Procedures Act ("APA") and the Fifth Amendment's Due Process Clause.

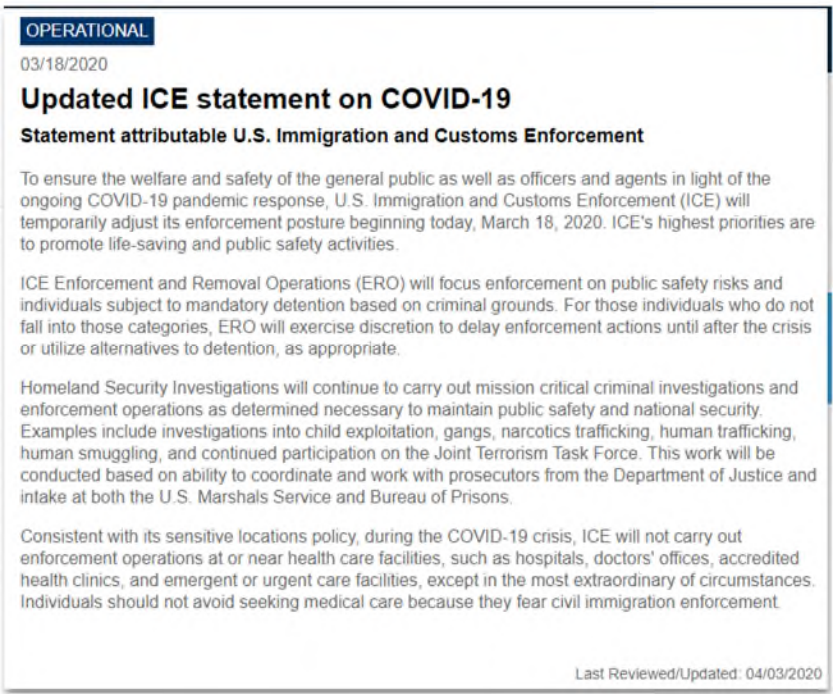
While violations of "internal agency procedures" do not always require a remedy, Accardi's rule applies with full force when "the rights or interests of the objecting party" are "affected." *Monitlla v. INS*, 926 F.2d 162, 167 (2d. Cir. 1991) (citing cases) ("Accardi doctrine is premised on fundamental notions of fair play underlying the concept of due process"); *see also*

Wilson v. Comm'r of Soc. Sec., 378 F.3d 541, 545-46 (6th Cir. 2004) (noting that an Accardi violation may be a due process violation, and the government's action may be set aside pursuant to the APA); *Sameena, Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own regulations . . . may result in a violation of an individual's constitutional right to due process.").

Under the *Accardi* doctrine, due process and the basic principle of administrative law dictate that rules promulgated by a federal agency regulating the rights and interests of others are controlling upon the agency. That doctrine is premised on the fundamental notion of fair play underlying the concept of due process. 322. The *Accardi* doctrine applies with particular force when "the rights of individuals are affected." *Morton*, 415 U.S. at 235.

The D.C. Circuit recently explained "that 'agencies cannot relax or modify regulations that provide the only safeguard individuals have against unlimited agency discretion.'" *Damus v. Nielsen*, 313 F. Supp. 3d 317 (D.D.C. 2018), citing *Lopez v. FAA*, 318 F.3d 242, 247 (D.C. Cir. 2003) as amended (Feb. 11, 2003).

On March 18, 2019, ICE issued a statement on enforcement during the COVID-19 crisis:



OPERATIONAL

03/18/2020

Updated ICE statement on COVID-19

Statement attributable U.S. Immigration and Customs Enforcement

To ensure the welfare and safety of the general public as well as officers and agents in light of the ongoing COVID-19 pandemic response, U.S. Immigration and Customs Enforcement (ICE) will temporarily adjust its enforcement posture beginning today, March 18, 2020. ICE's highest priorities are to promote life-saving and public safety activities.

ICE Enforcement and Removal Operations (ERO) will focus enforcement on public safety risks and individuals subject to mandatory detention based on criminal grounds. For those individuals who do not fall into those categories, ERO will exercise discretion to delay enforcement actions until after the crisis or utilize alternatives to detention, as appropriate.

Homeland Security Investigations will continue to carry out mission critical criminal investigations and enforcement operations as determined necessary to maintain public safety and national security. Examples include investigations into child exploitation, gangs, narcotics trafficking, human trafficking, human smuggling, and continued participation on the Joint Terrorism Task Force. This work will be conducted based on ability to coordinate and work with prosecutors from the Department of Justice and intake at both the U.S. Marshals Service and Bureau of Prisons.

Consistent with its sensitive locations policy, during the COVID-19 crisis, ICE will not carry out enforcement operations at or near health care facilities, such as hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities, except in the most extraordinary of circumstances. Individuals should not avoid seeking medical care because they fear civil immigration enforcement.

Last Reviewed/Updated: 04/03/2020

In the statement, ICE states that as a result of the COVID-19 epidemic, "ICE Enforcement and Removal Operations (ERO) will focus enforcement on public safety risks and individuals subject to mandatory detention based on criminal grounds. For those individuals who do not fall into those categories, ERO will exercise discretion to delay enforcement actions until after the crisis or utilize alternatives to detention, as appropriate." *Id.* ICE did not issue its mandatory rules for COVID-19 response until April 10, nearly a month later, however. *See* ICE Pandemic Requirements at 1. ICE has failed to release Petitioners and other transgender detainees under this program, and has announced that it has completed its reviews and relases of those detainees it considers high risk.

ICE has the authority to comply with its constitutional requirements by paroling transgender detainees, who are vulnerable to severe illness or death if they contract COVID-19. Section 212(d)(5)(A) of the Immigration and Nationality Act permits the Attorney General, at his or her discretion, to parole any noncitizen into the United States "temporarily under such conditions as [she or] he may prescribe only on a case-by-case basis for urgent humanitarian

reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Further, 8 C.F.R. § 235.3(b)(2)(iii) vests the Attorney General with the discretion to parole detained aliens with negative credible/reasonable fear findings as required "to meet a medical emergency." Responding to the current pandemic appropriately by releasing transgender civil immigration detainees who are not a threat to public safety meets all three standards: a medical emergency, a legitimate law enforcement objective and a "significant public benefit." Even if the government paroles a detainee, it can still issue notices to appear and place parolees in removal proceedings, thus ensuring that their immigration court cases continue even if they are released from detention. *See* 8 C.F.R. § 235.3(c).

Here, ICE's failure to implement even the most basic protections set forth in its rules require violates both the Fifth Amendment and the APA. *See Torres v. United States Dep't of Homeland Sec.*, 411 F. Supp. 3d 1036, 1068-69 (C.D. Cal. 2019) (detainees stated *Accardi* claim with allegations an ICE detention center did not follow the agency's standards for treatment of detainees).

As shown in detail by the declarations supporting this Motion, ICE has failed to ensure that its detention centers follow the ICE Pandemic Requirements or the guidance for detention facilities published by the CDC, which ICE also purports to require. Petitioners' evidence shows:

- Social Distancing—keeping a distance of 6 feet—is impossible, as detainees are surrounded by dozens of other detainees at any given time, sharing bedrooms, bathrooms, and communal spaces;
- Some of the ICE facilities have not provided any information about COVID-19 or instructions on how to maintain proper hygiene;
- Detainees do not have consistent access to soap, and often lack soap altogether if they do not have the funds to purchase soap themselves;
- Detainees are not provided with protective masks or gloves;

- Guards and staff working at the Detention Centers often do not use masks or gloves, and do not abide by the 6-foot social distancing rule, and;

- People in the Detention Centers are exhibiting symptoms of COVID-19, including coughs, fever, and shortness of breath, but are not being medically isolated, tested for COVID-19, or provided adequate medicine to address these symptoms.

The declarations of Petitioners also document the increased risks faced by transgender detainees:

- HIV-positive detainees are not provided their antiretroviral medication consistently, leading to gaps in doses that can compromise their immune systems;

- Transgender detainees suffer the additional burden and stress of experiencing harassment, discrimination and even violence at the hands of other detainees and guards (and further making social distancing impossible);

- Transgender detainees with chronic medical conditions are not consistently receiving proper care for those ailments – and in some cases are not receiving medical care for those conditions at all.

Even if Respondents have taken some proactive measures to address the crisis, this is not enough to achieve compliance with CDC guidelines or to eliminate risk of exposure. *See Cristian A.R. v. Decker*, No. 20-3600, 2020 U.S. Dist. LEXIS 66658, at *34 (D.N.J. Apr. 12, 2020). For example, because detainees cannot avoid coming into close contact with frequently used surfaces and shared spaces, Respondents' failure to ensure proper disinfecting of detainees' living areas at the recommended intervals of several times per day exposes detainees to a high risk of infection, even if some cleaning is performed.

Respondents' failure to act in a timely manner to protect Petitioners interferes with the rights of Petitioners in an arbitrary and capricious manner and is without justification. The continued refusal to establish and implement policies and procedures designed to prevent the transmission of COVID-19 violates Petitioners' and all transgender detainees' substantive and procedural due process rights. Courts have consistently held that detainees are likely to succeed on the merits of their claims under similar circumstances. *See, e.g.*, *Castillo*, 2020 U.S. Dist.

LEXIS 54425, at *16 ("Civil detainees must be protected by the Government. Petitioners have not been protected").

By failing to establish and implement policies and procedures to protect Petitioners from the transmission of COVID-19 in the Detention Centers, Respondents have enacted a final decision that violates both the APA and the Fifth Amendment. *See Torres*, 411 F. Supp. 3d at 1069.

For all of these reasons, Petitioners have established that they are likely to prevail on the merits.

B. Petitioners Will Be Irreparably Injured if The Court Does Not Grant the Relief Sought

COVID-19 is infecting and killing people in the United States at an ever-increasing rate. Avoiding transmission of the virus requires social distancing and proper hygiene. Respondents have failed to implement sufficient protocols in the Detention Centers to ensure that these basic directives can be followed, imperiling the lives of Petitioners and every transgender detainee. The imminent risk of infection, pain, disability and death is a well-established form of irreparable harm. *See, e.g., Harris v. Bd. of Supervisors, Los Angeles Cnty.*, 366 F.3d 754, 766 (9th Cir. 2004) (affirming finding of irreparable harm to Medicaid recipients from pain, infection, and possible death due to delayed treatment from county's reduction of hospital beds); *Al-Joudi v. Bush*, 406 F. Supp. 2d 13, 20 (D.D.C. 2005) ("Facing requests for preliminary injunctive relief, courts often find a showing of irreparable harm where the movant's health is in imminent danger."). In granting a preliminary injunction regarding similar dangers at the District of Columbia jail, Judge Kollar-Kotelly held that "Plaintiffs' risk of contracting COVID-19 and the resulting complications, including the possibility of death, is the prototypical irreparable harm." *Banks*, 2020 U.S. Dist. LEXIS 68287, at *43; *see also, e.g., Thakker*, 2020 U.S. Dist. LEXIS 59459, at *10 (granting injunction ordering immediate release of civil detainees from ICE detention centers

in central Pennsylvania and observing that "[b]ased upon the nature of the virus, the allegations of current conditions in the prisons, and Petitioners' specific medical concerns . . . Petitioners face a very real risk of serious, lasting illness or death. There can be no injury more irreparable.").

Further, "'suits for declaratory and injunctive relief against the threatened invasion of a constitutional right do not ordinarily require proof of any injury other than the threatened constitutional deprivation itself.'" *Gordon v. Holder*, 721 F.3d 638, 643 (D.C. Cir. 2013) (quoting *Davis v. District of Columbia*, 158 F.3d 1342, 1346 (D.C. Cir. 1998). "Thus, '[a]lthough a Petitioner seeking equitable relief must show a threat of substantial and immediate irreparable injury, a prospective violation of a constitutional right constitutes irreparable injury for these purposes.'" *Id*. (quoting *Davis*, 158 F.3d at 1346) (internal citation omitted). Here, Petitioners have alleged that Respondents' conduct violates the Due Process Clause of the Fifth Amendment. That constitutional deprivation constitutes irreparable harm.

C. There is No Substantial Injury to Other Parties and Injunctive Relief is in Public Interest.

The Government "cannot suffer harm from an injunction that merely ends an unlawful practice." *Open Communities Alliance v. Carson*, 286 F. Supp. 3d 148, 179 (D.D.C. 2017); *see also R.I.L–R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015). ICE has the authority to comply with its constitutional requirements by paroling transgender detainees, who are vulnerable to severe illness or death if they contract COVID-19. Section 212(d)(5)(A) of the Immigration and Nationality Act permits the Attorney General, at his or her discretion, to parole any noncitizen into the United States "temporarily under such conditions as [she or] he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Further, 8 C.F.R. § 235.3(b)(2)(iii) vests the Attorney General with the discretion to parole detained aliens with negative credible/reasonable fear findings as required "to meet a

medical emergency." Responding to the current pandemic appropriately by releasing transgender civil immigration detainees who are not a threat to public safety meets all three standards: a medical emergency, a legitimate law enforcement objective and a "significant public benefit." Even if the government paroles a detainee, it still can issue notices to appear and place parolees in removal proceedings, thus ensuring that their immigration court cases continue even if they are released from detention. *See* 8 C.F.R. § 235.3(c). Accordingly, there is no injury to Respondents should the Court grant the temporary restraining order.

Courts have granted temporary restraining orders where detainees have proposed a concrete and suitable release plan. *See, e.g.*, *Bent v. Barr*, No. 19-06123, 2020 U.S. Dist. LEXIS 62792 (N.D. Cal. Apr. 9, 2020). Courts also have acknowledged that the risk that detainees will flee, given the current global pandemic, is very low. *See Castillo*, 2020 U.S. Dist. LEXIS 54426, at *15. Here, many of the Petitioners have identified sponsors that will provide a residence where petitioners can shelter-in-place and remain on home detention. A group of nonprofit organizations led by the Transgender Law Center has secured nearly $100,000 and has plans in place to provide for the former detainees' humanitarian needs, including safe housing where social distancing is possible, for detainees that do not have sponsors. Ex 23 - 26; *see also* Ex 22.

Further, it is in the public interest that the Court grant the temporary restraining order. Where an injunction will "not substantially injure other interested parties," the balance of equities tips in the movant's favor. *MGU v. Nielsen*, 325 F. Supp. 3d 111, 123 (D.D.C. 2018) (citing *League of Women Voters of the United States v. Newby*, 838 F.3d at 12 (citation omitted)). Petitioners have already demonstrated that they will suffer irreparable harm without immediate relief, including severe and significant medical harm or death if exposed to COVID-19. *See supra* at Sec. II.C. If there are further outbreaks of COVID-19 in the Detention Centers, detainees and

staff who require hospitalization could overwhelm the nearby hospitals, putting the communities in which the Detention Centers operate at risk. *See* Franco-Paredes Decl. ¶ 26, Ex 15. ICE has an interest in preventing the potential spread of COVID-19 because the risk of exposure and infection is so high due to lack of basic sanitation products, inability to maintain social distancing, and due to inadequate medical care and a large number of currently sick detainees. There can be no greater public interest than preventing infection of dozens, if not hundreds, of detainees and preserving the resources of the local hospitals.

CONCLUSION

For all of the foregoing reasons, Petitioners respectfully request that the Court enter an Order: (1) immediately releasing, on parole or other supervised release, Petitioners and all transgender detainees in the Immigration and Customs Enforcement Detention Centers pending the completion of these proceedings, pursuant to the Court's inherent powers; (2) immediately ordering Respondents to implement all protocols designed to prevent the transmission of COVID-19 as indicated in the attached expert declarations or protocols of the CDC and the WHO; and (3) prohibiting the placement of new transgender detainees in the Detention Centers.

April 23, 2020

Respectfully submitted,

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*** Application for admission pro hac vice forthcoming*

Exhibit 1
(C.G.B. Declaration Filed Under Seal)

Exhibit 2
(A.F. Declaration Filed Under Seal)

Exhibit 3
(M.M.S-M Declaration Filed Under Seal)

Exhibit 4
(L.R.A.P. Declaration Filed Under Seal)

Exhibit 5
(K.S. Declaration Filed Under Seal)

Exhibit 6
(K.M. Declaration Filed Under Seal)

Exhibit 7
(R.H. Declaration Filed Under Seal)

Exhibit 8
(L.M. Declaration Filed Under Seal)

Exhibit 9
(M.J.J. Declaration Filed Under Seal)

Exhibit 10
(D.B.M.U. Declaration Filed Under Seal)

Exhibit 11
(K.R.H. Declaration Filed Under Seal)

Exhibit 12
(G.P. Declaration Filed Under Seal)

Exhibit 13
(M.R.P. Declaration Filed Under Seal)

EXHIBIT 14

Declaration of R. Nick Gorton, MD, DABEM

1. I, R. Nick Gorton, MD am a physician licensed to practice medicine in the state of California. I am board certified in Emergency Medicine and practice both as an emergency physician at Sutter Davis Hospital in Davis California and as a primary care provider at Lyon-Martin Health Services in San Francisco California. Lyon-Martin is an historically LGBTQ clinic. Over half of my patients identify as transgender. I have treated hundreds of transgender patients in the 15 years I have practiced at Lyon-Martin. As both an EM and primary care physician I am familiar both with the nature of COVID-19 and the particular vulnerabilities of certain populations to infection and complications from SARS-CoV-2 (the virus that causes COVID-19).

2. I received my medical degree from the University of North Carolina, School of Medicine and completed my residency and chief residency in emergency medicine at Kings County Hospital in Brooklyn, New York. I am board certified in Emergency Medicine and also have expertise in the primary care and hormonal treatment of transgender people.

3. COVID-19 (Corona Virus Disease 2019) is the clinical syndrome of illness suffered by people who are infected with the SARS-CoV-2 virus. SARS stands for Severe Acute Respiratory Syndrome. Previously this was referred to as "2019 novel coronavirus" or "2019-nCoV". Coronaviruses are ubiquitous causes of viral illness in many mammals including humans. Some strains circulate seasonally and cause mild viral respiratory infections like colds. Two other coronavirus strains have produced severe illness in humans: SARS coronavirus (SARS-CoV) which was identified in 2003, and MERS-CoV the cause if Middle East Respiratory Syndrome which was identified in 2012. While SARS-CoV-2 has a lower mortality rate than SARS-CoV and MERS-CoV, it has caused significantly more deaths because unlike SARS-CoV and MERS-CoV, it is far more easily transmitted person to person.

4. COVID-19 is a spectrum of disease with a minority being completely asymptomatic. Of those with symptoms approximately 80% will have "mild" disease meaning they are able to adequately oxygenate their blood without assistance and either have no pneumonia or have pneumonia with less than 50% of lung tissue involved. However many of these patients would not describe their illness as mild, but rather more severe than influenza. Mild is merely a clinical term meaning that patients are unlikely to require respiratory support and hospitalization. Another 15% have "severe" disease which is defined as pneumonia of 50% or more of the lungs and an inability to without assistance keep their blood adequately oxygenated. These patients require supplemental oxygen and in some cases invasive or non-invasive respiratory support (from non-invasive CPAP to intubation and artificial ventilation in an intensive care unit). Finally 5% have "critical" disease which is defined as respiratory failure, shock, and/or multiorgan system dysfunction (for example kidney failure, heart failure, etc). It should also be noted that a significant portion of those with severe or critical disease (and a minority with mild disease) who do survive will suffer permanent lung damage which, while not killing them today, can potentially significantly decrease their life expectancy and quality of life, and increase their need for chronic ongoing medical treatments for their lifetime.

5. As of on April 20, 2020, there have been almost 800,000 diagnosed cases of COVID-19 and over 39,000 deaths. Barring rapid availability of a vaccine even with good maintenance of social distancing, the number of infected in the US will likely rise to over 100 million.

6. There is no specific cure for COVID-19. Patients with severe and critical disease can be given what is termed supportive care – oxygen, invasive or non-invasive ventilation, intravenous fluids, medicines to raise blood pressure for patients in shock, dialysis for those who develop kidney failure, etc. However, despite this, approximately half the patients with critical COVID-19 die because there is no specific medicine to treat the actual infection. Thus while patients with severe and critical COVID-19 are given supportive treatment, the only ways to effectively prevent deaths are tried and true public health measures that have been employed for over a century in the US to slow the spread and prevent infections with deadly infectious diseases. The most important of these is commonly termed "social distancing". As the term implies, effective social distancing requires individuals (or family units) to keep a distance between themselves sufficient to prevent spread of the infection. For COVID-19, the recommendation is 6 feet or 2 meters. In addition, in order to reduce/eliminate transmission from an infected to an uninfected individual, individuals having more proximate contact with an actual or potentially infected individual should wear appropriate personal protective equipment. With COVID-19 in particular, because there are a significant number of people who are asymptomatic or minimally symptomatic that can spread the disease to others, the CDC now recommends that in all situations where social distancing would be challenging (such as going to a store or to seek medical care), masks be worn by everyone to prevent spread. In addition, the virus, when excreted from the respiratory tract of an infected individual, can survive on various surfaces for a time varying from hours to days, depending upon the nature of the surface and the viral load of the individual. So scrupulous and frequent environmental cleaning and individuals practicing frequent hand hygiene with alcohol based hand sanitizers or soap and water is crucial.

7. The ICE COVID-19 guidelines place persons in detention at significant risk. They state that "In detention settings, cohorting[1] serves as an alternative to self-monitoring at home." This is an exceedingly dangerous practice. Self-monitoring at home is recommended for people who have been exposed to the virus and are at risk for infection. An example of what should be done if people are at higher risk for exposure is the CDC's guidance on returning travelers (i.e. without symptoms but at risk). https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html This guidance

[1] Cohorting is defined as the placement of patients infected or colonized with the same laboratory-confirmed pathogens in the same designated unit, zone or ward (with or without the same staff). This term is also frequently applied to grouped patient placement based on clinical and epidemiological information without laboratory confirmation of the pathogen. See "Infection prevention and control of epidemic- and pandemic-prone acute respiratory infectionsin health care," WHO Guidelines (2014) https://apps.who.int/iris/bitstream/handle/10665/112656/9789241507134_eng.pdf?sequence=1

includes staying at least 6 feet from others, avoiding crowded places, and staying away from people who are at higher risk for severe disease. To meet these guidelines, detainees would have to have at least 6 feet between them at all times, no detainees would be allowed who were over 65, had hypertension, asthma, HIV, or any number of other diseases placing them at risk. Moreover even if this was done, if the number of detainees cohorted was larger than that of a typical family, the risk would be substantially higher because of a greater potential number of exposures.

8. Another problem with cohorting is that unless it is post test, you are taking people with rhinovirus or some other respiratory ailments and all but guaranteeing they get Covid-19 and coinfection with other respiratory infections makes the risk worse. For example, if you have 10 people , 8 with Covid-19 and 2 with flu or another virus, soon you will have 10 very sick people with all three conditions.
9. In addition, ICE's method of screening detainees has numerous holes in it. They state that "IHSC isolates detainees with fever and/or respiratory symptoms who meet these criteria and observe them for a specified time period." The CDC notes that fever was present in less than half of patients when they initially presented to the hospital for care and that asymptomatic and pre-symptomatic infections are common. https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html In addition, some patients present initially with only gastrointestinal symptoms or vague symptoms like fatigue or muscle aches. A significant number of infections which could spread extensively in a crowded detention situation would be missed by ICE's screening.
10. Transgender people as a group have greater risks for life threatening complications from SARS-CoV-2 because transgender people have higher rates of multiple risk factors such as:
    A. Higher rates of current and past tobacco use[2] which are both associated with increased risk for severe or critical disease and death. In addition, many diseases to which tobacco predisposes are independent risks for death or severe/critical disease in COVID-19 such as Chronic Obstructive Pulmonary Disease, cancer, and heart disease.
    B. Immune suppression due to HIV and viral hepatitis. Rates of HIV positivity among transgender women are as high as 20-25% in some studies, with higher rates among transgender women of color and those living in urban environments.[3]

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[2] Buchting, F. O., Emory, K. T., Kim, Y., Fagan, P., Vera, L. E., & Emery, S. (2017). Transgender use of cigarettes, cigars, and e-cigarettes in a national study. *American journal of preventive medicine*, *53*(1), e1-e7.
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Gamarel, K. E., Mereish, E. H., Manning, D., Iwamoto, M., Operario, D., & Nemoto, T. (2015). Minority stress, smoking patterns, and cessation attempts: findings from a community-sample of transgender women in the San Francisco Bay area. *Nicotine & Tobacco Research*, *18*(3), 306-313.
Grant, J., Mottet, L., Tanis, J., Herman, J. L., Harrison, J., & Keisling, M. (2010). National transgender discrimination survey report on health and health care.

[3]Baral, S. D., Poteat, T., Strömdahl, S., Wirtz, A. L., Guadamuz, T. E., & Beyrer, C. (2013). Worldwide burden of HIV in transgender women: a systematic review and meta-analysis. *The Lancet infectious diseases*, *13*(3), 214-222.
Herbst, J. H., Jacobs, E. D., Finlayson, T. J., McKleroy, V. S., Neumann, M. S., Crepaz, N., & HIV/AIDS Prevention Research Synthesis Team. (2008). Estimating HIV prevalence and risk behaviors of transgender persons in the United States: a systematic review. *AIDS and Behavior*, *12*(1), 1-17.

C. Increased rates of pre-existing high risk medical problems like diabetes, hypertension, and obesity. These increased risks are likely multifactorial. Hormone replacement therapy increases risks of these conditions but in addition, these are also heavily influenced by social determinants of health.
D. Transgender patients suffer minority stress and also have higher rates of unemployment, higher rates of incarceration, poverty, and homelessness which all contribute to these risks.[4] Minority stress is a chronically high level of stress faced by members of stigmatized groups, including transgender people. People who experience minority stress exhibit stress responses which includes high blood pressure, anxiety and a host of other medical issues. Over time, minority stress can lead to poor mental and physical health. These underlying conditions can lower immune response and act as a contributing factor to vulnerability for a severe reaction to Covid-19.
E. Lack of insurance which results in inadequate treatment of the above mentioned conditions prior to incarceration or detention.[5]
F. Higher rates of mental illness[6] which could complicate treatment of severe or critical COVID19 due to the known adverse neuropsychiatric effects of treatments being studied and used for COVID19 such as hydroxychloroquine and nucleoside analogues like remdisavir. In addition, since ICU care and intubation are known to provoke PTSD, patients who need advanced treatments would be further endangered.

11. Moreover, transgender patients taking hormone treatment by injected hormones (most transgender men and many transgender women) may have to interact with prison/detention health care providers more frequently (typically weekly to bimonthly). And even those taking oral medications may have to get daily medication from staff. This increased interaction with these medical providers places them at higher risk of contracting the virus from high-risk staff. This contrasts with transgender patients not in prison who generally self-administer medication at home.

While incarcerated, transgender people face an increased risk of assault, which impacts their health and well-being generally and particularly in the midst of the current health crisis.

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[4] Grant, J. M., Motter, L. A., & Tanis, J. (2011). Injustice at every turn: A report of the national transgender discrimination survey.
Russomanno, J., Patterson, J. G., & Jabson, J. M. (2019). Food insecurity among transgender and gender nonconforming individuals in the southeast United States: a qualitative study. *Transgender Health*, *4*(1), 89-99.
Reisner, S. L., Bailey, Z., & Sevelius, J. (2014). Racial/ethnic disparities in history of incarceration, experiences of victimization, and associated health indicators among transgender women in the US. *Women & health*, *54*(8), 750-767.
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[6] James, S., Herman, J., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. A. (2016). The report of the 2015 US transgender survey.
Brown, G. R., & Jones, K. T. (2016). Mental health and medical health disparities in 5135 transgender veterans receiving healthcare in the Veterans Health Administration: A case–control study. *LGBT health*, *3*(2), 122-131.

Research has repeatedly demonstrated that transgender prisoners and prisoners with intersex conditions suffered significantly higher rates of abuse than the general population. *See*, *e.g.*, NPREC Report, at 73 (citing W.S. Wooden & J. Parker, *Men behind bars: Sexual exploitation in prison*. (Plenum Press 1982)); Valerie Jenness et al., *Violence in California correctional facilities: An empirical examination of sexual assault* (Ctr. for Evidence-Based Corrs. 2009); *see also* Sylvia Rivera Law Project, "'It's War in Here': A Report on the Treatment of Transgender & Intersex People in New York State Men's Prisons" (2007), http://srlp.org/files/warinhere.pdf (documenting unrelenting harassment and abuse of transgender women incarcerated in New York State men's prisons). According to ICE's own numbers, lesbian, gay, bisexual and transgender (LGBT) people in ICE custody are 97 times more likely to be sexually victimized than non-LGBT people in detention. Therefore, even if a transgender person wanted to attempt social distancing, it might not be an option because of the high likelihood of getting sexually assaulted. S*ee* Center for American Progress, "ICE's Rejection of Its Own Rules Is Placing LGBT Immigrants at Severe Risk of Sexual Abuse" (2018) https://www.americanprogress.org/issues/lgbtq-rights/news/2018/05/30/451294/ices-rejection-rules-placing-lgbt-immigrants-severe-risk-sexual-abuse/

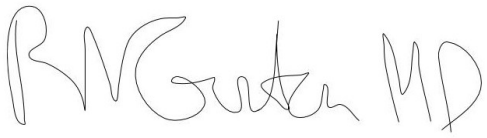
12. As an emergency physician I am fully aware of the devastation that COVID-19 is wreaking throughout the world and the consequences for individuals and the entire health care system of underestimating the danger of this deadly virus and delaying measures to control its spread and protect vulnerable populations. Transgender people are a population that is highly vulnerable to negative outcomes of this infection while incarcerated or detained, and based on my expert medical judgment, the ICE guidelines that I have read at https://www.ice.gov/coronavirus are woefully inadequate to prevent widespread COVID-19 among detainees in their care.

13. Moreover because transgender people are at much higher risk due to the above described clinical vulnerabilities in this group, I also expect that if kept in detention, transgender detainees will have a disproportionately higher risk of severe or critical COVID-19 and death or permanent pulmonary disability as a consequence. In addition to placing transgender detainees at risk, others in the community surrounding detention facilities could be placed at risk. Per ICE's guidance, "ICE transports individuals with moderate to severe symptoms, or those who require higher levels of care or monitoring, to appropriate hospitals with expertise in high-risk care." Given ICE's inadequate infection controls, widespread infection in facilities is very likely. Among those infected, 20% are expected to need hospital care and 5% or more intubation and prolonged use of a ventilator. With high risk detainees like transgender people, this number is even higher. Each ventilator and ICU bed that is occupied by a detainee is one that is unavailable to the surrounding community served by that hospital. Release of medically high-risk detainees like transgender people has the potential to save two lives: that of the detainee who would be better able to socially isolate in a community setting, and the local community member who lives near the ICE facility who would have access to a ventilator and ICU bed in the coming weeks to months when US cases surge and ventilator supply will be critically inadequate.

I would strongly encourage immediate release of as many transgender people in custody as possible to minimize the risk of serious harm, death, or permanent disability to both transgender individuals in custody as well as the people who live in close proximity to detention centers who will suffer because of lack of medical resources.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this twentieth day of April 2020 at San Francisco, California, United States.



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February 2005 – Current	Emergency Medicine Physician Sutter Davis Hospital Davis, CA
July 2002 – February 2005	Emergency Medicine Physician St Tammany Parish Hospital Covington, LA

Professional Practice: Volunteer Activities

March 2005 – Current	Primary Care Provider and Clinical Instructor Lyon-Martin Health Services San Francisco, CA.
August 2005 – February 2006	Acting Medical Director Lyon-Martin Health Services San Francisco, CA.
September 2008 – Current	Executive Committee Member and Lecturer Project HEALTH http://www.project-health.org/ San Francisco, CA.
January 2011 – Current	Lead Clinician TransLine National Clinical Consultation Line
Medical-Legal Consultant:	Sylvia Rivera Law Project, New York, NY Lambda Legal Defense and Education Fund, Inc., New York, NY Transgender Law Center, San Francisco, CA National Center for Lesbian Rights. San Francisco, CA Northwest Justice Project, Seattle, WA The Legal Aid Society, New York, NY National Center for Transgender Equality, Washington, DC TGI Justice Project, Oakland, CA. ACLU Florida

Post Graduate Training

June 2001 – June 2002	Chief Resident, Department of Emergency Medicine Kings County Hospital Center/SUNY Downstate Brooklyn, NY
July 1998 – June 2002	Emergency Medicine Residency

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August 1994 – May 1998	Doctor of Medicine University of North Carolina School of Medicine Chapel Hill, NC
August 1988 – August 1991	Bachelor of Science in Biochemistry, Summa Cum Laude North Carolina State University Raleigh, NC

Professional Affiliations

World Professional Association for Transgender Health (formerly HBIGDA)
- WPATH GEI Certified Practitioner
- Institutionalized Persons Committee

University of California at San Francisco Center of Excellence for Transgender Health
- Medical Advisory Board 2010-2013 (during development of original Primary Care Protocols)

American Medical Association
- GLBT Advisory Committee 2009-2011

Gay and Lesbian Medical Association
- LGBT Medical Experts Panel

Licensure/Certification

Nov 2003 – Present	Diplomate American Board of Emergency Medicine
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Feb 2002 – 2009	LA State Medical License 14466R
June 2001 – 2010	NY State Medical License 221808

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Selected Conference Presentations and Invited Talks

Gorton, R, Gruberg, S, Tobin, Harper Jean. Plenary IV: Fighting for LGBT Health Policy Protections: Health Providers' Crucial Role in Advocacy. GLMA 2019. New Orleans, LA, September 2019.

Gorton, R. Genital Gender Affirming Surgery for the Transgender Patient: A Didactic and Hands-on Fresh Cadaver-Based Course: "Hormone Replacement for Transgender Patients". American Urological Association 2018. San Francisco, CA. May, 2018.

Gorton, R, Jaffe, JM, Tescher, J, and Baker, K. "Mini-Symposium: As California Goes, So Goes the Nation (Hopefully)". USPATH. February, 2017.

Gorton, R. Sessuion Moderator. USPATH Symposium. San Francisco CA. February, 2017.

Gorton, R. "Acute and Long Term Complications of Silicone Pumping: Primary, Secondary, and Tertiary Prevention". WPATH Symposium. Amsterdam, The Netherlands. June, 2016.

Gorton, R, Ettner, R, Brown, G, Bermudez, F, Orthwein, J and Mazur, T. "Orange isn't the New Black (Yet)". WPATH Symposium. Amsterdam, The Netherlands. June, 2016.

Gorton R. “Transgender Patient Care in the Emergency Department”. American Academy of Emergency Medicine Scientific Assembly. Las Vegas, Nevada. February 2016.

Gorton R. “Transgender Patients in the Emergency Department”. Stanford University Department of Emergency Medicine SimWars. Stanford, CA. February 2016.

Gorton R. “History of Transgender Medicine”. UCSF School of Medicine Transgender Health elective. San Francisco, CA. February 2016.

Gorton R. “Free Silicone Complications and Management”. National Transgender Health Summit. Oakland, CA. April 2015.

Gorton R. “History of Transgender Medicine”. UCSF School of Medicine Transgender Health elective. San Francisco, CA. March 2015.

Gorton R. “Transgender Healthcare”. UC Davis School of Medicine. Sacramento, CA.
December 2015.

Gorton R. “Engaging and Retaining Transgender Patients in Ongoing Primary Care”. National Association of Community Health Centers Health Institute and Expo. San Diego, CA. August 2014.

Gorton R. “Sexual and Reproductive Health: A Focus on Transgender Patients”. California Family Health Council. Webinar. March 2014.

Gorton, R, Green, J and Tescher, J. “California Dreaming: Two Decades of Change in Health Insurance Law and Policy”. WPATH Symposium. Bangkok, Thailand. February, 2014.

Gorton, R and Chung, C. “From Grassroots Health Advocacy to Expanding Clinician Competency: Project HEALTH (Harnessing Education, Advocacy & Leadership for Transgender Health)”. WPATH Symposium. Bangkok, Thailand. February, 2014.

Gorton, R and Tescher, J. “Minding the Gap: Development and Implementation of a Clinical Rotation in Transgender Health”. WPATH Symposium. Bangkok, Thailand. February, 2014.

Gorton R and Keenan C. “LGBT Sexual and Reproductive Health Issues”. California Family Health Council Women's Health Update. San Francisco, CA. April, 2013.

Gorton R. “Transgender Medicine”. California AHEC Webinar. San Francisco, CA. April, 2013.

Gorton R. "Transgender Aging Issues". Institute on Aging Conference on LGBT Aging. San Francisco, CA. November, 2012.

Gorton R and Branning N. "Transgender Primary Care". California Academy of Physician Assistants Annual Conference. Palm Springs, CA. October, 2012.

Gorton R. "Primary care and Hormonal Treatment for Transgender Clients". Samuel Merritt University. Oakland, CA. June 2012.

Gorton R. "Primary care and Hormonal Treatment for Transgender Clients" Grand Rounds for the VA Medical Center. San Francisco, CA. June 2012.

Gorton R and Wertz K. "Transgender Health Care" Webinar for the California Family Health Council. San Francisco, CA. June, 2012.

Eichenbaum J, Gorton R and May A. "Transgender Health, the VA, and Barriers to Care." San Francisco Veterans Administration Mental Health Services Grand Rounds. San Francisco, CA. May, 2012.

Gorton R and Wertz K. "Working With GLBT Clients" California Family Health Council Webinar. Los Angeles, CA. May, 2011.

Gorton R. "Improving Access to Transgender Health Care: Outcomes from Project HEALTH" World Professional Association for Transgender Health. Atlanta, GA. September, 2011.

Gorton R and Wertz K. "Trailblazing for Transgender Health" Southern Comfort Conference. Atlanta, GA. September, 2011.

Gorton R. "Nuts and Bolts of Transgender Primary Care" Gay and Lesbian Medical Association Annual Conference. Atlanta, GA. September, 2011.

Gorton R. "Transgender Medicine and Cultural Competency" Kaiser Department of OB/Gyn Grand Rounds. San Francisco, CA. April, 2011.

Gorton R. "Evidence Based Transgender Medicine" Opening Plenary UCSF National Transgender Health Summit. San Francisco, CA. January, 2011.

Green J and Members of the Center of Excellence for Transgender Health Medical Advisory Board. "Primary Care Protocols" Morning Plenary UCSF National Transgender Health Summit. San Francisco, CA. January, 2011.

Freshel K, Gorton R, Hansom C and Barnes A. "Communities Working Together

to Become Culturally Competent" California State Rural Health Association Conference. Sacramento, CA. November, 2010.

Gorton R, Spade D and Wilkinson W. "Transposium: Healthcare Access and Quality For Transgender Individuals" Shaking the Foundations: The West Coast Conference on Progressive Lawyering, Primary Care Associate Program, Stanford School of Law. Stanford CA. October, 2010.

Gorton R. "Improving Access to Transgender Healthcare: Outcomes from Project HEALTH (Harnessing Education, Advocacy, and Leadership for Transgender Health)" Gay and Lesbian Medical Association Annual Conference. San Diego, CA. September 2010.

Gorton R, Gould D and Wertz K. "Trailblazing for Transgender Health" National Gay and Lesbian Task Force Creating Change Conference. March 2010.

Gorton R. "Grand Rounds: Transgender Medicine" Highland General Hospital Department of Internal Medicine. Oakland, CA. January, 2010.

Gorton R. "Grand Rounds: Transgender Medicine" Kaiser Permanente Department of Internal Medicine. San Francisco, CA. December, 2009.

Keatley J and Gorton R. "Transgender Health Care Issues in California Today" Equality California and the California LGBT Legislative Caucus Briefing on LGBTI Health Care Issues. Sacramento, CA. December 2009.

Ehrbar R, Winters K, and Gorton R. "Revision Suggestions for Gender Related Diagnoses in the DSM and ICD" WPATH XXI Biennial Symposium. Oslo, Norway. June, 2009.

Gorton R. "A Place at the Table" American College Health Association Annual Meeting. San Francisco, CA. May, 2009.

Famula M, Hall A, Pardo S, Gorton R. "Providing Trans-Specific Health Care to Transgender Students in the College Setting." American College Health Association Annual Meeting. San Francisco, CA. May, 2009.

Gorton R. "Transgender Health" American Medical Student Association: Regional Conference. Lubbock, TX. March, 2009.

Gorton R. "Medical Ethics and Evidence Based Transgender Medicine" Equality and Parity II: A Statewide Action for Transgender HIV Prevention and Care.
Los Angeles, CA, January 2009.

Gorton R. “Transgender Medicine 101” AMSA Regional Conference. Lubbock, TX. December, 2008.

Gorton R, Djordjevic M, and Brownstein M. “Female to Male (FTM) Health Update” (Provider Session) The 7th Annual Mazzoni Center Trans-Health Conference. Philadelphia, PA. May 2008.

Gorton R. “FTM Hormones 201.” (Community Session) The 7th Annual Mazzoni Center Trans-Health Conference. Philadelphia, PA. May 2008.

Green J, Gorton R, Razza R, and Tamar-Mattis A, “Healthcare and Access Issues Panel.” University of California Hastings College of the Law Transposium Conference. April 2008.

Arkles G, Gorton R, Sanchez D, Suarez C. “Trans Issues in Health Care Panel.” Harvard Law School Lambda Legal Advocacy Conference. February 2008.

Gorton N, Thaler C, and Keisling M. “Drawing the Curtain: An Overview of Medical Privacy Protections and Risks for Transgender Patients and Providers ” WPATH Symposium, 2007, Chicago.

Gorton R. “Transgender Medicine 2007: A Medical Ethics and Evidence Based Paradigm Shift.” (Provider Session) The 6th Annual Mazzoni Center Trans-Health Conference. Philadelphia, PA. April 2007.

Gorton R. “FTM Hormones 201.” (Community Session) The 6th Annual Mazzoni Center Trans-Health Conference. Philadelphia, PA. April 2007.

Gorton R. “Medical Ethics and Evidence Based Transgender Medicine.” FORGE Forward. Milwaukee WI. March 2007.

Gorton R. “FTM Hormonal Treatment: Beyond 101.” FORGE Forward. Milwaukee WI. March 2007.

Gorton R. "Transgender Healthcare in 2007: Its Time to Take it Seriously." Humboldt State University 13th Annual Diversity Conference and Education Summit. Arcata CA. March 2007.

Spade D, Gehi P, Arkles G, and Gorton R. “Barriers to health care access for transpeople.” UCLA School of Law, Williams Institute Annual Update. Los Angeles, CA. February 2007.

Marksamer J and Gorton R. "Legal Support and Advocacy for Transgender Youth and Their Families." Gay and Lesbian Medical Association Annual Conference. San Francisco, CA. October 2006.

Gorton R. "Hormone Therapy 101." FTM-Gender Odyssey 2006. Seattle, WA. September 2006.

Gorton R. "Hormone Therapy 201." FTM-Gender Odyssey 2006. Seattle, WA. September 2006.

Gorton R. "Transgender Medicine." California Department of Health Early Intervention Program Statewide Conference. May 2006.

Gorton R. "Primary Care and Hormonal Therapy for Transgender Males." (Provider Session) The 5th Annual Mazzoni Center Trans-Health Conference. Philadelphia, PA. March 2006.

Gorton R. "Health Maintainence for Transgender Men." (Community Session) The 5th Annual Mazzoni Center Trans-Health Conference. Philadelphia, PA. March 2006.

Gorton R. "Primary Care and Hormonal Therapy for Transgender Males." The 23rd Annual Conference of the Gay and Lesbian Medical Association. Montreal, Canada. September, 2005.

Spade, D, and Gorton R. "Medical-Legal Policy Update in the Quest for Trans Health Care and Justice." The 23rd Annual Conference of the Gay and Lesbian Medical Association. Montreal, Canada. September, 2005.

Arkles Z, and Gorton R. "Medical-legal Collaboration in the Quest for Trans Health Care and Justice" The 19th Biennial Symposium of the Harry Benjamin International Gender Dysphoria Association. Bologna, Italy. April, 2005.

Professional Advocacy

Supported as physician member of the American Medical Association for adoption of inclusive language for transgender people within AMA policy. "Recommendations to Modify AMA Policy to Ensure Inclusion for Transgender Physicians, Medical Students and Patients." Accepted by the AMA Board of Delegates July 2007. See "AMA Meeting: Anti-discrimination policy extended to transgendered." AMA News July 16, 2007.

http://www.ama-assn.org/amednews/2007/07/16/prsk0716.htm. Policy amendment available at: http://www.ama-assn.org/ama1/pub/upload/mm/467/bot11a07.doc

Authored and proposed with Vernon A, and Maxey K. *Resolution to amend the American College of Emergency Physicians 'Code of Ethics for Emergency Physicians.'* Accepted as policy October 2005. Now reads (amended language underlined): "Provision of emergency medical treatment should not be based on gender, age, race, socioeconomic status, sexual orientation, real or perceived gender identity, or cultural background."

Awards

Claire Skiffington Vanguard Award. Transgender Law Center. San Francisco, CA. 2012.

EXHIBIT 15

DECLARATION OF CARLOS FRANCO-PAREDES, M.D., M.P.H.

I, Carlos Franco-Paredes, M.D., M.P.H., declare under penalty of perjury under the laws of the United States as follows:

I. Overview of Background and Specializations.

1. My name is Dr. Carlos Franco-Paredes and I am an Associate Professor of Medicine at the University of Colorado in the Department of Medicine, Division of Infectious Diseases. I completed my internal medicine residency and infectious diseases fellowship at Emory University School of Medicine. I present my Curriculum Vitae attached as Exhibit A. I have written and published extensively on the topics of infectious diseases pandemics and epidemics, particularly in influenza. I have 196 scientific publications in peer-reviewed scientific journals. I teach a class at the school of medicine on caring for underserved populations including immigrants and incarcerated populations.
2. In addition, I hold a public health degree in global health from the Rollins School of Public Health at Emory University with a concentration on the dynamics of infectious disease epidemics and pandemics. I also have twenty years of relevant clinical experience. I participated in developing international guidelines for pandemic influenza preparedness and response as well as a global health action plan with the World Health Organization.
3. As an infectious diseases clinician, I have experience providing care to individuals in civil detention centers in the United States (US) and have performed medical forensic examinations and medical second opinion evaluations for patients in the custody of

the Department of Homeland Security, Immigration and Customs Enforcement (ICE). I have also provided direct care for many patients in ICE custody or incarcerated settings living with HIV-infection at my current academic institution. Prior to the Covid-19 outbreak, I provided care for transgender women residing in the Aurora, CO, immigration detention facility to manage their gender affirming care and antiretroviral therapy for HIV. However, at this time, the facility is not allowing me to see my patients, even virtually. The current doctor at the facility is not helping with the previously existing collaboration.

4. Over the last two weeks, I have witnessed firsthand the impact of COVID-19 at my institution, University of Colorado, Anschutz Medical Center. I have provided direct care to at least 40 patients with this infection, with many requiring intensive care management and often developing respiratory failure necessitating mechanical ventilator support.
5. Based on my conversations with patients, my own observations, and information that exists regarding the resources available within immigration detention facilities as detailed by the ICE Health Services Corps, it is my professional opinion that the medical care available in immigration detention centers cannot properly accommodate the needs of patients should there be an outbreak of COVID-19 in these facilities. Immigration detention centers are often poorly equipped to diagnose and manage infectious disease outbreaks. Many of these centers lack onsite medical facilities or 24-hour medical care.
6. In summary, I am concerned about the treatment of immigrants inside detention centers, which could make the current COVID-19 epidemic worse in the US by

contributing to a high fatality rate among detained individuals and potentially spreading the outbreak into the larger community.

7. Immigration detention centers in the US are tinderboxes for the transmission of highly transmissible infectious pathogens including the SARS-CoV-2, which causes the Coronavirus Disease (COVID-19). Given the large population density of immigration detention centers, and the ease of transmission of this viral pathogen, the attack rate inside these centers may reach exponential proportions consuming significant medical care and financial resources.

II. Overview of Documents Reviewed in Preparation of this Declaration.

8. In preparation for this declaration, I reviewed the following scientific references, relevant medical documents and public health websites:

    a. Johns Hopkins University. Coronavirus Resource Center Available at: https://coronavirus.jhu.edu/map.html. Accessed: April 14, 2020.

    b. CDC-Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19) Available at: https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html). Accessed: April 14, 2020.

    c. CDC COVID 19 Response Team. Severe outcomes among patients with coronavirus disease 2019 (COVID-19) – United States, February 12-March 16, 2020. Available at: https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm. Accessed: April 13, 2020.

    d. Rodriguez-Morales AJ, Cardona-Ospina JA, Gutiérrez-Ocampo E, Villamizar-Peña R, Holguin-Rivera Y, Escalera-Antezana JP, Alvarado-Arnez LE, Bonilla-Aldana DK, Franco-Paredes C, Henao-Martinez AF, Paniz-Mondolfi A, Lagos-Grisales GJ, Ramírez-Vallejo E, Suárez JA, Zambrano LI, Villamil-Gómez WE, Balbin-Ramon GJ, Rabaan AA, Harapan H, Dhama K, Nishiura H, Kataoka H, Ahmad T, Sah R; Latin American Network of Coronavirus Disease 2019-COVID-19 Research (LANCOVID-19). Electronic address: https://www.lancovid.org. Clinical, laboratory and imaging features of COVID-19: A systematic review and meta-analysis. Travel Med Infect Dis. 2020 Mar 13:101623. doi: 10.1016/j.tmaid.2020.101623. [Epub ahead of print].

e. Foppian Palacios C, Opensahw JJ, Travassos MA. Influenza in US detention centers- the desperate need for immunization. N Engl J Med 2020; 382(9): 789-792.

f. Novel Coronavirus Pneumonia Emergency Response Epidemiology Team. [The Epidemiological Characteristics of an Outbreak of 2019 Novel Coronavirus Diseases (COVID-19) in China]**.** Zhonghua Liu Xing Bing Xue Za Zhi. 2020;41(2):145–151. DOI:10.3760/cma.j.issn.0254-6450.2020.02.003.

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h. Wu C, Chen X, Cai Y, Xia J, Zhou X, Xu S, Huang H, Zhang L, Zhou X, Du C, Zhang Y, Song J, Wang S, Chao Y, Yang Z, Xu J, Zhou X, Chen D, Xiong W, Xu L, Zhou F, Jiang J, Bai C, Zheng J, Song Y. JAMA Intern Med. 2020 Mar 13. doi: 10.1001/jamainternmed.2020.0994. [Epub ahead of print].

i. Koh GC, Hoenig H. How should the rehabilitation community prepare for 2019-nCOV? Arch Phys Med Rehabil 2020 Mar 16. Pii: S0003-9993(20)30153-2. Doi: 10.1016/j.apmr.2020.03.003. (Epub ahead of print].

j. Chen C, Zhou Y, Wen WD. SARS-CoV-2: a potential novel etiology of fulminant myocarditis. Herz 2020; March 5. https://doiorg/10.1007/s00059-020-04909-z.

k. Hu H, Ma F, Wei X, Fang Y. Coronavirus fulminant myocarditis saved with glucocorticoid and human immunoglobulin. Eur Heat J 2020; Mar 16. [Epub ahead of print].

l. Li R, Pei S, Chen B, Song , Zhang T, Shaman J. Substantial undocumented infection facilitates the rapid dissemination of novel coronavirus (SARS-CoV2). Science 10.1126/scienceabb3221 (2020).

m. Russell CD, Millar JE, Baillie JK. Clinical evidence does not support corticosteroid treatment for 2019-nCoV lung injury. Lancet Infect Dis 2020; 395: 474-475.

n. Hoffmann M, Kleine-Weber H, Schroeder S, Krüger N, Herrler T, Erichsen S, Schiergens TS, Herrler G, Wu NH, Nitsche A, Müller MA, Drosten C, Pöhlmann S. SARS-CoV-2 Cell Entry Depends on ACE2 and TMPRSS2 and Is Blocked by a Clinically Proven Protease Inhibitor. Cell. 2020 Mar 4. pii: S0092-8674(20)30229-4. doi: 10.1016/j.cell.2020.02.052. [Epub ahead of print]

o. Tian S, Hu W, Niu L, Liu H, Su H, Xiao SY. Pulmonary pathology of early phase 2019 novel coronavirus (COVID-19) pneumonia in patients with lung cancer. J Thorac Oncol 2020; https://doi.org/10.1016;j.tho.2020.02.010.

p. Lauer SA, Grantz KH, Bi Q, Jones FK, Zheng Q, Meredith HR, Azman AS, Reich NG, Lessler J.The incubation period of coronavirus disease 2019 (COVID-19) from publicly reported confirmed cases: estimation and

application. Ann Intern Med 2020; March 10, doi: https://doi/org/107326/M20-0504.

q. Korean Society of Infectious Diseases; Korean Society of Pediatric Infectious Diseases; Korean Society of Epidemiology; Korean Society for Antimicrobial Therapy; Korean Society for Healthcare-associated Infection Control and Prevention; Korea Centers for Disease Control and Prevention. Report on the Epidemiological Features of Coronavirus Disease 2019 (COVID-19) Outbreak in the Republic of Korea from January 19 to March 2, 2020. J Korean Med Sci. 2020 Mar 16; 35(10):e112. doi: 10.3346/jkms.2020.35.e112.

r. Fauci AS. Infectious diseases: considerations for the 21st century. Clin Infect Dis 2001; 32: 675-85.

s. Finnie TJR, Copley VR, Hall IM, Leach S. An analysis of influenza outbreaks in institutions and enclosed societies. Epidemiol Infect 2014; 14: 107-113.

t. Chao W-C, Liu P-Y, Wu C-L. Control of an H1N1 outbreak in a correctional facility in central Taiwan. J Microbiol Immunol Infect 2017; 50: 175-182.

u. Dolan K, Wirtz AL, Moazen B, Ndeffo-Mbah M, Galvani A, Kinner SA, Courtney R, McKee M, Amon JJ, Maher L, Hellard M, Beyrer C, Altice FL. Global burden of HIV, viral hepatitis, and tuberculosis in prisoners and detainees. Lancet 2016; 388 (10049): 1089-1102

v. CDC. Interim guidance on management of coronavirus disease 2019 (COVID-19) in correctional and detention facilities. Available at: https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html. Accessed: April 12, 2020.

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Thompson R. Pandemic potential of 2019-nCoV.Lancet Infect Dis 2020; 20 March 20; doi.org/10.1016/S1473-3099 (20)30068-2.

III. Formal Analysis.

A. Global and US-Specific Status of the SARS-CoV-2 (COVID-19) Pandemic.

9. The Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) is a newly emerging zoonotic agent initially identified in December 2019 that as of April 14,

2020 has disseminated to 185 countries, causing 1,961,965 confirmed cases and 125,476 deaths. This viral pathogen causes the Coronavirus Disease 2019 (COVID-19).

10. Infection with COVID-19 is associated with significant morbidity and mortality, especially in patients above 55 years of age and those with chronic medical conditions including HIV/AIDS, diabetes mellitus, chronic lung disorders, hypertension and others.

11. As of April 14, 2020, there have been 594,207 confirmed cases of COVID-19 with 25,402 deaths reported in the U.S. There have been reports of confirmed cases in all US states and most states have already reported deaths. The epicenters in the US territory began in the Pacific Northwestern states and then spread to California and the Northeast, particularly New York City and New Jersey.

12. Reports by the CDC show that 31% of COVID-19 cases, 45% of hospitalizations, and 80% of deaths occurred among adults over 65 years of age. Case-fatality in persons aged over 85 ranged from 10-27%, followed by 3-11% among persons aged 65 to 84, 1% among persons aged 55 to 64, and less than 1% among persons aged 20 to 54.

B. Risk of Immigration Detention Centers Fueling the COVID-19 Pandemic.

13. I reviewed COVID-19 guidance by ICE and CDC recommendations for carceral settings.

14. Both sets of guidance address social distancing in these centers, which appears to be difficult, if not impossible, in settings where many individuals are living in close quarters with a large number of beds per room or dorm. However, these recommendations and guidance are insufficient in case of an outbreak as it has

occurred in many carceral settings in the U.S. The current crisis reaching jails and prisons in the U.S. is concerning. My colleagues and I have a publication in press where we state the following:

"In the US, the Federal Bureau of Prisons (BOP) reports that there are 335 federal inmates diagnosed with COVID-19 and 185 staff members among 39 BOP and 9 Residential Reentry Management Centers (RRC) nationwide. There have been nine federal inmate deaths. However, when combining prisons and jails in all States, there are at least 1,324 confirmed cases of COVID-19 tied to prisons and jails with at least 32 deaths. These include some of America's largest outbreaks including the Cook County Jail in Chicago, Illinois (492 cases), and Parnall Correctional Facility in Jackson, Michigan (194 cases). As the number of cases of COVID-19 continues to spread in the U.S., it is likely that there will be an increasing number of clusters and outbreaks in carceral settings with implications to the larger community and to the healthcare system. At this point in the pandemic, the capacity to handle a large influx of patients with complicated COVID-19 coming from jails and prisons is limited. Efforts at the federal, state, and local levels are reducing the number of incarcerated individuals. However, without widespread availability of testing in jails and prisons to guide isolation and quarantine practices, inadequate supply of personal protective equipment for inmates including masks, and the revolving door of jails, hampers the ability to block transmission as the current outbreak inside the Cook County jail has uncovered."

C. Populations at Risk of Severe Disease and Death Due to SARS-CoV-2 Infection under ICE Custody.

15. According to the CDC, groups deemed to be at high risk of developing severe disease and dying from COVID-19 include those above 50 years of age and those with underlying medical conditions (regardless of their age). (See Table 1 below). These cases are also amplifiers or hyper-spreaders of the infection since they tend to have high viral concentrations in their respiratory secretions.

16. The clinical experience in China, South Korea, Italy, and Spain; and within the US, has shown that 80% of confirmed cases tend to occur in persons 30 to 69 years of age regardless of whether they had underlying medical conditions. Of these, 20% develop severe clinical manifestations or become critically ill. Among those with severe clinical manifestations, regardless of their age or underlying medical conditions, the virus progresses into respiratory failure, septic shock, and multiorgan dysfunction requiring intensive care support including the use of mechanical ventilator support. The overall case fatality rate is 10-14% of those who develop severe disease.

17. Another important vulnerable group is transgender individuals, particularly transgender women. An important percentage of them are living with HIV-infection. Without exception, all of them have fled to the US seeking protection from torture, sexual violence, or other forms of persecution. Every single patient that I have the honor of caring for as a physician, have a profound history of trauma leading to high rates of depression, anxiety, and post-traumatic stress disorder. Many experience prolonged periods of detention while immigration courts adjudicate their asylum claims or are deported for civil immigration violations. While in detention, many

transgender women routinely undergo harassment, sexual assault, and solitary confinement. In some immigration detention centers, there is no routine provision of gender affirming care (hormonal therapy). Often, transgender women are held in men's detention facilities placing them at risk of sexual abuse. From a medical perspective, many transgender women may also have chronic medical conditions such as systemic arterial hypertension or diabetes mellitus. Two transgender females have died under ICE custody and in both cases, there has been evidence of medical neglect.

Table 1. Risk factors for developing severe disease and death

Age groups at high risk of developing severe disease and dying without underlying medical conditions	≥50 years (1% CFR)* 60-69 years (3.6% CFR) 70-79 years (8% CFR)
Groups with underlying medical conditions at high risk of dying regardless of their age	-Cardiovascular Disease (congestive heart failure, history of myocardial infarction, history of cardiac surgery) -Systemic Arterial Hypertension (high blood pressure) -Chronic Respiratory Disease (asthma, chronic obstructive pulmonary disease including chronic bronchitis or emphysema, or other pulmonary diseases) -Diabetes Mellitus -Cancer -Chronic Liver Disease -Chronic Kidney Disease -Autoimmune Diseases -Severe Psychiatric Illness **

	-History of Transplantation -HIV/AIDS

*CFR= Case Fatality Rate. This is an indicator of lethality used during outbreaks to identify the number of individuals who succumb out of those who become infected.
** In South Korea, 20% of deaths occurred in what they defined as Psychiatric Illness (J Korean Med Sci 2020; 35(10): e112).

D. Potential Impact of the COVID-19 behind Walls of Immigration Detention Centers in the US.

18. There is a growing number of confirmed Covid-19 cases in the US, increasing numbers of hospitalizations and admissions to intensive care units, and many deaths. In this wave of the pandemic or in subsequent ones, it is likely the number of infected individuals will continue to augment. In the closed settings of immigration detention centers, where there is overcrowding and confinement of a large number of persons, networks of transmission become highly conducive to spread rapidly.

19. There is evidence of substantial undocumented infection facilitating the rapid dissemination of novel coronavirus SARS-CoV-2 which is responsible for 79% of documented cases of COVID-19 in China. Once an individual is exposed to this virus from either a symptomatic individual (21% of cases) or from asymptomatic individuals (79% of cases), the shortest incubation period is 3 days with a median incubation period of 5.1 days (95% CI 4.5 to 5.8 days). Overall, 97.5% of persons who develop symptoms do so within 11.5 days of the initial exposure. Most persons with COVID-19 who develop severe disease do so immediately after admission or within 3-5 days from their initial presentation and represent 53% of those requiring intensive care unit admissions and advanced supportive care. At the University of

Colorado, Anschutz Medical Center, there have been two confirmed deaths occurring within 48 hours of admission to the hospital.

20. Given the high population density of jails, prisons, and juvenile detention centers, and the ease of transmission of this viral pathogen, the infection rate will be exponential if even a single person, with or without symptoms, that is shedding the virus enters a facility. For every person with the virus, they will infect more than 2 other people – whether they be incarcerated individuals or staff. Of those infected, one-fifth will get so ill that they require hospital admission, and about 10% will develop severe disease requiring treatment only available in the intensive care unit. To illustrate the magnitude of this threat, a jail or prison that holds 1500 individuals can anticipate that 500-650 individuals may acquire the infection. Of these, 100 to 150 individuals may develop symptoms and may progress to develop severe disease requiring admission to the hospital, potentially to an intensive care unit. Of these, 5-10 individuals may die from respiratory failure, septic shock and multiorgan failure.

21. Reducing the number of incarcerated individuals is necessary for effective infection control and sanitization practices that could dramatically reduce the burden COVID-19 will inevitably place on our health system. Urgent action is needed given the predicted shortage of medical supplies such as personal protective equipment, shortage of staff as medical personnel become ill themselves, and limited life-saving resources such as ventilators.

E. Potential Impact of a COVID-19 Outbreak in a Detention Center May be Overwhelming To Local Healthcare Systems

22. Detention of any kind requires large groups of people to be held together in a confined space and creates the worst type of setting for curbing the spread of a highly contagious infection such as COVID-19. To contain the spread of the disease, infection prevention protocols must be meticulously followed.

23. The number of private rooms in a typical detention facility is insufficient to comply with the recommended airborne/droplet isolation guidelines. Another important consideration that complicates disinfection and decontamination practices is the ability of this novel coronavirus to survive for extended periods of time on materials that are highly prevalent in secure settings, such as metals and other non-porous surfaces. Current outbreak protocols require frequent disinfection and decontamination of all surfaces of the facility, which is exceedingly difficult given the large number of incarcerated individuals, frequent interactions between incarcerated individuals and staff, and regularity with which staff move in and out of each facility.

24. Responding to an outbreak requires significant improvements in staffing, upgrading medical equipment, substantial supplies including antibiotics, intravenous infusions, cardiac and respiratory monitors, devices for oxygen supply, and personal protection supplies among persons at high risk of severe COVID-19 disease. Additionally, this outbreak calls for highly trained staff to correctly institute and enforce isolation and quarantine procedures, and appropriately use personal protective equipment. It is essential that nursing and medical staff be trained in infection control prevention practices, implementing triage protocols, and the medical management of suspected, probable and confirmed cases of coronavirus infection.

25. These same personnel would have to initiate the management of those with severe disease. Since these are closed facilities, the number of exposed, infected, and ill individuals may rapidly overwhelm staff and resources.

26. This is particularly important in rural and semirural settings where many immigration detention centers are located, particularly in Southern states and where they may have contact with a limited number of surrounding medical centers. As a result, many patients would need transfer to hospitals near these facilities, likely overwhelming the surrounding healthcare systems, which are already functioning at full capacity caring for the general non-incarcerated community.

27. A large outbreak of COVID-19 in an immigration detention facility would put a tremendous strain on the medical system to the detriment of patients in the communities surrounding these centers. It is reasonable to anticipate that there will be the loss of additional lives that could have otherwise been saved.

IV. Expert Opinion.

28. There is an urgent need to consider alternative strategies to dilute the community-based impact of an outbreak inside immigration detention centers. Therefore, it is my professional view, that releasing detainees on parole from these centers constitutes a high-yield public health intervention that may significantly lessen the impact of this outbreak. In particular, due to their vulnerability, there should be efforts targeting the release of transgender women. Many of these transgender women are in the age groups at risk of severe disease and death; or those with underlying medical conditions including HIV infection, diabetes mellitus, obesity, and hypertension.

These interventions may lessen the human and financial costs that this outbreak may impose on ICE detention facilities nationwide.

29. As an infectious disease physician specialized in the care of patients living with HIV-infection, I can attest that most patients that we currently co-manage with the Aurora medical staff are receiving optimal antiretroviral therapy. However, some of the newly admitted patients to the Aurora facility are living with HIV-infection have not received our consultation services. This is an important concern since lately we have had some challenges in scheduling virtual evaluations of some of our patients. And at least in one case, one of the patients that I evaluated was receiving an antiretroviral drug combination (Genvoya) which contains cobicistat, a medication with important drug-drug interactions. This transgender patient living with HIV-infection was also receiving the inhaled steroid, fluticasone that has important drug-drug interactions with cobicistat leading to excess glucocorticoid syndrome. In summary, it is my professional opinion that despite receiving optimal antiretroviral therapy, many individuals living with HIV-infection and having an adequate response to these therapies, remain at high risk of some infections including bacterial pneumonias and likely COVID-19. It is my understanding that the increasing number of transgender women in civil detention at the Aurora facility are residing in a specific pod. This may concentrate the vulnerability of this group to COVID-19 by all living in one designated area. Conversely, releasing them into the male or female general pods, may place them at risk of increasing harassment and sexual violence. Therefore, the best strategy for risk mitigation for this group of individuals is release.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this fifteenth day of April 2020 at Aurora, Colorado, United States.

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Carlos Franco Paredes, M.D., M.P.H.
Associate Professor of Medicine
Division of Infectious Diseases
Department of Medicine
Division of infectious Diseases
Program Director Infectious Disease Fellowship
Training Program, University of Colorado

Exhibit A. Curriculum Vitae – Carlos Franco-Paredes MD, MPH

PERSONAL INFORMATION
Carlos Franco-Paredes, M.D., M.P.H.
Carlos.franco-paredes@cuanschutz.edu
carlos.franco.paredes@gmail.com
US Citizen

CURRENT PROFESSIONAL POSITION AND ACTIVITIES:

- Associate Professor of Medicine, Division of Infectious Diseases, University of Colorado Denver School of Medicine, Anschutz Medical Campus and Infectious Diseases (July 2018 - ongoing).
- Fellowship Program Director, Division of Infectious Diseases, University of Colorado Denver School of Medicine, Anschutz Medical Campus (March 2019- ongoing).

EDUCATION

1989 -1995	M.D. - La Salle University School of Medicine, Mexico City, Mexico
1996-1999	Internship and Residency in Internal Medicine, Emory University School of Medicine Affiliated Hospitals, Atlanta, GA

1999-2002	Fellowship in Infectious Diseases, Emory University School of Medicine Affiliated Hospitals, Atlanta, GA
1999-2002	Fellow in AIDS International Training and Research Program, NIH Fogarty Institute, Rollins School of Public Health, Emory University, Atlanta, GA
1999 - 2002	Masters Degree in Public Health (M.P.H.) Rollins School of Public Health, Emory University, Atlanta, GA, Global Health Track
2001-2002	Chief Medical Resident, Grady Memorial Hospital, Emory University School of Medicine, Atlanta, GA
2006	Diploma Course in Tropical Medicine, Gorgas. University of Alabama, Birmingham and Universidad Cayetano Heredia, Lima Peru

CERTIFICATIONS

1999-Present	Diplomat in Internal Medicine American Board of Internal Medicine (Recertification 11/2010-11/2020)
2001-present	Diplomat in Infectious Diseases, American Board of Internal Medicine, Infectious Diseases Subspecialty (Recertification 04/2011-04/2021)
2005-present	Travel Medicine Certification by the International Society of Travel Medicine
2007-present	Tropical Medicine Certification by the American Society of Tropical Medicine – Diploma in Tropical Medicine and Hygiene (DTMH - Gorgas)

EMPLOYMENT HISTORY:

- 2002 - 2004 - Advisor to the Director of the National Center for Child and Adolescent Health and of the National Immunization Council (NIP), Ministry of Health Mexico; my activities included critical review of current national health plans on vaccination, infectious diseases, soil-transmitted helminthic control programs; meningococcal disease outbreaks in the jail system, an outbreak of imported measles in 2003-2004 and bioterrorism and influenza pandemic preparedness. I represented the NIP at meetings of the Global Health Security Action Group preparation of National preparedness and response plans for Mexico
- 2005 – 2011- Co-Director Travel Well Clinic, Emory University
  Emory Midtown Hospital
- 2004- 8/2009 -Assistant Professor of Medicine
  Department of Medicine, Division of Infectious Diseases
  Emory University School of Medicine, Atlanta GA
- 3/2008-10/2009 Consultant WHO, HQ, Geneva, Influenza Vaccine
- 9/2009- 3/2011 Associate Professor of Medicine
  Department of Medicine, Division of Infectious Diseases
  Emory University School of Medicine, Atlanta GA
- 1/2007 – 3/2011 Assistant Professor of Public Health
  Hubert Department of Global Health
  Rollins School of Public Health, Emory University, Atlanta GA

- 4/2011 –5/2013 - Associate Professor of Public Health in Global Health
  Hubert Department of Global Health
  Rollins School of Public Health, Emory University, Atlanta GA
- 2010 - WHO HQ Consultant for a 4-month-period on the Deployment of H1N1 influenza vaccine in the African Region, Jan to March 2010, Switzerland Geneva, WHO HQ 2010 sponsored by John Snow Inc. USAID, Washington, D.C.
- 2014-2015 - Consultant International Association of Immunization Managers, Regional Meeting of the Middle Eastern and North African Countries and Sub Saharan Africa, held in Durban South Africa, Sept 2014; and as rapporteur of the Inaugural Conference, 3-4 March 2015, Istanbul, Turkey.
- 3/2011- 5/2017 - Phoebe Physician Group –Infectious Diseases Clinician Phoebe Putney Memorial Hospital, Albany, GA.
- 5/2015 - 9/2015 - Consultant Surveillance of Enteric Fever in Asia (Pakistan, Indonesia, Bangladesh, Nepal, India) March 2015-October 2015.
- June 19, 2017-June 31, 2018–Visiting Associate Professor of Medicine, Division of Infectious Diseases, University of Colorado Denver, Anschutz Medical Campus
- June 2004- present - Adjunct Professor of Pediatrics, Division of Clinical Research, Hospital Infantil de México, Federico Gómez, México City, México. Investigador Nacional Nivel II, Sistema Nacional de Investigadores (12/2019); SNI III Sistema Nacional de Investigadores (1/2020-); Investigador Clínico Nivel E, Sistema Nacional de Hospitales

HONORS AND AWARDS

1995 Top Graduating Student, La Salle School of Medicine

1997 Award for Academic Excellence in Internal Medicine, EUSM
1999 Alpha Omega Alpha (AOA) House staff Officer, EUSM
2002 Pillar of Excellence Award. Fulton County Department of Health and Wellness Communicable Disease Prevention Branch, Atlanta GA
2002 Emory University Humanitarian Award for extraordinary service in Leadership Betterment of the Human Condition the Emory University Rollins School of Public Health
2002 Winner of the Essay Contest on the Health of Developing Countries: Causes and Effects in Relation to Economics or Law, sponsored by the Center for International Development at Harvard University and the World Health Organization Commission on Macroeconomics Health with the essay "*Infectious Diseases, Non-zero Sum Thinking and the Developing World"*
2002 *"James W. Alley"* Award for Outstanding Service to Disadvantaged Populations, Rollins School of Public Health of Emory University May

2002. Received during Commencement Ceremony Graduation to obtain the Degree of Masters in Public Health

2006 Golden Apple Award for Excellence in Teaching, Emory University, School of Med

2006 Best Conference Award Conference, "*Juha Kokko*" Best Conference Department of Medicine, EUSM

2007 "*Jack Shulman*" Award Infectious Disease fellowship, Excellence in Teaching Award, Division of Infectious Diseases, EUSM

2007 Emerging Threats in Public Health: Pandemic Influenza CD-ROM, APHA's Public Health Education and Health Promotion Section, Annual Public Health Materials Contest award

2009 National Center for Preparedness, Detection, and Control of Infectious Diseases. Honor Award Certificate for an exemplary partnership in clinical and epidemiologic monitoring of illness related to international travel. NCPDCID Recognition Awards Ceremony, April 2009. CDC, Atlanta, GA

2012 The ISTM Awards Committee, directed by Prof. Herbert DuPont, selected the article "Rethinking typhoid fever vaccines" in the Journal of Travel Medicine (Best Review Article)

2012 Best Clinical Teacher. Albany Family Medicine Residency Program

2018 Outstanding Educator Award – Infectious Diseases Fellowship, Division of Infectious Diseases, University of Colorado, Anschutz Medical Center, Aurora Colorado

EDITORSHIP AND EDITORIAL BOARDS

2007-Present Deputy/Associate Editor PLoS Neglected Tropical Disease Public Library of Science

2017-2018 Deputy Editor, Annals of Clinical Microbiology and Antimicrobials BMC

2007-2019 Core Faculty International AIDS Society-USA -Travel and Tropical Medicine/HIV/AIDS

INTERNATIONAL COMMITTEES

2018- Member of the Examination Committee of the International Society of Travel Medicine. Developing Examination Questions and Proctoring the Certificate in Traveler's Health Examination

Proctor Certificate of Traveler's Health Examination (CTH) as part of the International Society of Travel Medicine– 12th Asia-Pacific Travel Health Conference, Thailand 21-24, March 2019

Proctor Certificate of Traveler's Health Examination (CTH), Atlanta, GA, September, 2019

PRESENTATIONS AT NATIONAL/INTERNATIONAL MEETINGS

2017- Meeting of the Colombian Society of Infectious Diseases, August 2017:
Discussion of Clinical Cases Session, Influenza, MERS-Coronavirus, Leprosy, Enteric Fever

2018 – Cutaneous Mycobacterial Diseases, Universidad Cayetano Heredia, Lima, Peru, Mayo 2018
2018 – Scientific Writing Seminar, ACIN, Pereira, Colombia, August 2-4, 2018
2019 – First International Congress of Tropical Diseases ACINTROP 2019. March 21, 2019, Monteria, Colombia, Topic: Leishmaniasis
2019 – One Health Symposium of Zoonoses, Pereira Colombia, August 16-17, 2019, Topic: Zoonotic Leprosy
2019 – Congress Colombian Association of Infectious Diseases (ACIN), Topic: Leprosy in Latin America, Cartagena, Colombia, August 21-24, 2019
2019 – World Society Pediatric Infectious Diseases, Manila Philippines, November 7-9, 2019 - Tropical Medicine Symposium: Diagnosis, Treatment, and Prevention of Leprosy.
2019 – FLAP. Federacion Latino Americana de Parasitologia, Panama, Panama, November 26, 2019, Oral Transmission of Leprosy Symposium
2019 – FLAP. Federacion Latino Americana de Parasitologia, Panama, Panama, November 27, 2019, Leprosy Situation in the Americas.

PUBLICATIONS
BOOKS
Franco-Paredes C, Santos-Preciado JI. Neglected Tropical Diseases in Latin America and the Caribbean, Springer-Verlag, 2015. ISBN-13: 978-3709114216 ISBN-10: 3709114217
Franco-Paredes C. Core Concepts in Clinical Infectious Diseases, Academic Press, Elsevier, March 2016. ISBN: 978-0-12-804423-0

RESEARCH ORIGINAL ARTICLES (clinical, basic science, other) in refereed journals:
1. Del Rio C, **Franco-Paredes C**, Duffus W, Barragan M, Hicks G. Routinely Recommending HIV Testing at a Large Urban Urgent-Care Clinic – Atlanta, GA. *MMWR Morbid Mortal Wkly Rep* 2001; 50:538-541.
2. Del Rio C, Barragán M, **Franco-Paredes C**. *Pneumocystis carinii* Pneumonia. *N Engl J Med* 2004; 351:1262-1263.
3. Barragan M, Hicks G, Williams M, **Franco-Paredes C**, Duffus W, Del Rio C. Health Literacy is Associated with HIV Test Acceptance. *J Gen Intern Med* 2005; 20:422-425.
4. Rodriguez-Morales A, Arria M, Rojas-Mirabal J, Borges E, Benitez J, Herrera M, Villalobos C, Maldonado A, Rubio N, **Franco-Paredes C**. Lepidopterism Due to the Exposure of the Moth *Hylesia metabus* in Northeastern Venezuela. *Am J Trop Med Hyg* 2005; 73:991-993.
5. Rodriguez-Morales A, Sánchez E, Arria M, Vargas M, Piccolo C, Colina R, **Franco-Paredes C**. White Blood Cell Counts in *Plasmodium vivax*. *J Infect Dis* 2005; 192:1675-1676.
6. **Franco-Paredes C**, Nicolls D, Dismukes R, Kozarsky P. Persistent Tropical Infectious Diseases among Sudanese Refugees Living in the US. *Am J Trop Med Hyg* 2005; 73: 1.
7. Osorio-Pinzon J, Moncada L, **Franco-Paredes C**. Role of Ivermectin in the Treatment of Severe Orbital Myiasis Due to *Cochliomyia hominivorax*. *Clin Infect Dis* 2006; 3: e57-9.
8. Rodriguez-Morales A, **Franco-Paredes C**. Impact of *Plasmodium vivax* Malaria during Pregnancy in Northeastern Venezuela. *Am J Trop Med Hyg* 2006; 74:273-277.
9. Rodriguez-Morales A, Nestor P, Arria M, **Franco-Paredes C**. Impact of Imported Malaria on the Burden of Malaria in Northeastern Venezuela. *J Travel Med* 2006; 13:15-20.

10. Rodríguez-Morales A, Sánchez E, Vargas M, Piccolo C, Colina R, Arria M, **Franco-Paredes C.** Is anemia in *Plasmodium vivax* More Severe and More Frequent than in *Plasmodium falciparum? Am J Med* 2006; 119:e9-10.
11. Hicks G, Barragan M, **Franco-Paredes C**, Williams MV, del Rio C. Health Literacy is a Predictor of HIV Knowledge. *Fam Med J* 2006; 10:717-723.
12. Cardenas R, Sandoval C, Rodriguez-Morales A, **Franco-Paredes C**. Impact of Climate Variability in the Occurrence of Leishmaniasis in Northeastern Colombia. *Am J Trop Med Hyg* 2006; 75:273-7.
13. **Franco-Paredes C**, Nicolls D, Dismukes R, Wilson M, Jones D, Workowski K, Kozarsky P. Persistent and Untreated Tropical Infectious Diseases among Sudanese Refugees in the US. *Am J Trop Med Hyg* 2007; 77:633-635.
14. Rodríguez-Morales AJ, Sanchez E, Arria M, Vargas M, Piccolo C, Colina R, **Franco-Paredes C**. Hemoglobin and haematocrit: The Threefold Conversion is also Non Valid for Assessing Anaemia in *Plasmodium vivax* Malaria-endemic Settings. *Malaria J* 2007; 6:166.
15. **Franco-Paredes C**, Jones D, Rodriguez-Morales AJ, Santos-Preciado JI. Improving the Health of Neglected Populations in Latin America. *BMC Public Health* 2007; 7.
16. Kelly C, Hernández I, **Franco-Paredes C**, Del Rio C. The Clinical and Epidemiologic Characteristics of Foreign-born Latinos with HIV/AIDS at an Urban HIV Clinic. *AIDS Reader* 2007; 17:73-88.
17. Hotez PJ, Bottazzi ME, **Franco-Paredes C**, Ault SK, Roses-Periago M. The Neglected Tropical Diseases of Latin America and the Caribbean: Estimated Disease Burden and Distribution and a Roadmap for Control and Elimination. *PLoS Negl Trop Dis* 2008; 2:e300.
18. Tellez I, Barragan M, Nelson K, Del Rio C, **Franco-Paredes C**. *Pneumocystis jiroveci* (PCP) in the Inner City: A Persistent and Deadly Pathogen. *Am J Med Sci* 2008; 335:192-197.
19. Rodriguez-Morales AJ, Olinda, **Franco-Paredes C**. Cutaneous Leishmaniasis Imported from Colombia to Northcentral Venezuela: Implications for Travel Advice. *Trav Med Infect Dis* 2008; 6(6): 376-9.
20. Jacob J, Kozarsky P, Dismukes R, Bynoe V, Margoles L, Leonard M, Tellez I, **Franco-Paredes C**. Five-Year Experience with Type 1 and Type 2 Reactions in Hansen's Disease at a US Travel Clinic. *Am J Trop Med Hygiene* 2008; 79:452-454.
21. Delgado O, Silva S, Coraspe V, Ribas MA, Rodriguez-Morales AJ, Navarro P, **Franco-Paredes C**. Epidemiology of Cutaneous Leishmaniasis in Children and Adolescents in Venezuela. *Trop Biomed.* 2008; 25(3):178-83.
22. **Franco-Paredes C**, Lammoglia L, Hernandez I, Santos-Preciado JI. Epidemiology and Outcomes of Bacterial Meningitis in Mexican Children: 10-Years' Experience (1993-2003). *Int J Infect Dis* 2008; 12:380-386.
23. Pedroza A, Huerta GJ, Garcia ML, Rojas A, Lopez I, Peñagos M, **Franco-Paredes C**, Deroche C, Mascareñas C. The Safety and Immunogenicity of Influenza Vaccine in Children with Asthma in Mexico. *Int J Infect Dis* 2009; 13(4): 469-75.
24. Museru O, **Franco-Paredes C**. Epidemiology and Outcomes of Hepatitis B Virus Infection among Refugees Seen at US Travel Medicine Clinic: 2005-2008. *Travel Med Infect Dis* 2009; 7: 171-179.
25. Rodriguez-Morales AJ, Olinda M, **Franco-Paredes C**. Imported Cases of Malaria Admitted to Two Hospitals of Margarita Island, Venezuela: 1998-2005. *Travel Med Infect Dis* 2009: (1): 48-45.

26. Kelley CF, Checkley W, Mannino DM, **Franco-Paredes C**, Del Rio C, Holguin F. Trends in Hospitalizations for AIDS-associated *Pneumocystis jiroveci* Pneumonia in the United States (1986-2005). *Chest* 2009; 136(1): 190-7.
27. Carranza M, Newton O, **Franco-Paredes C**, Villasenor A. Clinical Outcomes of Mexican Children with Febrile Acute Upper Respiratory Infection: No Impact of Antibiotic Therapy. *Int J Infect Dis* 2010; 14(9): e759-63.
28. Museru O, Vargas M, Kinyua M, Alexander KT, **Franco-Paredes C,** Oladele A. Hepatitis B Virus Infection among Refugees Resettled in the US: High Prevalence and Challenges in Access to Health Care. *J Immigrant Minor Health* 2010;
29. Moro P, Thompson B, Santos-Preciado JI, Weniger B, Chen R, **Franco-Paredes C.** Needlestick injuries in Mexico City sanitation workers. *Revista Panamericana de Salud Pública/Pan American Journal of Public Health* 2010; 27 (6): 467-8.
30. Barragan M, Holtz M, **Franco-Paredes C**, Leonard M. The Untimely Misfortune of Tuberculosis Diagnosis at time of Death. *Infect Dis Clin Pract* 2010; 18(6):1-7.
31. Hochberg N, Armstrong W, Wang W, Sheth A, Moro R, Montgomery S, Steuer F, Lennox J, **Franco-Paredes C**. High Prevalence of Persistent Parasitic Infections in Foreign-born HIV-infected Persons in the United States. *PLoS Neglect Dis* 2011; 5(4): e1034.
32. Larocque RC, Rao SR, Lee J, Ansdell V, Yates JA, Schwartz BS, Knouse M, Cahill J, Hagmann S, Vinetz J, Connor BA, Goad JA, Oladele A, Alvarez S, Stauffer W, Walker P, Kozarsky P, **Franco-Paredes C**, Dismukes R, Rosen J, Hynes NA, Jacquerioz F, McLellan S, Hale D, Sofarelli T, Schoenfeld D, Marano N, Brunette G, Jentes ES, Yanni E, Sotir MJ, Ryan ET; the Global TravEpiNet Consortium. Global TravEpiNet: A National Consortium of Clinics Providing Care to International Travelers--Analysis of Demographic Characteristics, Travel Destinations, and Pretravel Healthcare of High-Risk US International Travelers, 2009-2011. *Clin Infect Dis*. 2012; 54(4):455-462.
33. Espinosa-Padilla SE, Murata C, Estrada-Parra S, Santos-Argumendo L, Mascarenas C, **Franco-Paredes C**, Espinosa-Rosales FJ. Immunogenicity of a 23-valent pneumococcal polysaccharide vaccine among Mexican children. *Arch Med Res* 2012;
34. Harris JR, Lockhart SR, Sondermeyer G, Vugia DJ, Crist MB, D'Angelo MT, Sellers B, **Franco-Paredes C**, Makvandi M, Smelser C, Greene J, Stanek D, Signs K, Nett RJ, Chiller T, Park BJ. *Cryptococcus gattii* infections in multiple states outside the US Pacific Northwest. *Emerg Infect Dis*. 2013; 19 (10):1620-6.
35. **Franco-Paredes C**. Aerobic actinomycetes that masquerade as pulmonary tuberculosis. Bol Med Hosp Infant Mex 2014; 71(1): 36-40.
36. Chastain DB, Ngando I, Bland CM, **Franco-Paredes C**, and Hawkins WA. Effect of the 2014 Clinical and Laboratory Standard Institute urine-specific breakpoints on cefazolin susceptibility rates at a community teaching hospital. *Ann Clin Microbiol Antimicrob* 2017; 16(1): 43.
37. Kashef Hamadani BH, **Franco-Paredes C**, MCollister B, Shapiro L, Beckham JD, Henao-Martinez AF. Cryptococcosis and cryptococcal meningitis- new predictors and clinical outcomes at a United States Academic Medical Center. *Mycoses* 2017; doi: 10.1111/myc.12742.
38. Chastain DB, **Franco-Paredes C**, Wheeler SE, Olubajo B, Hawkins A. Evaluating Guideline Adherence regarding Empirical Vancomycin use in patients with neutropenic fever. *Int J Infect Dis* 2018; Feb 22. pii: S1201-9712(18)30052-3. doi: 10.1016/j.ijid.2018.02.016. PMID: 29477362

39. Parra-Henao G, Amioka E, **Franco-Paredes C**, Colborn KL, Henao-Martinez AF. Heart failure symptoms and ecological factors as predictors of Chagas disease among indigenous communities in the Sierra Nevada de Santa Marta, Colombia. *J Card Fail* 2018; Mar 26. pii: S1071-9164(18)30119-2. doi: 10.1016/j.cardfail.2018.03.007.
40. Vela Duarte D, Henao-Martinez AF, Nyberg E, Castellanos P, **Franco-Paredes C**, Chastain DB, Lacunar Stroke in Cryptococcal Meningitis: Clinical and Radiographic Features. *J Stroke and Cerebrovascular Disease* 2019;
41. Chastain DB, Henao-Martinez AF, **Franco-Paredes C**. A clinical pharmacist survey of prophylactic strategies used to prevent adverse events of lipid-associated formulations of amphotericin B. *Infect Dis* 2019;
42. Henao-Martínez AF, Chadalawada S, Villamil-Gomez WE, DeSanto K, Rassi A Jr, **Franco-Paredes C**. Duration and determinants of Chagas latency: an etiology and risk systematic review protocol. *JBI Database System Rev Implement Rep*. 2019 Jul 22. doi: 10.11124/JBISRIR-D-18-00018.

RESEARCH ORIGINAL ARTICLES AS COLLABORATOR (clinical, basic science, other) in refereed journals:

43. Benator D, Bhattacharya M, Bozeman L, Burman W, Cantazaro A, Chaisson R, Gordin F, Horsburgh CR, Horton J, Khan A, Lahart C, Metchock B, Pachucki C, Stanton L, Vernon A, Villarino ME, Wang YC, Weiner M, Weis S; **Tuberculosis Trials Consortium**. Rifapentine and Isoniazid Once a Week versus Rifampicin and Isoniazid twice a week for Treatment of Drug-susceptible Pulmonary Tuberculosis in HIV-Negative Patients: a Randomised Clinical Trial. *Lancet* 2002; 360:528-34.
44. Weiner M, Burman W, Vernon A, Benator D, Peloquin CA, Khan A, Weis S, King B, Shah N, Hodge T; **Tuberculosis Trials Consortium**. Low INH Concentrations and Outcome of Tuberculosis Treatment with Once-weekly INH and Rifapentine. *Am J Rev Crit Care Med* 2003; 167:1341-1347.
45. Jasmer RM, Bozeman L, Schwartzman K, Cave MD, Saukkonen JJ, Metchock B, Khan A, Burman WJ; **Tuberculosis Trials Consortium**. **Recurrent Tuberculosis in the United States and Canada: Relapse or Reinfection?** *Am J Respir Crit Care Med* 2004; **170:1360**-1366.
Mendelson M, Davis XM, Jensenius M, Keystone JS, von Sonnenburg F, Hale DC, Burchard GD, Field V, Vincent P, Freedman DO; **GeoSentinel Surveillance Network**. Health risks in travelers to South Africa: the GeoSentinel experience and implications for the 2010 FIFA World Cup. *Am J Trop Med Hyg*. 2010; 82(6): 991-5.
46. Hagmann S, Neugebauer R, Schwartz E, Perret C, Castelli F, Barnett ED, Stauffer WM; GeoSentinel Surveillance Network. Illness in children after international travel: analysis from the **GeoSentinel Surveillance Network**. *Pediatrics.* 2010; 1 25(5): e1072-80.
47. Schlagenhauf P, Chen LH, Wilson ME, Freedman DO, Tcheng D, Schwartz E, Pandey P, Weber R, Nadal D, Berger C, von Sonnenburg F, Keystone J, Leder K; **GeoSentinel Surveillance Network**. Sex and gender differences in travel-associated disease. *Clin Infect Dis*. 2010; 50 (6): 826-32.

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49. Chen LH, Wilson ME, Davis X, Loutan L, Schwartz E, Keystone J, Hale D, Lim PL, McCarthy A, Gkrania-Klotsas E, Schlagenhauf P; **GeoSentinel Surveillance Network**. *Emerg Infect Dis*. 2009; 15(11): 1773-82.
50. Nicolls DJ, Weld LH, Schwartz E, Reed C, von Sonnenburg F, Freedman DO, Kozarsky PE; **GeoSentinel Surveillance Network**. Characteristics of schistosomiasis in travelers reported to the GeoSentinel Surveillance Network 1997-2008. *Am J Trop Med Hyg 2008*; 79(5): 729-34.
51. Greenwood Z, Black J, Weld L, O'Brien D, Leder K, Von Sonnenburg F, Pandey P, Schwartz E, Connor BA, Brown G, Freedman DO, Torresi J; **GeoSentinel Surveillance Network.** Gastrointestinal infection among international travelers globally. *J Travel Med* 2008; 1 5(4):221-8.
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53. Boggild AK, Castelli F, Gautret P, Torresi J, von Sonnenburg F, Barnett ED, Greenaway CA, Lim PL, Schwartz E, Wilder-Smith A, Wilson ME; **GeoSentinel Surveillance Network**. Vaccine preventable diseases in returned international travelers: results from the GeoSentinel Surveillance Network. *Vaccine* 2010; 28(46):7389-95.
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55. Boggild AK, Castelli F, Gautret P, Torresi J, von Sonnenburg F, Barnett ED, Greenaway CA, Lim PL, Schwartz E, Wilder-Smith A, Wilson ME; **GeoSentinel Surveillance Network**. Latitudinal patterns of travel among returned travelers with influenza: results from the GeoSentinel Surveillance Network, 1997-2007. *J Travel Med* 2012; 19(1):4-8. doi: 10.1111/j.1708-8305.2011.00579.x.

REVIEW, EDITORIALS, CASE SERIES, CASE REPORT ARTICLES:

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FORMAL TEACHING
Medical Student Teaching

2001 - 2002	Clinical Methods, Emory University School of Medicine
2001 - 2002	Clinical Instructor Harvey Cardiology Course, Emory University School of Medicine
2001 - 2002	Problem-Based Learning for Second year Medical Students, EUSM
2005 - 2011	Clinical Methods Preceptor, ECLH
2006 - 2008	Medical Spanish - Instructor for M2, EUSM
2006 - 2007	Directed Study on Social Determinants of Infectious Diseases for M2 students (Lindsay Margolis and Jean Bendik), EUSM
2007 - 2011	Instructor - Global Health for M2 Students, EUSM
2007 - 2008	Presentation-Case Discussion – Social Determinants of Diseases – Coordinated by Dr. Bill Eley – Emory School of Medicine New Curriculum.

2018- Small Group: Parasitic Diseases, Microbiology Course for First Year Medical Students, University of Colorado, Anschutz Medical Center.
2019- MS-2 Small group discussion Microbiology, University of Colorado, Anschutz Medical Center: Parasitic Diseases, CNS Infections, Septic Arthritis-Cat Bite
2019- Class Global Health and Underserved Populations of the New SOM CU Curriculum. Course Co-Director. Pilot Class (Jan 6-Jan 17, 2020).
2020- MS-2 Small group discussion Microbiology, University of Colorado, Anschutz Medical Center: Parasitic Diseases, CNS Infections, Septic Arthritis-Cat Bite

Graduate Program:

Training programs

2006-2011 Professor - GH511 (Global Health 511) International Infectious Diseases Prevention and Control, Rollins School of Public Health
2009-2011 Professor – GH500 D – Key Issues in Global Health, Career MPH Program
2006-2011 Thesis Advisor to students Global Health Track – Hubert Department of Global Health, Rollins School of Public Health of Emory University
2008-2011 Coordinator International Exchange between Rollins School of Public Health and National Institute of Public Health, Cuernavaca, Mexico – Supported by the Global Health Institute of Emory University

Residency and Fellowship Program:

2004-2011 Resident Report – Noon Conferences Emory Crawford Long Hospital and Grady Memorial Hospital
2004-2011 Didactic Lectures on Parasitic Diseases and Non-tuberculous mycobacterial diseases for Internal Medicine Residents and Infectious Disease Fellows
2005-2008 Coordinator Journal Club Infectious Disease Division
2005-2011 Travel Medicine Elective, Internal Medicine Residents (2 internal residents per month)
2005 Grand Rounds – EUH - Department of Medicine: “Travel Medicine”
2006 Grand Rounds – ECLH – Department of Medicine: “Malaria”
2008 Grand Rounds - ECLH – Department of Medicine: “Leprosy”
2008-2011 Journal Club Coordinator, Internal Medicine Residency Program – ECLH
2009 Grand Rounds - EUH – Department of Medicine: “Leprosy a Modern Perspective of an Ancient Disease”
2009 Grand Rounds – Pulmonary and Critical Care Division – Neglected Tropical Diseases of the Respiratory Tract, June 16, 2009
2017 Grand Rounds – Leprosy, University of Colorado, Anschutz Medical Center, Division of Infectious Diseases, December 2017
2017 Grand Rounds – Infections associated with Secondary Antiphospholid Syndrome, University of Colorado, Anschutz Medical Center, Division of Rheumatology,
2018 Didactic Session – Travel Medicine (Pretravel and Postravel) Infectious Diseases Fellowship Anschutz Medical Center, Division of Infectious Diseases
2017 Infectious Diseases Fellows Clinic, University of Colorado, Anschutz Medical Center, IDPG.
2019 Invited Speaker: Travel Medicine, Pretravel/Postravel Care, Physician Assistant Program, September 12, 2019, University of Colorado, Anschutz Medical Center

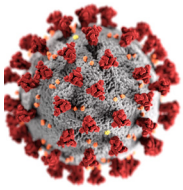
Other categories:

2000-2002	Physician Assistant Supervision during Fellowship/Junior Faculty, Emory University
2004-2007	Mentoring of four College Students to enter into Medical School (Emory, Southern University, and Dartmouth): Lindsay Margolis 2004-Emory University Michael Woodworth 2005 – Emory University Peter Manyang 2007 – Southern University Padraic Chisholm 2007 – Southern University/Emory University
2009-2011	Project Leader. Partnership – Emory Global Health Institute – University-wide - Emory Travel Well Clinic and is titled Hansen's disease in the state of Georgia: A Modern Reassessment of an Ancient Disease". http://www.globalhealth.emory.edu/fundingOpportunities/projectideas.php. Students: 5 MPH students (RN/MPH, MD/MPH)
2017-	Infectious Diseases Fellowship Program, University of Colorado, Anschutz Medical Center. Teaching activities, Inpatient and outpatient (ID Fellows Weekly Clinic)
2019-	Infectious Diseases Fellowship Program Director, University of Colorado, Aurora Colorado

Supervisory Teaching:
Ph.D. students directly supervised:
Global Health, Rollins School of Public Health - PhD Task Force Member – 2007-2009
Residency Program:
Emory University: Internal Medicine Residents and Infectious Disease Fellows Supervision – Inpatient Months – 3-4 months per year on Grady Wards. I participated in the presentation and discussion of clinical cases, and discussion of peer-reviewed journal with medical students, residents, and fellows. Overall evaluations: Outstanding Teacher. (Anna Von 2005-2006; Seth Cohen 2008, Susana Castrejon 2007; Lindsay Margoles 2007-2008; Jean Bendik 2006-2008; Meredith Holtz 2007-2008)
University of Colorado, Anschutz Medical Center (since June 2017- present). Case discussion in infectious diseases during clinical rounds inpatient services (ID Gold, ID Blue, ID Orthopedics).
2004-2009 Thesis advisor – MPH Students – Hubert Department of Global Health – Concentration Infectious Diseases: Brenda Thompson 2004; Katrina Hancy 2004; Trina Smith 2006; Melissa Furtado 2007-2008; Oidda Museru 2008-2009; Hema Datwani 2010; Ruth Moro 2010; Talia Quandelacy 2010
2015 – Class GH511, Topic: "Leprosy" as part of the International Infectious Diseases, Global Health Track, Rollins Schoolf of Public Health, Emory University, Atlanta GA
2017 – Class GH511, Topic: "Leprosy" as part of the International Infectious Diseases, Global Health Track, Rollins School of Public Health, Emory University, Atlanta GA
2019 - Project Mentorship – Diffuse lepromatous leprosy. Undergraduate Student, University of Colorado, Boulder. Mikali Ogbasselassie. Project was carried out in Collaboration with the Dermatology Center of the Hospital General de Mexico.
Poster presentation by Mikali Ogbasselassie September 22, 2019, UMBC, Baltimore, Maryland.

EXHIBIT 16

What you should know about COVID-19 to protect yourself and others



Know about COVID-19

- Coronavirus (COVID-19) is an illness caused by a virus that can spread from person to person.
- The virus that causes COVID-19 is a new coronavirus that has spread throughout the world.
- COVID-19 symptoms can range from mild (or no symptoms) to severe illness.

Know how COVID-19 is spread

- You can become infected by coming into close contact (about 6 feet or two arm lengths) with a person who has COVID-19. COVID-19 is primarily spread from person to person.
- You can become infected from respiratory droplets when an infected person coughs, sneezes, or talks.
- You may also be able to get it by touching a surface or object that has the virus on it, and then by touching your mouth, nose, or eyes.

Protect yourself and others from COVID-19

- There is currently no vaccine to protect against COVID-19. The best way to protect yourself is to avoid being exposed to the virus that causes COVID-19.
- Stay home as much as possible and avoid close contact with others.
- Wear a cloth face covering that covers your nose and mouth in public settings.
- Clean and disinfect frequently touched surfaces.
- Wash your hands often with soap and water for at least 20 seconds, or use an alcohol-based hand sanitizer that contains at least 60% alcohol.

Practice social distancing

- Buy groceries and medicine, go to the doctor, and complete banking activities online when possible.
- If you must go in person, stay at least 6 feet away from others and disinfect items you must touch.
- Get deliveries and takeout, and limit in-person contact as much as possible.

Prevent the spread of COVID-19 if you are sick

- Stay home if you are sick, except to get medical care.
- Avoid public transportation, ride-sharing, or taxis.
- Separate yourself from other people and pets in your home.
- There is no specific treatment for COVID-19, but you can seek medical care to help relieve your symptoms.
- If you need medical attention, call ahead.

Know your risk for severe illness

- Everyone is at risk of getting COVID-19.
- Older adults and people of any age who have serious underlying medical conditions may be at higher risk for more severe illness.

cdc.gov/coronavirus

CS 314937A 04/15/2020

Exhibit 17

Declaration of Ronica Mukerjee

1. I, Ronica Mukerjee, am an American trained doctorally-prepared family nurse practitioner fully licensed to practice medicine in the states of New York and Connecticut. I am trained as a family nurse practitioner with extensive knowledge in primary care. I have been clinical faculty at Yale University since 2017 I am the program coordinator and creator of the Gender and Sexuality Health Justice concentration at Yale University, focused on the primary care, racial and economic justice, HIV, substance use, and mental health care needs of LGBTQIA people.

2. I received my Masters in Science in Nursing at Columbia University in New York, New York and my doctoral degree in Nursing at Yale University in New Haven, Connecticut, with a specialty in the care of transgender patients. Additionally, I am a board certified American Academy of HIV Medicine Specialist (AAHIVS) and also trained in forensic evaluation of asylum seekers by the Keck Human Rights Clinic and Physicians for Human Rights.

3. I have been formerly employed as the Director of Transgender Health for Community Health Care in New York City, overseeing the transgender medical care of all nurse practitioners, medical doctors, and other medical staff at twelve clinics within the five boroughs of New York City.

4. I am Co-Director of Refugee Health Alliance (RHA). RHA provides ethical, holistic, and culturally-inclusive care and advocate for all displaced and vulnerable populations in collaboration with activists and existing healthcare organizations along the US-Mexico border. Through RHA, I take care of patients seeking asylum who have diverse and complex medical conditions; this population includes transgender patients, in Tijuana, Mexico.

5. I have been seeing patients in Tijuana since January of 2019 and have seen approximately 250 transgender patients for medical care during this time. Patients who are seen by my medical organization, Refugee Health Alliance, have had so many different medical issues that have ranged from: hypertension, diabetes mellitus II, asthma, peptic ulcers, HIV/AIDS, Hepatitis C, chronic smoking, chronic alcohol and drug use, condylomas, abdominal pain, cough, fever, rashes, headaches, back pain, ingrown toenails, several types of cancers, and infections of many different systems including gastrointestinal, upper respiratory, lower respiratory and dermatological systems. About 30% of the trans patients seen through our organization, are HIV+ (almost all without proper treatment) or immunocompromised.

6. COVID-19 infections are much increased and worsened in patients with cardiovascular and respiratory comorbidities. Transgender patients in detention centers across the United States have significantly more comorbidities than their non-transgender counterparts. Some medical diagnoses that are significantly increased in transgender patients include HIV, cardiovascular disease, asthma and diabetes.

7. **HIV:** According to the Centers for Disease Control (CDC): “By race/ethnicity, an estimated 44% of black/African American transgender women, 26% of Hispanic/Latina transgender women, and 7% of white transgender women have HIV.” (https://www.cdc.gov/hiv/group/gender/transgender/index.html).
   In Tijuana, about 30% of all transgender patients were HIV+.
8. According to Human Rights Watch, transgender women have been "unable to access their HIV medications for periods ranging from two to three months after entering detention." The likelihood of having significant morbidity and

mortality from the combination of HIV and COVID-19 is increased without access to appropriate medications (Herrera, 2019).

a. Since 2018, I have provided medical care for transgender patients in Tijuana, Mexico. This population of patients is disproportionately affected by HIV wherein approximately 33% of all transgender asylum seekers in Tijuana are HIV.

COVID-19 and HIV: According to the CDC: "People with HIV can also be at increased risk of getting very sick with COVID-19 based on their age and other medical conditions." (https://www.cdc.gov/coronavirus/2019- ncov/need-extra-precautions/hiv.html). Transgender patients, who have a higher risk of being HIV+ than the general population, have an increased risk of becoming very sick. with COVID-19.

9. **Cardiovascular Disease:** A study published in 2020 (Martinez, 2020), has clearly demonstrated that transgender patients have increased risk of cardiovascular disease. Cardiovascular disease includes thromboembolic disease (blood clots) and ischemic stroke (Goodman, 2014). In Tijuana, about 25% of all transgender patients presented with cardiovascular complications including hypertension, almost all untreated for a month or more.
COVID-19 and Cardiovascular Disease: "The American Heart Association is advising caution and preparation for people who have heart disease or who have survived a stroke. Based on current information, it appears elderly people with coronary heart disease or hypertension are more likely to be infected and to develop more severe symptoms. Stroke survivors may also face increased risk for complications if they get COVID-19." (https://www.heart.org/en/about-us/coronavirus-covid-19- resources). Transgender patients with cardiovascular disease have an increased risk of severe symptoms with COVID-19.

10. **Asthma:** Transgender patients, which are the majority of patients within detention facilities have a much higher rate (26.7%) of asthma diagnosis than non-transgender patients (7.7% of the general population) (Seelman et al., 2017). In Tijuana, about 10% of all transgender patients presented with respiratory complications including asthma, almost all untreated for a month or more.

COVID-19 and Asthma: Currently the CDC is advising that people with asthma are likely at higher risk of getting very sick from COVID-19. Transgender patients, who have higher rates of asthma than the general population, have an increased risk of becoming very sick with COVID-19.

11. **Diabetes:** In a cross-sectional study completed in 214 TGFs [transgender females] and 138 TGMs [transgender males], there were higher rates of diabetes mellitus in TGFs…" The rates were also increased in transgender males. In Tijuana, about 15% of all transgender patients presented with metabolic complications including diabetes, almost all untreated for a month or more.
COVID-19 and Diabetes: According the American Diabetes Association, people with diabetes face "a problem of worse outcomes" when contracting COVID-19. "In China, where most cases have occurred so far,

people with diabetes had much higher rates of serious complications and death than people without diabetes." (https://www.diabetes.org/covid-19- faq). Transgender patients who have higher rates of diabetes, have an increased risk of severe symptoms with COVID-19.

12. Due to the serious health lapses, including "deficient treatment for mental illnesses and other chronic diseases" noted at detention centers (Rosenberg, 2020), the risk for transgender patients to develop serious complications due to COVID-19 is much higher than the general population. And currently, detention centers across the United States have not instituted 6 feet contact precautions for inmates or staff.

13. COVID-19 is an acute disease of the respiratory tract caused by a novel corona virus designated SARS-CoV-2 that is transmitted easily via respiratory droplets as well as fomites left on surfaces. It was first reported in December 2019 and has caused severe illness and death in almost all countries in the world, including the United States. The death toll will continue to rise, particularly in spaces with little access to appropriate person-to-person spacing such as detention centers. Transgender women are particularly vulnerable to undesired physical contact such as assault and sexual violence in detention centers and this can increase risk of morbidity and mortality due to contracting COVID-19.

14. I have reviewed the ICE Guidelines on COVID-19 (https://www.ice.gov/covid19). So far more than 300 cases have been confirmed (as of April 17, 2020). The R0 (R-naught) of COVID-19 is approximately 2 to 2.5, which means that on average a person with COVID-19 infects 2 to 2.5 other people. This means that likely 170 other people have been infected by the confirmed cases in detention. There is no way to protect transgender patients with comorbidities with such a high level of virulence.

15. It is my expert opinion that transgender patients, whose susceptibility to COVID-19 are higher than the general population should be immediately released into the community in order to avoid death or infirmity due to a lack of consideration for the health of this population.

Pursuant to U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Prepared in Tijuana, Mexico on April 21, 2020

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RELEVANT EDUCATION

YALE UNIVERSITY, NEW HAVEN, CT — August 2014-May 2017
- Doctorate of Nursing Practice

COLUMBIA UNIVERSITY, NY, NY — June 2005-Feb 2008
- Bachelors of Science, Nursing
- Masters of Science graduate, NYS FNP licensure

BASTYR UNIVERSITY, Seattle, WA — Sept 2000-June 2003
- Bachelors of Science
- Masters of Science in Acupuncture

CERTIFICATIONS AND LICENSURES

AMERICAN NURSES CREDENTIALING CENTER (ANCC) — May 2009-May 2024
- Family Nurse Practitioner—Board Certified

THE STATE OF CONNECTICUT EDUCATION DEPARTMENT — June 2017-March 2021
- Family Health Nurse Practitioner

THE STATE OF CONNECTICUT EDUCATION DEPARTMENT — June 2017-March 2021
- Registered Professional Nurse

THE STATE OF NEW YORK EDUCATION DEPARTMENT — May 2008-February 2021
- Family Health Nurse Practitioner

THE STATE OF NEW YORK EDUCATION DEPARTMENT — July 2006-February 2021
- Registered Professional Nurse

THE STATE OF NEW YORK EDUCATION DEPARTMENT — May 2004-February 2022
- Licensed Acupuncturist

AMERICAN ACADEMY OF HIV MEDICINE — December 2009-December 2022
- Certified HIV Specialist

LANGUAGES SPOKEN

- Native English
- Fluent Spanish
- Competent Bengali, and American Sign Language
- Basic Hindi

RELEVANT SKILLS & EXPERIENCE

YALE UNIVERSITY, NEW HAVEN, CT August 2017-current
Clinical Lecturer, Yale School of Nursing
Gender and Sexuality Health Justice Program Coordinator and Founder

- Teaching nurse practitioner and midwifery students primary care concepts as part of their core curriculum
- Focusing on integrating the care of women's health, chemically dependent and HIV+ adults into a baseline curriculum for all students
- Creating a new program, "Gender and Sexuality Healthcare Justice," focused on healthcare for LGBTQIA+, HIV+ and substance-using patients taught through a racial and economic justice framework

TREE OF LIFE PRIMARY CARE AND RECOVERY, NEW HAVEN, CT February 2018-current
Clinical Director, Private Practice

- Providing primary care for patients throughout the lifespan
- Delivering outpatient recovery services, including buprenorphine and naloxone, for adults
- Specializing in LGBTQIA+ care
- Performing trauma-informed gynecological care
- Offering urgent care and telemedicine as needed

COMMUNITY HEALTH ACTION OF STATEN ISLAND, NY February 2018-current
Clinical Director, Opioid Overuse Prevention Program

- Creating and implementing a new clinical care program for opioid and other substance users
- Providing buprenorphine care for patients seeking treatment for opioid overuse
- Providing acupuncture for patients seeking treatment for opioid overuse
- Generating promotional materials for a new drug treatment program

ST FRANCIS COLLEGE, BROOKLYN, NY September 2014-September 2017
Assistant Professor, Nursing Department; full-time

- Teaching undergraduate nursing students physical assessment and community health as part of their undergraduate core curriculum
- Developing and approving curriculum for the entire college
- Determining academic integrity of students' behavior, through committee determination

SUNY DOWNSTATE, STAR/WIHS (HIV) CLINIC, BROOKLYN, NY March 2016-August 2017

Nurse Practitioner--HIV Specialist, Clinical Researcher; part-time

- Caring for HIV+ patients with both primary care and urgent care services
- Performing gynecological care for HIV+ patients
- Offering conscientious and compassionate care for all patients
- Recruiting and treating trans patients and updating STAR clinic hormonal care protocols
- Working with chemically dependent patients
- Offering PrEP and PEP services

MITR TRUST, NEW DELHI, INDIA March 2008-present

Hormonal Specialist for Trans Women (volunteer position)

- Collaborating with a community based organization run by and for trans women in Western Delhi, including partnership with a local doctor
- Caring for trans women through hormonal advisement and laboratory evaluation
- Providing telemedicine services for every three month follow-up
- Performing physical exams and in-person follow up on a monthly basis

CALLEN-LORDE COMMUNITY HEALTH CENTER, NY, NY Aug 2008-May 2017

Staff Clinician (full-time until April 2013; occasional per diem thereafter)

- Providing primary and urgent care of adult & adolescent patients
- Specializing in HIV and LGBT-knowledgeable care
- Analyzing phlebotomy results
- Offering compassionate, well-informed gynecological care
- Administering intrauterine artificial insemination
- Coordinating a medical mobile unit (MMU) for transiently-housed, chemically-dependent adolescents
- Integrating functional medicine, Chinese nutrition, as well as herbs and vitamin supplementation into a Western medical practice

WASHINGTON HEIGHTS CORNER PROJECT, NY, NY June 2015- November 2016

Temporary staff clinician

- Providing immediate care for Injection Drug Users at a community-based organization
- Counseling and supporting patients around drug use
- Implementing harm reduction methodology
- Screening patients for chronic and acute disease processes
- Working closely with case managers to ensure proper continuing care and connection with appropriate services

COLLECTIVE PRIMARY CARE NY, NY December 2013-January 2014
(closed March 2014)

Senior Nurse Practitioner, Senior Acupuncturist

- Providing primary and urgent care of adult & pediatric patients as one of two clinicians at a primary care practice
- Analyzing phlebotomy results
- Offering compassionate, well-informed gynecological care
- Integrating acupuncture, functional medicine, Chinese nutrition, as well as herbs and

vitamin supplementation into a Western medical practice
- Directing the proper medical care of transgender patients including writing evidence-based protocols for the provision of care to transgender patients

COMMUNITY HEALTHCARE NETWORK, NY, NY April 2013-August 2014
Associate Medical Director (Director of Trans Services)
- Providing primary and urgent care of adult & pediatric patients
- Providing HIV and LGBT-knowledgeable care
- Analyzing phlebotomy results
- Offering compassionate, well-informed gynecological care
- Working extensively with geriatric patients
- Writing evidence-based protocols for the provision of care to transgender patients
- Directing the proper medical care of transgender patients
- Reviewing all providers performing primary care for transgender patients

YALE UNIVERSITY SCHOOL OF NURSING June 2011-June 2015
Preceptor
- Precepting Family, Women's Health, and Adult Nurse Practitioner students
- Teaching students clinical skills as well as analysis of current research for best practices

UPENN SCHOOL OF NURSING June 2012- May 2014
Preceptor and Adjunct Faculty
- Precepting students as adjunct faculty for Nurse Practitioner students
- Teaching students clinical skills as well as analysis of current research for best practices

COLUMBIA UNIVERSITY SCHOOL OF NURSING January 2009-April 2013
Preceptor
- Working as a preceptor for Nurse Practitioner students
- Providing seminars on LGBT Health, and HIV
- Teaching students clinical skills as well as analysis of current research for best practices

PRIVATE PRACTICE ACUPUNCTURIST June 2003-present
Acupuncturist
- Assessing patients' pathologies including neuromuscular, gastrointestinal and upper respiratory disorders
- Diagnosing and treating disorders using Chinese Medicine
- Treating chronic illnesses, often in conjunction with Western Medical providers

MT SINAI WOMEN'S HEALTH/ ONCOLOGY, NY, NY Aug 2006-Jan 2008
Staff Nurse
- Performing full body assessments on post-operative patients
- Placing IVs, catheterizing patients, drawing blood, and accessing central lines and chest ports
- Providing colostomy care
- Assessing post-surgical wounds for signs of infection
- Administering chemotherapeutic and other medicines

- Charting assessments of patients accurately and clearly
- Administering BCLS and CPR

PUBLICATIONS

- R. Mukerjee. The ethics of transgender inclusion: a nursing perspective. Ethics in Biology, Engineering and Medicine: An International Journal, 2016. Volume 6, Issue 3-4

- Erickson-Schroth, L. (2014), *Trans bodies, trans selves: A resource for the transgender community.* New York, New York: Oxford University Press.
    - Noted contributor on this book

- K. Steffens, A. Radix, J. Dolby, G. Gatterman, G. Mayer, S. Weiss, R. Mukerjee. Implementation of a nursing model for triage of HIV-positive patients with influenza like illness (ILI) during a pandemic threat of novel swine-origin influenza A (2009 H1N1 influenza). International AIDS Conference, Vienna 2010. Abstract no. WEPE0845

- J. Johnson, A. Radix, J. Santos-Ramos, N. Levitt, H. Reynolds, G. Mayer, R. Mukerjee. If you´ve got it, check it: establishing a sexual health clinic for transgender clients at a New York City community health center. International AIDS Conference, Vienna 2010.: Abstract no. WEPE0346

ADDITIONAL SKILLS

- Computer literacy with Microsoft Excel, PowerPoint, Word, and Adobe Photoshop
- Experienced Electronic Medical Record (EMR) user
- Martial arts training

EXHIBIT 18

116TH CONGRESS *1st Session* } HOUSE OF REPRESENTATIVES { REPORT 116–180

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS BILL, 2020

JULY 24, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Ms. ROYBAL-ALLARD of California, from the Committee on Appropriations, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3931]

The Committee on Appropriations submits the following report in explanation of the accompanying bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2020.

INDEX TO BILL AND REPORT

women fairly and without bias; and (2) CBP's training, complaints system, and culture regarding sexual harassment and assault.

Technology Procurement.—The Committee understands that CBP is carrying out a Southern Border Threat Assessment to help inform future border security investments, including the appropriate mix of personnel, technology, and infrastructure. To accelerate the efficient acquisition of border security technologies and maximize industry expertise, the Committee urges the Department and CBP to explore and expand the use of rapid and non-traditional acquisition tools, such as Other Transaction Authority and innovative commercial solutions authority provided under section 880 of Public Law 114–328.

U.S. Citizens Held in CBP Custody.—The Committee directs CBP to provide a detailed report within 90 days of the date of enactment of this Act on the number of U.S. citizens detained for more than 24 hours at POEs during the last two fiscal years. The report should include the ages of the individuals detained, the length of detention, and the rationale for their detention.

PROCUREMENT, CONSTRUCTION, AND IMPROVEMENTS

Appropriation, fiscal year 2019	$2,515,878,000
Budget request, fiscal year 2020	5,402,191,000
Recommended in the bill	477,962,000
Bill compared with:	
Appropriation, fiscal year 2019	−2,037,916,000
Budget request, fiscal year 2020	−4,924,229,000

The Committee recommends the following increases above the request: $50,000,000 for border security technology procurement; $17,000,000 for team awareness kits; $30,000,000 for innovation technology; $20,000,000 for trade enforcement enhancement, to include collections; and $30,000,000 for one additional multi-role enforcement aircraft. The recommendation provides no funding for border barriers or for border patrol checkpoints.

Non-Intrusive Inspection (NII).—The Committee directs CBP to provide, not later than 90 days after the date of enactment of this Act, an updated, multi-year strategic plan for addressing vulnerabilities and capability gaps at POEs, as directed in the explanatory statement accompanying Public Law 115–141. CBP is also directed to brief the Committee on the results of the ongoing POE pilots upon their completion. This briefing shall include an assessment of each platform's ability to increase vehicle inspection throughput at POEs without impacting primary operations for commercial and privately-owned vehicles. CBP is further directed to update the Committee on the obligation of funds for NII acquisition as a part of the required quarterly obligation plans directed in title I of this report. The Committee expects any procurement of technology to be competitively awarded.

U.S. Immigration and Customs Enforcement

Appropriation, fiscal year 2019	$7,587,712,000
Budget request, fiscal year 2020	8,781,195,000
Recommended in the bill	8,057,287,000
Bill compared with:	
Appropriation, fiscal year 2019	+469,575,000
Budget request, fiscal year 2020	−723,908,000

Mission

U.S. Immigration and Customs Enforcement (ICE) enforces federal laws governing border control, customs, trade, and immigration to promote homeland security and public safety.

Homeland Security Investigations (HSI) is responsible for disrupting and dismantling transnational criminal threats facing the United States. HSI special agents also conduct national security investigations targeting violations of the nation's customs and immigration laws.

Enforcement and Removal Operations (ERO) enforces the nation's immigration laws by identifying and apprehending removable aliens, detaining apprehended individuals when necessary, and removing them from the United States in a manner consistent with legal processes and procedures.

OPERATIONS AND SUPPORT

Appropriation, fiscal year 2019	$7,542,153,000
Budget request, fiscal year 2020	8,702,425,000
Recommended in the bill	7,593,940,000
Bill compared with:	
Appropriation, fiscal year 2019	+51,787,000
Budget request, fiscal year 2020	−1,108,485,000

The recommendation includes the following increases above the request: $47,250,000 to restore proposed cuts for the 2019 pay raise; $15,750,000 to support the annualization of the 2019 pay raise; $90,875,000 for the 2020 pay raise; and $233,144,000 to sustain fiscal year 2019 initiatives. The recommendation does not include $368,612,000 proposed in the request to sustain hiring initiatives that were not funded in the fiscal years 2018 and 2019 appropriations, nor $298,973,000 that was requested for additional law enforcement staffing. An additional reduction of $6,308,000 is based on anticipated savings associated with a hiring freeze for Fugitive Operations and the Criminal Alien Program. The recommendation does not assume the use of $207,600,000 from the Immigration Examination Fee Account (IEFA) to partially offset costs for eligible activities in this account due to concerns with the impact to U.S. Citizenship and Immigration Services (USCIS) operations and the growing backlog in applications for immigration benefits; an administrative provision in the bill prohibits the use of IEFA funds for ICE operations.

Homeland Security Investigations

Combatting Human Trafficking.—HSI plays a critical role in investigating Transnational Criminal Organizations involved in trafficking individuals into and within the United States. The Committee encourages HSI to work with appropriate nonprofit organizations and victim service providers to assist HSI agents in the identification of human trafficking victims, ensuring they receive the proper care and access to victim service organizations.

Human Exploitation Rescue Operative Child-Rescue Corps.—The recommendation includes an increase of $4,000,000 above the request for the training, equipping, and hiring of Human Exploitation Rescue Operative (HERO) Child-Rescue Corps program graduates. ICE is directed to brief the Committee not later than

180 days after the date of enactment of this Act on performance indicators for the HERO program, including the number of child exploitation cases worked by HERO interns and their impact on the identification of minor victims and apprehension of contact offenders.

Intellectual Property Rights Enforcement.—The recommendation provides not less than $15,000,000 for intellectual property law enforcement through HSI and the National Intellectual Property Rights (IPR) Coordination Center. ICE is reminded of the IPR enforcement resource requirements in House Report 116–9.

Worksite Immigration Enforcement Actions.—The Committee is concerned about the increase in worksite enforcement operations since January 2018, especially the disproportionate use of resources dedicated to civil administrative arrests of employees. Such arrests should be reserved for those individuals who pose a risk to public safety. Within 60 days of the date of enactment of this Act, ICE is directed to brief the Committee on the policies, practices, and procedures associated with worksite immigration enforcement actions, with a specific focus on direction to the field related to civil administrative arrests.

Enforcement and Removal Operations

287(g) Program.—A provision in the bill requires ICE to provide a report to the Committees and the public regarding 287(g) steering committee membership and activities; performance data; the number of individuals placed into removal proceedings by 287(g)-designated officers; and any plans for future expansion of or changes to the program. ICE, OIG, and CRCL are also directed to provide rigorous oversight of the 287(g) program, and ICE is directed to notify the Committee prior to implementing any significant changes to the program, including any changes to training requirements, data collection, selection criteria, or the jurisdictions with which ICE has agreements. The Committee also reminds ICE that communities are not legally required to enter into such agreements and that immigration enforcement should not be used either to induce communities to enter or deter them from discontinuing 287(g) agreements.

The Committee directs GAO to follow up on its January 2009 report on management controls in the 287(g) program (GAO–09–109). GAO's review should include a review of the content of and compliance with memoranda of agreement with participating law enforcement agencies; the establishment and role of community steering committees; the extent to which ICE has guidance for jurisdictions with 287(g) and intergovernmental service agreements to fulfill their separate roles and responsibilities for each agreement; safeguards to ensure that state or local officers perform immigration enforcement functions only as authorized by their 287(g) agreement; and 287(g) arrest data, broken down by jurisdiction and offense, among other factors.

Age-Outs.—The Committee is concerned about reports that approximately two-thirds of unaccompanied children turning 18 years old while in the custody of the Office of Refugee Resettlement (ORR) of the Department of Health and Human Services are transferred directly to ICE custody and detained, often because of a lack of planning for alternative placements during the child's time in

ORR care. ICE is directed to provide semi-annual updates to the Committee on the number of unaccompanied alien children who turn 18 while in ORR custody and are subsequently detained by ICE. The first update, due within 60 days after the date of enactment of this Act, shall include a description of the Juvenile Coordinator's methodology for determining placement in the least restrictive setting available and for considering an alien's risk to self or the community, risk of flight, and post-18 plan. Each update shall delineate transfers from ORR according to ICE area of responsibility and most recent ORR placement category and shall detail the rationale for ICE's placement decision (detention, alternatives to detention, Order of Supervision, or own recognizance) for each transferred individual.

Alternatives to Detention (ATD).—The recommendation includes an additional $64,000,000 over fiscal year 2019 to continue to grow the ATD program, of which $20,000,000 is for the Family Case Management Program (FCMP). ICE is directed to continue to provide performance reports to the Committee on the ATD program, as described in House Report 116–9.

Also included is $4,000,000 above the request to fund an independent review and analysis of the ATD program, to include the FCMP. The review shall include recommendations for improvements or alternatives to: increase the overall effectiveness of the program; improve the cost efficiency and sustainability of the program; ensure appropriate alignment of functions to be performed by government officials, non-profit organizations, and/or the private sector; and address any gaps in services provided. The Committee directs the review and analysis be informed by discussions with government officials, current program operators, non-governmental immigration policy stakeholders, and current participants in the program, and by reviewing similar programs in other countries. The results of this review and analysis shall be briefed to the Committee not later than 180 days after the date of enactment of this Act.

ICE is directed to continue ensuring access to "know your rights" presentations, as described in House Report 116–9.

Body Worn Cameras.—ICE is reminded of the requirements in House Report 116–9 regarding the use of body worn cameras in its field enforcement activities.

Bond Payments.—ICE is directed to provide the monthly bond statistics described in House Report 116–9.

Detainee Access to Legal, Medical, and Mental Health Services.—ICE should not enter into, expand, or renew a contract with any entity to operate an immigration detention facility that is located more than 100 miles from: a Level IV (or lower) designated trauma center; or at least one government-listed, legal aid resource on the Executive Office for Immigration Review (EOIR) "List of Pro Bono Legal Service Providers" from which the Director has received confirmation that it is able to provide legal services to detainees at the facility.

ICE is directed to continue the requirements in House Report 116–9 regarding legal resources available to detainees and shall ensure that such information is provided in both English and Spanish.

Not later than 30 days after the date of the close of the fiscal year, the Committee directs ICE to publish on a public facing website a description of the medical and mental health staffing—delineated by position and qualification—at each facility with a capacity to house at least 50 ICE detainees, along with the ADP of each facility. The report should indicate the hours of availability of in-person, specialized medical service typically available during the week; whether any positions were unfilled for more than one month of the previous year; and the average detainee wait time for seeing a medical professional. ICE shall also include in the report the number of individuals taken into ICE custody with a serious medical condition, including pregnant women, a serious mental health condition, and the total length of detention, including transfers, for each. The Committee urges ICE to reinstate the policies in its August 2016 directive on the *Identification and Monitoring of Pregnant Detainees* that was superseded by its December 2017 update.

The Committee directs ICE to ensure that each family residential center has on-site at least one medical professional qualified to provide pediatric care for every 200 children in residence. In addition, at least one such medical professional should be on-site or on-call for every 100 children detained in the facility. The Committee further directs ICE to ensure that each family residential center makes available at least one mental health professional specializing in pediatric care.

Detainee Forms.—The Committee directs ICE to provide all forms that are required to be signed by a detained person in the detainee's native language. ICE is directed to report to the Committee within 90 days of the date of enactment of this Act on a plan and timeline for achieving this goal, including an estimate of related resource requirements.

Detention Capacity.—The recommendation reduces Custody Operations by $1,053,313,000 and reduces the Transportation and Removal Program by $72,229,000 from the request. The funding provided supports an average daily population (ADP) in detention of 34,000 for single adults, of which not more than 17,000 is for interior enforcement operations, commensurate with the average ADP for such operations between fiscal years 2013 and 2016. Funding provided for family detention is intended to phase out this activity by not later than December 31, 2019.

The Committee understands that a surge in the number of single adults deemed inadmissible at a POE or who cross the border between ports in fiscal year 2020 could necessitate additional detention capacity to prevent overcrowding at short-term CBP holding facilities. To address such a contingency, a provision is included to provide additional funding during the fiscal year to respond to surges of single adult migrants. Access to this additional funding requires a certification from the Secretary that the anticipated number of single adult alien transfers to ICE from CBP will exceed the number so transferred in fiscal year 2016, when the ADP for such aliens was approximately 17,000. The Secretary must also provide the Committee with an analysis to substantiate such certifications.

Further, to ensure that a short-term migration surge does not result in over-funding ICE detention operations, the bill makes these additional resources available to ICE only incrementally and peri-

odically throughout the fiscal year. If surge conditions are met, the highest-level increment of additional funding provided by this provision would support a single adult ADP of 24,500 associated with border security operations, and a total potential funding increase of $387,077,000, of which $55,941,000 would be for the Transportation and Removal Program. None of the incremental funding increases are available for ADP associated with interior enforcement.

Detaining Individuals with Credible Fear.—The Committee reminds ICE of its policy to avoid the detention of an individual who has received a positive credible fear determination from an asylum officer or immigration judge, absent a finding by an immigration officer that the individual poses a risk to the community or is a flight risk. ICE is directed to report to the Committee, monthly, data on the number of individuals who received a positive credible fear or reasonable fear determination who were: considered for parole; granted parole; or denied release on parole, along with an individualized description of the justification for each denial.

Detention Inspection Reporting.—ICE shall continue to report and make public the following, as described in House Report 116–9, and shall follow the previously directed timeframes unless otherwise specified:

(1) Secure Communities report;

(2) Requirements related to detention facility inspections reports;

(3) Death in custody reporting, with subsequent reporting to be released within 90 days of the initial report;

(4) Access to facilities;

(5) Detainee locator information;

(6) Changes to the current detention facility category and inspection framework;

(7) Compliance with the 2011 Performance Based National Detention Standards (PBNDS 2011) and Prison Rape Elimination Act (PREA) requirements; and

(8) Weekly rate of operations for Custody Operations.

Detention Oversight.—The Committee remains concerned about the conditions and care provided at ICE's civil detention facilities. The recommendation provides an additional $14,000,000 above the request for the Office of Detention Oversight within the Office of Professional Responsibility to fully fund the inspection of each over-72-hour detention facility not less than twice per year. The detailed results of these inspections shall be promptly published on a public-facing website, redacted as needed to protect any personally identifiable information, along with a plan of action and milestones to address any deficiencies that were identified during the inspection. The status of addressing such deficiencies shall be validated by the Office of Immigration Detention Ombudsman established in title I and shall be updated on the website not less than quarterly. Further, given the findings in the OIG report, *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, dated June 26, 2018 (OIG–18–67), the recommendation does not include the $3,500,000 requested for the Custody Management Division's facility inspection contract.

Consistent with the direction provided in House Report 116–9, the ICE Director shall have sole authority to approve detention

standard waivers and shall notify the Committee of such waivers within 3 business days of such approval. Additionally, ICE shall report publicly on a quarterly basis any waivers issued, and the justification for each such waiver.

To ensure that detention facility inspections capture the reality of conditions that detainees experience, the Committee encourages ICE to include within its immigration detention facility inspections and reviews documented input from a wide-range of stakeholders, to include individuals working at the facility, a representative sample of detainees at the facility, attorneys representing detainees, legal orientation providers at the facility, and others performing visitation, such as clergy or faith-based organizations.

ICE is directed to provide a report to the Committee, not later than 90 days after the date of enactment of this Act, identifying for each detention contract, Inter-governmental Service Agreement, or Inter-governmental Agreement, the detention standards under which it is inspected and the status of its compliance with PREA standards; and all fiscal year 2019 costs by category, as appropriate. In addition, the ICE Director shall continue to report to the Committees at least 30 days in advance of entering into any new or significantly modified detention contract or other detention agreement that does not meet or exceed the PBNDS–2011, as revised in 2016. Each report shall include a justification for why such contract or agreement requires different standards.

Immigration Enforcement at Sensitive Locations.—The Committee understands it is ICE's policy that enforcement actions at or near sensitive locations—identified by ICE as schools, healthcare facilities, places of worship, religious or civil ceremonies or observances, and public demonstrations—should generally be avoided, and require either prior approval from an appropriate supervisory official for exigent circumstances necessitating immediate action. The policy is intended to ensure that anyone seeking to participate in activities or utilize services provided at such locations are free to do so without fear or hesitation. The Committee directs ICE to follow this policy and to broaden the scope of the category to include: courthouses; bus stops; USCIS offices; mental health, emergency, and social services centers; and other locations where community impacts should be better balanced against ICE law enforcement requirements.

Further, within 180 days of the date of enactment of this Act, ICE is directed, in collaboration with other DHS entities as needed, to provide a public report on enforcement actions at sensitive locations since October 1, 2017. The report shall include the total number of enforcement actions at sensitive locations, broken down by: field office; type of sensitive location; whether prior approval was given; what type of exigent circumstances existed, if any; and the number of non-targeted individuals who were also apprehended. It should also contain information on the number of enforcement actions occurring at courthouses and bus stops for each field office, including the number of individuals apprehended at each location, broken down by targeted and non-targeted individuals.

Improving Conditions at ICE Field Offices and Sub-Offices.—The Committee is concerned about the conditions and lack of adequate infrastructure at ICE's Enforcement and Removal Operations field offices and sub-offices that service migrants. The Committee under-

stands that visitors who appear at these facilities for an appointment or processing may be required to wait inordinate amounts of time, without shelter or shade. Further, there may be insufficient restroom or drinking water infrastructure. The Committee has also been made aware that visitors who appear at these facilities for appointments may experience difficulty while attempting to confirm their appointment letters via phone due to insufficient capacity, and many visitors have had trouble contacting an ICE employee who can speak their native language, including Spanish. To address these conditions, the Committee directs ICE to work with the General Services Administration (GSA) to determine what steps must be taken and what additional infrastructure is necessary at facilities in order to improve conditions and processing times, as well as to determine how to improve planning and design for future ICE ERO facilities. ICE is directed to provide a report on its findings to the Committee within 180 days of the date of enactment of this Act. ICE is also directed to ensure that proper oversight of conditions at its ERO field offices, sub-offices, and contractor facilities is conducted by its quality assurance teams. Finally, the Committee encourages ICE to permit the distribution of food and water by outside individuals or advocates to visitors who are waiting to be seen.

Parental Interests.—In the execution of ERO activities, ICE is directed to ensure that field personnel, including ERO officers, are appropriately trained on all agency policies and procedures involving detained parents and legal guardians, including ICE's directive on the Detention and Removal of Alien Parents or Legal Guardians and time of arrest protocols to minimize harm to children.

Phone Access in Detention.—To the greatest extent possible, the Committee expects ICE to apply the terms of the *Lyon v. ICE, et al.* Settlement Agreement regarding detainee telephone access to each of its detention facilities and directs ICE to brief the Committee on the status of providing such access within 90 days after the date of enactment of this Act. The briefing shall include a list of facilities that fail to provide access to free, confidential calls to attorneys and non-attorneys; a justification for each such failure; the period of performance for the contract with the facility (if applicable), along with any option periods; and the steps and a timeline for requiring each facility to comply.

Rape Prevention in Immigration Detention Facilities.—The Committee encourages ICE to collaborate with the National PREA Resource Center, which is supported by the Department of Justice, to help facilitate PREA compliance. Within 60 days after the date of enactment of this Act, ICE shall brief the Committee on its planned schedule for achieving 100 percent compliance with PREA requirements, the results of completed PREA audits, and an assessment of whether the standards are effective in protecting vulnerable populations.

Reporting on Removals.—The Department shall continue to submit data on the deportation of parents of U.S.-born children semiannually, as in prior years, and shall also report semiannually on removals of honorably discharged members of the armed services.

Reporting on Criminality.—ICE is directed to continue monthly reporting regarding criminality, as described in House Report 116–9, and shall further differentiate such individuals detained as a re-

sult of interior enforcement efforts versus those from border security operations.

Risk Classification Assessment.—The Committee is concerned about ICE's inconsistent treatment of similarly situated individuals, to include decisions on whether to release or detain; length of time in detention; whether to require a bond and the amount of such bond; custody classification level of those detained; and community supervision level of those not detained. Not later than 180 days after the date of enactment of this Act, ICE, in collaboration with the Office of the Immigration Detention Ombudsman, is directed to brief the Committee on the results of a reevaluation of its Risk Classification Assessment (RCA) process and to provide recommendations to improve the process. The Committee directs that the recommendations provide a strong preference for using ATD, especially in support of interior enforcement efforts, and clear guidance to describe situations when detention must be used, such as when the officer can clearly demonstrate with individualized evidence that a migrant poses a flight risk or a risk to public safety.

Transgender Detainees.—The Committee directs ICE to limit the detention of individuals who self-identify as transgender to facilities subject to a contract formally modified pursuant to Attachment 1 of the June 19, 2015 ICE memo entitled "Further Guidance Regarding the Care of Transgender Individuals," unless the individual has voluntarily declined placement in such a facility after being informed of the opportunity to do so.

U Visas.—The Committee recognizes the value of the U visa program in protecting victims of violent crime and promoting public safety by enabling criminal investigations. The Committee directs ICE to provide a report within 90 days of the date of enactment of this Act on the number of individuals deported with a pending U visa application or when a U visa application had been denied.

Mission Support and the Office of the Principal Legal Advisor

Increases to Support Transparency.—The recommendation includes increases above the request of $2,000,000 for the Law Enforcement Systems and Analysis division to address increased demands for immigration data and analysis, including Committee requests for information, and $2,000,000 for the Office of the Chief Financial Officer for additional capacity to address the growing workload.

Minor Construction and Improvements to ICE Facilities.—The recommendation includes an increase of $9,425,000 above the request to reduce the backlog of necessary repairs and improvements to address unsafe or unfit detention facility conditions, and an increase of $406,000 above the request to support an Office of the Principal Legal Advisor facility consolidation project.

PROCUREMENT, CONSTRUCTION, AND IMPROVEMENTS

Appropriation, fiscal year 2019	$45,559,000
Budget request, fiscal year 2020	78,770,000
Recommended in the bill	76,270,000
Bill compared with:	
Appropriation, fiscal year 2019	+30,711,000
Budget request, fiscal year 2020	−2,500,000

The recommendation includes the following increases above the request: $45,000,000 for construction and facility improvements to address major projects on ICE's facilities backlog list; and $2,500,000 for the U.S. Title 8 Aliens and Nationality Initiative (T–8) to accelerate modernization efforts of ICE's immigration information technology systems, data platforms, and reporting and analytics capabilities. The recommendation does not include $50,000,000 proposed in the request for facility projects to support prior year hiring initiatives that were not funded in fiscal years 2018 and 2019 appropriations.

TRANSPORTATION SECURITY ADMINISTRATION

Appropriation, fiscal year 2019	$7,600,462,000
Budget request, fiscal year 2020	7,298,720,000
Recommended in the bill	7,879,691,000
Bill compared with:	
Appropriation, fiscal year 2019	+279,229,000
Budget request, fiscal year 2020	+580,971,000

Mission

The Transportation Security Administration (TSA) is charged with protecting U.S. transportation systems, while facilitating the flow of travelers and commerce.

OPERATIONS AND SUPPORT

Appropriation, fiscal year 2019	$7,410,079,000
Budget request, fiscal year 2020	7,115,195,000
Recommended in the bill	7,648,384,000
Bill compared with:	
Appropriation, fiscal year 2019	+238,305,000
Budget request, fiscal year 2020	+533,189,000

The recommendation includes $533,189,000 above the request, including: $24,545,000 to annualize the 2019 pay raise; $118,305,000 to provide a 2020 pay raise; $45,000,000 to continue the Law Enforcement Officer Reimbursement Program; $58,800,000 to continue the Visible Intermodal Prevention and Response Team program; $81,633,000 to continue legally mandated staffing at certain exit lanes; and $204,906,000 to maintain current services.

DCA Access Standard Security Program.—The Committee encourages TSA to work with partner agencies and stakeholders to improve the DCA Access Standard Security Program (DASSP). TSA is directed to provide a briefing on the DASSP not later than 90 days after the date of enactment of this Act.

Federal Flight Deck Officer Program.—The Committee recommends $20,017,000 for the Federal Flight Deck Officer (FFDO) and Flight Crew Training program, an increase of $3,320,000 above the request to maintain the current pace of training. Recent administrative changes to the program should provide more flexibility and a substantive increase in FFDO enrollment and retention. The Committee directs TSA to provide a briefing not later than 60 days after the date of enactment of this Act on FFDO enrollment, training, and recertification.

General Aviation Representative.—The Committee understands that TSA has appointed a full-time general aviation representative, as authorized by Public Law 115–254. Within 60 days of the date

EXHIBIT 19

March 26, 2020

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DHS Office for Civil Rights and Civil Liberties
Washington, DC 20528

RE: Detention Conditions Impacting the Health and Safety of LGBTQI/HIV+ Immigrants Detained at the Winn Correctional Center in Winnfield, LA

Dear Field Office Director Witte, Deputy Director Khoury, and Warden Deville:

We, the undersigned organizations,[1] believe in protecting the livelihood, health, and overall well-being of LGBTQI/HIV+ immigrants.[2] Accordingly, we write this letter to express our urgent concerns regarding the ongoing detention and civil rights violations of a group of LGBTQI/HIV+ immigrants who are being detained at the Winn Correctional Center ("Winn") in Winnfield, LA. Many of these individuals are transgender women. We are alarmed by the COVID-19 pandemic and the potential for irreparable harm including death for migrant detainees, especially for LGBTQI/HIV+ immigrants detained at Winn. **We request a response to this letter by 5 PM on Friday, March 27, 2020, with specific information detailing: 1) when ICE officials and the Warden at Winn will meet with us to discuss these conditions; and 2) when DHS officials will begin the necessary investigations.**

For over 9 months, representatives of the Santa Fe Dreamers Project ("SFDP") and Immigration Equality have visited and/or provided limited legal services to those LGBTQI/HIV+ immigrants detained at Winn. SFDP has been working with these individuals primarily through its El Paso office, as their cases were all initially handled through video-teleconference by the Otero Immigration Court. All of the individuals SFDP and Immigration Equality have spoken with are (or were) seeking asylum in the United States because of the persecution they survived in their countries of origin—in most cases, because of their gender identity, sexual orientation, or political beliefs. The majority of these individuals were detained for 5-6 months before ever seeing an Immigration Judge.

We begin with the following four premises:

- The safest and best place for all asylum-seekers is with their communities and families, not in immigration detention. We support the abolition of immigration detention. Detention of asylum-seekers should not be a part of the asylum process.

[1] We write jointly from: Immigration Equality, Al Otro Lado, Detained Migrant Solidarity Committee, Gender Justice, Trans Latin@ Coalition, VisibiliT, and Santa Fe Dreamers Project.

[2] LGBTQUI/HIV+ refers to individuals who identify as lesbian, gay, bi-sexual, transgender, queer, or intersex and those who have the human immunodeficiency virus.

- This is especially true for LGBTQI/HIV+ individuals who the Department of Homeland Security (DHS) has previously determined to be especially vulnerable to the conditions of immigration detention. We condemn the prolonged detention of LGBTQI/HIV+ immigrants. We also urge ICE to immediately release all LGBTQI/HIV+ people from civil immigration detention.

- When the government exercises its discretion to detain an individual, it takes on a legal obligation to ensure that the person is safe and receives all medically necessary care.[3] ICE should not expose LGBTQI/HIV+ immigrants to more harm by placing them in detention facilities that do not take into consideration the specific needs of these communities and restrict their access to care.

- The COVID-19 pandemic will expose already vulnerable migrant detainees to a currently untreatable and potentially deadly disease. Protective public health measures such as social distancing and self-quarantining are impossible in detained settings. LGBTQI/HIV+ immigrants are especially vulnerable in detention settings. Releasing detained LGBTQI/HIV+ migrants is the only viable option for improving their COVID-19 pandemic health outcomes.

Per the 2015 ICE Transgender Care Memorandum, ICE must determine *a respectful, safe, and secure environment for transgender individuals in ICE custody.* This is identified in the Memo as: appropriate medical care; presence of staff with special training to work with identified transgender individuals in ICE custody; a tailored detention plan as developed by a Transgender Classification and Care Committee; and provisions that ensure transgender individuals detained by ICE have access to safety, security, and the ability to meet their hygienic needs.[4] The memorandum additionally mandates the consideration of an immigrant's transgender status upon initial detention—with placement preference given to facilities that operate a protective custody unit for transgender individuals—as well as when any subsequent transfer is requested. Finally, the Transgender Care memo sets standards for safety, privacy, and medical care of transgender individuals detained by ICE.

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[3] United Nations General Assembly, *International Covenant on Economic, Social, and Cultural Rights*, Art. 12, December 16, 1966, https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx; *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001) (acknowledging that immigration detention is civil); *Youngberg v. Romero*, 457 U.S. 307, 315-16, 324 (1982) (finding civil detainee was entitled to adequate food, shelter, clothing, medical care, and reasonable safety under the Fourteenth Amendment).

[4] For standards of care *see also,* U.S. ICE, Detention Operations Manual: Medical Care (2000), https://www.ice.gov/doclib/dro/detention-standards/pdf/medical.pdf; U.S. ICE, Performance-Based National Detention Standards 2011, https://www.ice.gov/detention-standards/2011.

Nationally, these minimal standards to ensure the health and safety of LGBTQI/HIV+ individuals in immigration detention are not being met. For example:

- In May 2018, the Center for American Progress published a study concluding that "LGBT people in ICE custody are 97 times more likely to be sexually victimized than non-LGBT people in [immigration] detention.[5]"

- On March 25, 2019, the ACLU of New Mexico wrote a joint letter with Las Americas and the Santa Fe Dreamers Project detailing the grave conditions faced by gay men and transgender women detained at the Otero County Processing Center.[6]

- On July 9, 2019, twenty-nine transgender women and gender non-conforming immigrants held at Cibola County Correctional Center in New Mexico called for an investigation into poor medical services - including HIV care-- and mistreatment at the facility.[7] This prompted an investigation by the DHS Office of Civil Rights and Civil Liberties, which ultimately substantiated the claims of dangerously inadequate medical care and ordered the transfer of all "medically vulnerable individuals" from the facility—including all 26 transgender women detained at Cibola at the time.

- On September 25, 2019, the Transgender Law Center, along with a number of concerned organizations, wrote to ICE regarding the agency's failure to provide adequate medical

[5] Sharita Gruberg, "ICE's Rejection of Its Own Rules Is Placing LGBT Immigrants at Severe Risk of Sexual Abuse," Center for American Progress, https://www.americanprogress.org/issues/LGBTQI-rights/news/2018/05/30/451294/ices-rejection-rules-placing-lgbt-immigrants-severe-risk-sexual-abuse/

[6] Letter Kristin Greer-Love et al, to Wayne Cox, Acting Field Office Director of El Paso ERO (March 25, 2019), https://www.aclu-nm.org/sites/default/files/field_documents/advance_copy_of_3.25.2019_las_americas_santa_fe_dreamers_project_aclu-nm_letter_to_dhs_re_otero.pdf; see also Robert Moore, "Gay, transgender detainees allege abuse at ICE Facility in NM," The Washington Post, (March 25, 2019), https://www.washingtonpost.com/immigration/gay-transgender-detainees-allege-abuse-at-ice-facility-in-new-mexico/2019/03/25/e33ad6b6-4f10-11e9-a3f7-78b7525a8d5f_story.html

[7] Laura Gomez, "Migrants held in ICE's only transgender unit plead for help, investigation in letter," *AZ Mirror*, July 9, 2019 https://www.azmirror.com/2019/07/09/migrants-held-in-ices-only-transgender-unit-plea-for-help-investigation-in-letter/.

and mental health care to LGBTQI people and people living with HIV in immigration detention.[8]

- On January 14, 2020, members of Congress wrote to ICE demanding that the agency stop placing transgender migrants at risk of sexual abuse and assault in ICE custody.[9]

We now write to give you a brief summary of the on-going civil rights and civil liberties violations that have been documented at the Winn Correctional Center. This information comes from in-person conversations, telephone communications, and written statements from dozens of LGBTQI/HIV+ individuals detained at Winn over the past year. Our clients and friends report the following:

Widespread Abuse and Mistreatment of LGBTQI/HIV+ individuals. LGBTQI/HIV+ individuals detained at Winn are not housed in an insulated unit that offers them additional protection from other detained individuals. Even self-identified transgender women are held with large cisgender male populations, where they face elevated risks of sexual assault, discrimination, and abuse.

- P. is one of two transgender women forced to share shower and bathroom facilities with nearly 50 cisgender men. The cisgender males detained in her unit regularly watch P. and other transgender women while they use the restroom and shower. She reports that men sometimes become aroused while watching her. P. tries to shower in the middle of the night to avoid being watched.

- Other women report having developed urinary tract infections because, out of fear of assault, they are forced to hold off from urinating for prolonged periods of time.

- M. is another transgender woman incorrectly housed amongst the all cisgender male population at Winn. M. reports that cisgender men detained at Winn often threaten her with violence and use homophobic and transphobic slurs toward her, such as "faggot."

[8] Letter from Transgender Law Center et al., to Dr. Stewart Smith, Assistant Director for ICE Health Services Corps et al. (Sept. 25, 2019), https://www.cvt.org/sites/default/files/attachments/u101/downloads/complaint_on_LGBTQ_detention_final_.pdf

[9] Letter Mike Quigley et al, to Chad Wolf, Acting Secretary DHS and Matthew Albence, Acting Director ICE (Jan 14, 2020), https://quigley.house.gov/sites/quigley.house.gov/files/01.14.20%20ICE%20Letter.pdf

- D. reports that one cisgender man threatened to fight her for being LGBTQI/HIV+. After that she did not go outside for recreation for fears she would be assaulted. On August 17, 2019, Winn staff forced her to go outside to play soccer with the cisgender men. Once on the field, and far removed from the play, the same man tackled D., breaking her leg. The officer refused to take a report of how D.'s leg was broken.

- J. reports severe verbal harassment and threats from cisgender men detained at Winn. One man called her "the plague of the earth" and threatened to insert a stick into her anus to "make her a man."

- Many of the transgender women report attempts by cisgender men detained at Winn to force them to engage in sexual acts. When women refuse, the men threaten to kill them and call the women "faggots" or "whores."

- LGBTQI/HIV+ individuals at Winn report a fear of humiliation or retaliation from Winn staff if they submit a PREA report to the facility.

Failure to Provide Access to Adequate Medical and Mental Health Care. Winn medical staff fails to provide timely and adequate medical care. This includes access to medically necessary hormone therapy and other gendering affirming care. The problem of inadequate medical care is particularly significant for people living with life-threatening illnesses like HIV, tuberculosis, and syphilis. HIV care is woefully inadequate at Winn, and HIV positive individuals are subjected to conditions and practices that put their life and health in serious jeopardy.

- After months of intense physical and verbal harassment by cisgender males detained at Winn, J., a transgender woman, attempted to take her life. She survived and was subsequently held in solitary confinement for a prolonged period of time. She reports being held naked for several days. She also reports Winn staff regularly passing by her cell to laugh at her and call her "crazy."

- G., an individual living with HIV, reports a variety of serious issues with his care. G. has experienced numerous interruptions to his antiretroviral regime in detention, including going for days at a time without receiving his HIV medication. His medication is also given to him at inconsistent times each day potentially leading to serious side effects, including the kidney problems he is now experiencing. G.'s most recent urine analysis showed that his urine contained blood. G.'s HIV medication was changed while in detention, but there is no indication that the proper resistance testing was done before

making the switch. G was not told what his new medication is, nor was he administered the proper blood work to track his "CD4" count, which is the essential indicator to track HIV health. Health care staff at Winn mistakenly measured his C4 count – a test that has nothing to do with HIV monitoring rather than his CD4 count. G. had to point this out to Winn staff and request that the appropriate blood test be provided. G. waited months to be seen by an HIV specialist, and when he final saw the specialist, he was not provided an interpreter and so could not communicate with the provider. G. has no way to monitor his own HIV care because ICE refuses to provide him with copies of his own medical records.

- M. has severe spinal issues. She reports only being allowed to see a doctor three times over the course of eight months in detention. She often experiences acute pain, but when she asks to see the doctor the request is delayed or denied.

- P. reported that she started experiencing pain in a tooth in December 2019. P. was told that because Winn does not have a dentist on-site, she would have to wait for medical attention and was given ibuprofen for pain. Two months later, she saw a dentist who extracted her tooth. During the two months, she lost a significant amount of weight and suffered intense pain.

- After breaking her leg, a doctor told D. that she was losing muscle in her leg and was in danger of losing her ability to walk. D. was prescribed physical therapy and given an elastic band for resistance training. However, officers at Winn confiscated the resistance band, thus denying D. her prescribed treatment.

- M. has also experienced severe tooth pain. She was told she needed to be in custody for six months before she could see a dentist.

- J. suffers from high levels of anxiety and erratic fainting spells. She has fainted on a number of occasions and hit her head in the unit. No changes have been made to her medical regime to reduce or manage her anxiety or incidents of fainting.

- P. receives medication for depression and is administered pills prior to bed at 9:00 pm, and with breakfast around 3:00 am. Overhead lights are kept on throughout the night. On weekends, bedtime is pushed back to midnight while breakfast remains at 3:00 am. This intentionally destabilizes those who are detained so that they cannot achieve an adequate sleep cycle, leaving them cognitively and emotionally impaired.

- H. lost 20 pounds due to an intolerable tooth pain which left her unable to chew food. She was left in pain for over 2 months before she was able to see a dentist.

- The majority of the transgender women detained at Winn have made formal requests to receive medically necessary, gender-affirming care, including hormone replacement therapy. These requests have been denied.[10] Some women report being told that they had "not been detained long enough" to receive hormone replacement therapy.

- One transgender woman reported a doctor at Winn telling her she was not, in fact, a transgender woman because she had not yet undergone surgery altering her genitalia. This was the basis for denying her request to receive hormone replacement therapy.

- Another woman was strongly discouraged from beginning hormone replacement therapy due to a medical provider's stated concern that once the hormones took effect, she would suffer further, more-severe harassment from detained cisgender males due to the changes in her physical appearance.

- Nearly all LGBTQI/HIV+ individuals have submitted multiple formal requests for copies of their medical and mental health records to aid in their legal cases. All of these requests have been either denied or unacknowledged.

Discrimination and Verbal Abuse by Facility Staff. At times, Winn staff use homophobic and transphobic slurs against LGBTQI/HIV+ individuals and refuse to use the pronouns for transgender women that correspond with their gender identity. It is apparent that guards at Winn have not received adequate training on how to care for or work with transgender people.

- One transgender woman reports having been forcefully pushed in the middle of her back by guards at least three times, including when she was merely standing and reading her bible. Winn staff do not respect her name or pronouns.

[10] Gender affirming care is often medically necessary for transgender individuals, and denial of such care while in custody arguably rises to the level of cruel and unusual. *See Edmo v. Corizon, Inc*., 935 F.3d 757 (9th Cir. 2019); *De'lonta v. Johnson*, 708 F.3d 520 (5th Cir. 2019); *Fields v. Smith*, 653 F.3d 550 (7th Cir. 2011)).

- Winn Officers regularly threaten transgender women with solitary confinement for arbitrary reasons, such as interpreting for other detained individuals.

- D., a gay male, reports being subject to regular homophobic verbal harassment from guards, as well as intimidation. On one instance, D. approached a guard in a crowded dining hall to make a request. Because D. was timid in his approach, the guard shouted at him: "Why don't you go look for your boyfriend's balls so you will have the courage to speak to me." After his sexual orientation was exposed so publicly, D. reported an increased fear to use public spaces or bathroom facilities.

- One officer threatened a transgender woman detained at Winn with physical harm, going as far as to say he would beat to death any detained individuals who made him angry.

- Winn Officers regularly order the transgender women to "walk like men, not faggots" when they are escorted around the detention center. A cisgender female officer once walked pass a group of transgender women, instructed them to look at her buttocks, and stated "this is how a real woman walks."

- H. reports that Winn staff enforce rules more harshly for LGBTQI/HIV+ individuals while cisgender individuals are allowed to break the same rules.

- Reports indicate that few, if any, of the Winn staff are fluent Spanish-speakers. Staff rely on a limited group of bilingual detained individuals to interpret and translate instructions, grievances, legal documents, and general procedures.

- The LGBTQI/HIV+ individuals at Winn report that they know of guards laughing at and destroying written grievances and requests they submit to the facility.

Failure to Timely Adjudicate Parole Requests or Consider Transfer Requests. Deportation Officers overseeing the cases of LGBTQI/HIV+ individuals routinely ignore parole requests submitted by the individuals or their legal counsel. The requests which are acknowledged, first remain pending for weeks, even months before a determination is made. This results in the prolonged detention of parole eligible individuals, who unnecessarily suffer irreparable harm in the interim.

- On January 21, 2020, counsel from Immigration Equality submitted a parole request on behalf of J. Counsel followed up with the client's Deportation Officer (DO) by phone at

least a dozen times and left numerous messages but DO never answered or returned their phone calls. On or around February 15, DO interviewed J. to determine his parole eligibility. During the interview, J. filled out a questionnaire provided to him by ICE, where J indicated that he was HIV-positive and needed immediate medical attention. J. also stated he did not feel comfortable in the dorm because he is gay. On or around February 22, DO denied J.'s parole request. He refused to provide J. a copy of Notification Declining to Grant Parole. J. made at least three requests for the copy of the Notification, but he did not receive a response.

- K. applied for parole without legal counsel on or around November 11, 2020. No response was received. On February 13, 2020, counsel from Immigration Equality submitted a comprehensive parole request on behalf of K, indicating that she was a medically vulnerable individual. The DO conducted a parole interview with K. but gave no indication that he had reviewed the parole request from Immigration Equality. On or around February 18, 2020, the DO denied K.'s parole without justification. On March 5, 2020, K. reported to the medical department that there was blood in her urine due to a severe kidney issue, which had been explained in her prior parole request. It was only then her parole was approved.

- Attorneys from Santa Fe Dreamers Project have submitted multiple individual and group transfer requests on behalf of the LGBTQI/HIV+ individuals at Winn—in October 2019, December 2019, January 2020 and February 2020. Few of these requests were answered, let alone acknowledged. Requests that were responded to were denied without explanation or justification. When legal counsel requested written determinations, including the factors considered and how current conditions are in compliance with the Transgender Care memo, no response was received.

The above information reflects the egregious conditions at the Winn Correctional Center and reveals blatant homophobia, transphobia, and a disregard for basic human safety. The above-mentioned individuals have submitted regular complaints to DHS, all of which remain unaddressed. In essence, these LGBTQI/HIV+ asylum-seekers are indefinitely trapped in a detention center where they are at a heightened risk of medical negligence, sexual harassment and disproportionate systemic violence.

COVID-19:

On March 11, 2020, World Health Organization (WHO) Director-General Dr. Tedros Adhanom said that, "COVID-19 can be characterized as a pandemic." The CDC notes that pandemics

happen when new "viruses emerge which are able to infect people easily and spread from person to person in an efficient and sustained way." The WHO says that "there is no evidence that current medicine can prevent or cure" COVID-19.

Detained individuals face an elevated risk of contracting COVID-19. According to Dr. Homer Venters, "When COVID-19 arrives in a community, it will show up in jails and prisons. This has already happened in China, which has a lower rate of incarceration than the U.S."[11] Or, as Dr. Anne Spaulding put it in a presentation to Correctional facility employees, "a prison or jail is a self-contained environment, both those incarcerated and those who watch over them are at risk for airborne infections. Some make an analogy with a cruise ship. Cautionary tale #1: think of the spread of COVID-19 on the Diamond Princess Cruise Ship, January 2020. Cautionary tale #2: Hundreds of cases diagnosed in Chinese prisons."[12]

According to Dr. Chauolin Huang, "2019-nCoV caused clusters of fatal pneumonia with clinical presentation greatly resembling SARS-CoV. Patients infected with 2019-nCoV might develop acute respiratory distress syndrome, have a high likelihood of admission to intensive care, and might die"[13] The CDC recently reported that, "Older people and people of all ages with severe underlying health conditions — like heart disease, lung disease and diabetes, for example — seem to be at higher risk of developing serious COVID-19 illness."[14]According to another source, Jialieng Chen, "[M]ost of those who have died had underlying health conditions such as hypertension, diabetes or cardiovascular disease that compromised their immune systems." [15]

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[11] Dr. Homer Venters, *Four Ways to Protect Our Jails and Prisons from Coronavirus*, The Hill, Feb. 29, 2020, https://thehill.com/opinion/criminal-justice/485236-4-ways-to-protect-our-jails-and-prisons-from-coronavirus?rnd=1582932792.

[12] Dr. Anne Spaulding, *Coronavirus and the Correctional Facility: for Correctional Staff Leadership*, Mar. 9, 2020, https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf.

[13] Chaolin Huang, et al., *Clinical Features of Patients Infected with 2019 Novel Coronavirus in Wuhan, China*, 395 The Lancet 497 (2020), https://doi.org/10.1016/S0140-6736(20)30183-5 (also available at https://www.sciencedirect.com/science/article/pii/S0140673620301835).

[14] Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19), People at Higher Risk and Special Populations*, Mar.7, 2020, https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/index.html.

[15] Jieliang Chen, *Pathogenicity and transmissibility of 2019-nCoV—A Quick Overview and Comparison with Other Emerging Viruses*, Microbes and Infection, Feb. 4, 2020, https://doi.org/10.1016/j.micinf.2020.01.004.

On March 23, 2020 the CDC released COVID-19 related guidance for detention facilities.[16] This guidance urges detention facilities to:

- Implement social distancing of at least 6 feet between each individual.
- Provide incarcerated/detained persons and staff no-cost access to: soap, running water, hand drying machines or paper towels, and tissues, and hand sanitizer.
- Several times per day, clean and disinfect surfaces and objects that are frequently touched.
- Restrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.
- Restrict incarcerated/detained persons from leaving the facility while under medical isolation precautions, unless released from custody.
- Note that if group activities are discontinued, it will be important to identify alternative forms of activity to support the mental health of incarcerated/detained persons.
- Expect shortages of all personal protective equipment including N95 respirators, face mask, eye protection, disposable examination gloves, and medical isolation gowns.
- **Note that incarcerated/detained populations have higher prevalence of infectious and chronic diseases and are in poorer health than the general population, even at younger ages.**

The CDC recognizes that detained populations are already medically vulnerable.[17]

Our LGBTQI/HIV+ clients at Winn are reporting troubling conditions specific to the COVID-19

[16] Centers for Disease Control, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, March 23, 20202. https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html.

[17] *Id*.

pandemic. They include lack of medical attention for a detainee who had a days long fever, a sympton of COVID-19, crowded conditions, and a lack of sanitation supplies for detainees and staff alike.

- K. reports that as of March 20th Winn Officials had not addressed COVID-19 concerns with immigrant detainees, including failing to instruct detainees on handwashing and social distancing.

- Hand sanitizer is not available.

- During the week of March 16-20, thirty to thirty-five new detainees arrived at Winn and were immediately housed with the preexisting detained population.

- Dormitories are not being cleaned or sanitized.

- Some dormitories have 50 people in the same room sharing one sink, one toilet, and no meaningful access to medical attention or sanitation.

- A experienced a week long fever without being quarantined or tested for COVID-19.

These reports, taken with the above mentioned civil rights violations and existing lack of adaquate medical care, are alarming. Social distancing at Winn is virtually impossible. Winn is primed to have COVID-19 spread through the detained population like wildfire. It will be devastating and deadly. This is especially true for the already vulnerable LGBTQI/HIV+ immigrant population. Medically vulnerable detainees, especially LGBTQI/HIV+ migrants and those who are otherwise immunocompromised, should be released immediately.

Winn and ICE's Legal Obligations:

Over the past year, ICE and Winn have repeatedly failed to meet their most basic legal obligations to care for LGBTQI/HIV+ individuals in detention, raising serious questions about their compliance with the Prison Rape Elimination Act ("PREA"), ICE Performance-Based National Detention Standards ("PBNDS"[18]), and the U.S. Constitution.

[18] U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011 (2016), https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf.

The most comprehensive of these standards, the 2011 Performance-Based National Detention Standards (2011 PBNDS), updated in 2016, set forth extensive medical care requirements for ICE. For instance, the 2011 PBNDS require appropriate physical, dental, and mental health care as well as pharmaceutical services, 24-hour access to emergency care, and timely responses to medical complaints for all detained people.[19] They also require language services for individuals with limited English proficiency during any physical or mental health appointment, treatment, or consultation.[20]

The 2011 PBNDS also mandates that special consideration be given to people at risk of sexual assault, including individuals who have self-identified as members of the LGBTQI community.[21] With specific regard to transgender individuals, the 2011 PBNDS require that those individuals who have been receiving hormone therapy when taken into ICE custody, maintain continued access to such therapy.[22] The guidelines further demand that detained transgender people have access to "mental health care, and other transgender-related health care and medication based on medical need."[23] Once again, this complaint and others demonstrate that the DHS is failing to meet these standards and LGBTQI/HIV+ people are experiencing immense suffering as a result.

In addition to these generalized detention standards, ICE also issued a 2015 Memorandum concerning the care and safety of transgender immigrants in ICE custody. More specifically, the memorandum includes contract modifications for facilities to ensure access to adequate healthcare, including access to hormone therapy. The memorandum also states that during initial processing or risk classification assessment of an individual, the detention facility staff should inquire about a person's gender identity[24] and make individualized placement determination to ensure the person's safety, including whether detention is warranted. Where feasible and appropriate, ICE should house transgender immigrants in facilities that are equipped to care for transgender people.[25]

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[19] U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011, 257-81 (2016), https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf.
[20] *Id.* at 264.
[21] *Id.* at 135.
[22] *Id.* at 273.
[23] *Id.* at 274.
[24] U.S. Dep't. of Homeland Security, *Further Guidance Regarding the Care of Transgender Detainees*, 2 (June 19, 2015) https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf.
[25] *Id.*

Our position is that ICE and its contractors blatantly disregard the health and safety of LGBTQI/HIV+ individuals in its custody and repeatedly fail to meet not only the federally required standards of care, but even its own internal detention standards. The countless reports of outright denial of medical treatment, combined with the continuous mistreatment and abuse of LGBTQI/HIV+ individuals, clearly demonstrates that DHS cannot house LGBTQI/HIV+ migrants safely.

Accordingly, we the undersigned organizations, **demand the following actions be immediately taken to ensure the health, safety, dignity, and due process** of the LGBTQI/HIV+ individuals presently detained at the Winn Correctional Center.

1. Grant all LGBTQI/HIV+ individuals detained at Winn immediate humanitarian parole and release them to family or community members who can properly care for them.

2. Schedule a meeting within one (1) week of receipt of this letter between U.S. Immigration and Customs Enforcement ("ICE"), the acting Warden at the Winn Correctional Center, and representatives of the undersigned organizations to discuss our concerns about the conditions in which ICE is confining LGBTQI/HIV+ individuals at the Winn Correctional Center.

3. Finally, we urge CRCL to use its authority under federal law[26] to schedule a visit to Winn to fully investigate the civil rights and civil liberties violations outlined in this letter; recommend policy changes to address these violations; and oversee Winn and ICE's implementation of policy changes.

In ordinary times it would be appropriate to suggest that an alternative to immediate release would be the immediate transfer of all LGBTQI/HIV+ individuals detained at Winn to Protective Care Units for LGBTQI/HIV+ individuals. However, the CDC recommends against transfers at this time to limit the spread of COVID-19.[27] Therefore, the only responsible course of action is the immediate granting of humanitarian parole to all LGBTQI/HIV+ migrants detained at Winn.

We are willing to discuss in detail the conditions described in this letter, with any individuals, agencies, or representatives willing to recommend and advocate for policy changes in line with the above recommendations. We urge ICE and those in charge of the Winn Correctional Center to make immediate changes to comply with the law, provide on-going oversight to ensure its

[26] 6 U.S.C. § 345(a).

[27] Centers for Disease Control, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, March 23, 20202. https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html.

facilities and contractors do not fall out of compliance in the future, and immediately grant humanitarian parole to all LGBTQI/HIV+ migrants detained at Winn.

If you have any questions about the above information please contact attorney, Héctor Ruiz, at hector@santafedreamersproject.org or Executive Director, Allegra Love, at allegra@santafedreamersproject.org.

Dated: March 25, 2020

Sincerely,

Santa Fe Dreamers Project

Immigration Equality

Al Otro Lado

Detained Migrant Solidarity Committee

Familia: Trans Queer Liberation Movement

Gender Justice LA

Trans Latin@ Coalition

VisibiliT

CC'd:

Members of the House Appropriations Subcommittee on Homeland Security
Members of the House Subcommittee on Border Security, Facilitation, and Operations
Members of the Senate Appropriations Subcommittee on Homeland Security
Members of Senate Subcommittee on Homeland Security and Governmental Affairs
Members of Congressional LGBTQ Equality Caucus
Members of Congressional Transgender Equality Task Force

EXHIBIT 20

DECLARATION OF ALLEGRA LOVE, ESQ.

1. My name is Allegra Love. I am an attorney licensed to practice law in the State of New Mexico since September of 2011. This declaration describes my practice, experience, and observations working with transgender individuals detained by ICE from the time period of August 2017 to present.

2. I have practiced immigration law since 2013. In 2015, I founded the Santa Fe Dreamers Project, a non-profit legal services organization that serves immigrant populations of New Mexico and, now, West Texas. I have been the Executive Director for 5 years and was the legal director from 2015-2019.

3. I have practiced law in ICE detention centers since 2014, primarily working with people seeking political asylum. I have worked with detainees in Cibola County Correction Center, Otero Processing Center, El Paso Service Processing Center, Florence Correctional Center, West Texas Detention Center, Torrance County Detention Center, Aurora Contract Detention Facility, South Texas Detention Facility, South Texas Family Residential Facility, Otay Mesa Detention Center, and Northwest Detention Center.

4. During the summer of 2017, ICE moved their Transgender Protective Care Unit, often referred to as the Trans-pod, from Santa Ana, CA to Cibola County Correctional Center in Milan, NM. At that time, our organization was providing on the ground legal visitation and representation to individuals detained in Cibola County. As a result, we became the primary legal service providers for the majority of trans women detained in the United States from 2017 to when the trans-pod abruptly closed in Cibola County in January of 2020.

5. Due to our experience working with trans populations, we are often called on to directly support populations of transgender women who are detained outside of the protective custody unit. We have worked with populations of detained transgender individuals in detention facilities in Washington, California, Arizona, Colorado, New Mexico, Texas, and Lousiana.

6. We provide direct representation in Credible Fear Interview preparation, parole requests, bond requests, the merits hearings for Asylum, Withholding of Removal, and claims under the Convention Against Torture, and appeals to the Board of Immigration Appeals. We also provide advocacy to complain about the poor conditions of detention to ICE and the corporations that run detention centers. These conditions include medical neglect,

lack of mental health services, abuse and discrimination from staff, misuse of solitary confinement, and generally poor conditions of confinement and lack of resources.

7. Examples of our advocacy efforts include: emails, letters, and phone calls to supervising officers including Field Office Directors, Acting Field Office Directors, Supervisory Detention Deportation Officers, Deportation Officers, natioal level officers of ICE's LGBTQ program, and employees of Corporate Correctional institutions; formal complaints filed about conditions at Otero County Detention Center and Winn Correctional; participating in media stories about the conditions of trans detention and individual cases; and participating in sign-on petitions and letters with national organizations about the conditions of trans-detention.

8. Since July 2017, I estimate that we have had contact with over 300 transgender individuals in ICE detention and provided direct services to at least 200 individuals.

9. Throughout the course of our work at Cibola County Correctional Center, South Texas Detention, Winn Correctional Center, Florence Correctional Center, Otero Detention Center, El Paso Processing Center, Otay Mesa Detention Center, and Aurora Contract Detention Center we received nearly constant complaints from detained transgender individuals about medical care in the facility. We heard several consistent complaints: lack of access to basic medication including hormones; individuals being unable to schedule a visit for months to deal with both severe and routine medical issues.

10. At Cibola County women would request medical appointments regularly for acute and chronic issues and for help with medication. Many women reported asking for help on a weekly basis only for months to pass without attention. One example is a client who needed syphilis medication and never received any for the 4 months she was detained.

11. One of our clients detained at Cibola had liver disease, Hepatitis B, and HIV. She was also bleeding from her anus for reasons she did not understand. She requested an appointment because she needed her HIV meds. She requested an appointment 3 times. She was at Cibola for two months and never received her HIV meds in spite of the fact that her C4 counts were low.

12. At two facilities, Clients consistently reported excessive amounts of blood being drawn at medical screenings, sometimes up to 12 vials.

13. In December of 2019, one of our clients was released from Cibola County with a grant of Withholding of Removal. Her health was fragile when she was released. It was

determined that she needed critical surgery in her GI area. She was hospitalized for three days and was given antibiotics and medications at the time of her discharge. She rested one day and had a regular ICE check-in early the next morning. She went to her ICE check-in and never returned. ICE re-detained her because DHS had decided to appeal her case. For this reason ICE determined that she was a "flight risk". The next morning she had a seizure in detention. She was detained without her medication and we demanded immediate medical care. She was given seizure medication 48hrs later at midnight. Her critical health issues were not addressed for a week in spite of our pleas to Congressional delegations to intervene. She was eventually transferred to Tacoma, Washington and released on parole.

14. On July 9, 2019, twenty-nine transgender women held at Cibola County Correctional Center in New Mexico called for an investigation into poor medical services - including HIV care-- and mistreatment at the facility. This [7] prompted an investigation by the DHS Office of Civil Rights and Civil Liberties, which ultimately substantiated the claims of dangerously inadequate medical care and ordered the transfer of all "medically vulnerable individuals" from the facility. In January of 2020, our organization was working with 29 trans individuals detained in Cibola. One morning we found out that they were abruptly transferred to two other facilities in the US, effectively ending transgender custody in Cibola County. At first ICE gave no explanation for the abrupt transfer. As time went on we learned that the transgender women at the facility were categorically deemed "medically vulnerable individuals" and transferred per the CRCL order.

15. For the last 10 months, our organization has been supporting transgender individuals at Winn Correctional Center in Winnfield Parrish, Louisiana. Throughout our time serving clients at Winn, we have received weekly reports of poor conditions and medical neglect. Winn medical staff fails to provide timely and adequate medical care. This often means asking for months for an appointment. This includes access to medically necessary hormone therapy and other gendering affirming care. The problem of inadequate medical care is particularly significant for people living with life-threatening illnesses like HIV, tuberculosis, and syphilis. HIV care is woefully inadequate at Winn, and HIV positive individuals are subjected to conditions and practices that put their life and health in serious jeopardy.

16. After months of intense physical and verbal harassment by cisgender males detained at Winn, J., a transgender woman, attempted to take her life. She survived and was subsequently held in solitary confinement for a prolonged period of time. She reports being held naked for several days. She also reports Winn staff regularly passing by her

cell to laugh at her and call her "crazy.

17. Another client at Winn had severe spinal issues. She reported only being allowed to see a doctor three times over the course of eight months in detention. She often experienced acute pain, but when she asked to see the doctor the request was delayed or denied.

18. Another client at Winn broke her leg and a doctor told her that she was losing muscle in her leg and was in danger of losing her ability to walk.She was prescribed physical therapy and given an elastic band for resistance training. However, officers at Winn confiscated the resistance band, thus denying her prescribed treatment.

19. Another client at Winn reported that she started experiencing pain in a tooth in December 2019. She was told that because Winn does not have a dentist on-site, she would have to wait for medical attention and was given ibuprofen for pain. Two months later, she saw a dentist who extracted her tooth. During the two months, she lost a significant amount of weight and suffered intense pain.

20. Two transgender women died in ICE custody between May of 2018 and June of 2019. While I met Roxsana Hernandez in Puebla, Mexico before she entered the US. I did not have contact with her when she was in DHS custody. In May of 2018 she was transferred through several DHS facilities and eventually detained in Cibola County. I did not have contact with her before she was sent for emergency medical care in Albuquerque, NM and died in Lovelace Hospital. Similarly, I did not have contact with Joana Medina before she died in Otero County Detention in June of 2019. Due to my position as leader as an advocate for transgender detainees, I was involved in the aftermath. My understanding was that Joana was a nurse and also HIV positive. She was ill in detention and requested help consistently and pled for her release on parole. Local advocacy groups sent letters to our Congressional delegations to intervene and investigate. She was found unconscious in her cell and transported to a hospital in El Paso where she later died. Importantly, ICE signed her parole papers while she was hospitalized so she was not technically in ICE custody when she passed away and Otero County was able to avoid the required scrutiny following a death in custody.

21. During the outbreak of COVID-19 in the US, our clients have been detained at Winn Correctional Center, El Paso Service Processing Center, Florence Correctional Center, and Aurora Contract Detention Facility. Our clients in each of these facilities report a lack of soap and sanitation materials, no access to PPE, and an inability to distance themselves from others. They call our organization in fear, begging for mercy.

22. In late March 2020, we heard that ICE was going to transfer 15 transgender women from El Paso Service Processing Center to Aurora, Colorado. There was a confirmed case of COVID-19 with staff at the Aurora facility and we aggressively asked ICE not to transfer our clients, 8 of whom were HIV+ to a place with known exposure to COVID-19. Our requests were ignored and the women were transferred.

23. While I have been inside the visitation rooms of El Paso Processing Center and South Texas Family Residential Center. I have been "behind the line" (meaning inside the back of the detention facility, in Cibola County Correctional Center, Otero County Detention Center, and South Texas Detention Center. I have observed extremely close living quarters, tight hallways, and small bathrooms. The bunkrooms that I have seen would not permit any modicum of social distancing if more than one person were using it.

24. Our complaints about conditions are routinely ignored and unaddressed by ICE officers and corporate officers for the correctional corporations. Emails and phone calls to officials when there are urgent health related issues are more often than not unacknowledged and unanswered. To my knowledge, the current director of LBGT programs for ICE is Officer Lana Khoury. I regularly attempt to engage Ms. Khoury around advocacy issues involving our clients and their care and am routinely ignored. ;

25. In 2015 ICE released a memo outlining the standards of care for transgender individuals. The Memo promised *a respectful, safe, and secure environment for transgender individuals in ICE custody.* This is identified in the Memo as: appropriate medical care; presence of staff with special training to work with identified transgender individuals in ICE custody; a tailored detention plan as developed by a Transgender Classification and Care Committee; and provisions that ensure transgender individuals detained by ICE have access to safety, security, and the ability to meet their hygienic needs. I have never once seen a tailored detention plan and have never had any knowledge of a Trangender Classification and Care Committee. My experiences and observations have shown regular and routine denial of the rights and care promised in the Memo.

26. Based on my experience and observations, I do not believe that ICE has the capacity to safely care for their health of transgender individuals in any setting, especially during a global pandemic. Based on the neglect and poor decision making that I have witnessed throughout my work with transgender individuals detained by ICE, I am gravely concerned that ICE's refusal to release transgender individuals could result in irreprable harm to their health or even their lives.

Signature

4/20/2020

Date

EXHIBIT 21

September 25th, 2019

Dr. Stewart D. Smith
Assistant Director for ICE Health Services Corps.
Enforcement and Removal Operations
Immigration and Customs Enforcement
Department of Homeland Security
Washington, DC 20528

Mr. Matthew Albence
Acting Director
U.S. Immigration and Customs Enforcement
Department of Homeland Security
Washington, DC 20528

Mr. Mark A. Morgan
Acting Commissioner
U.S. Customs and Border Protection
Department of Homeland Security
Washington, DC 20528

Ms. Cameron Quinn
Officer for Civil Rights and Civil Liberties
Office for Civil Rights and Civil Liberties
Department of Homeland Security
Washington, DC 20528

Mr. Joseph V. Cuffari
Inspector General
Office of Inspector General
Department of Homeland Security
Washington, DC 20528

RE: Failure to provide adequate medical and mental health care to LGBTQ people and people living with HIV in immigration detention facilities

Dear Dr. Smith, Mr. Albence, Mr. Morgan, Ms. Quinn, and Mr. Cuffari:

We, the undersigned organizations, file this complaint on behalf of current and formerly detained lesbian, gay, bisexual, transgender, and queer individuals and people living with HIV (LGBTQ, PLWHIV) in immigration detention facilities. This complaint details recent accounts of Immigration and Customs Enforcement's (ICE) and Customs and Border Protection's (CBP) provision of egregiously inadequate medical and mental health care, jeopardizing the health, safety, and lives of individuals in federal custody while they exercise their legal right to pursue their immigration claims and seek protection in the United States. ICE and CBP's continued failure to provide such basic care is in clear violation of the U.S.

Constitution, statutory law, and applicable detention standards.[1] This failure has led to the deaths of multiple LGBTQ, PLWHIV migrants, and continues to cause irreparable harm.

In light of the substantial evidence of ICE's inability to safely house and adequately care for LGBTQ, PLWHIV individuals in its custody, we call for ICE to exercise its parole authority and release all LGBTQ, PLWHIV individuals on their own recognizance. We also urge the Office of Inspector General (OIG) to work with the Office for Civil Rights and Civil Liberties (CRCL) to immediately conduct a systemic investigation into the provision of medical and mental health care to LGBTQ, PLWHIV individuals in ICE and CBP custody. We call on ICE to comply with the OIG's January 29, 2019 recommendation and use its contracting tools to hold accountable those detention facilities that fail to meet the applicable standards of care by ending their contracts and imposing financial penalties. Finally, we call on DHS to strengthen its oversight of all facilities to identify and promptly remedy abuses and medical neglect within these centers.

The Abuse of LGBTQ, PLWHIV Individuals in DHS Custody Is Well-Documented

The widespread abuse and mistreatment of LGBTQ, PLWHIV individuals in ICE custody is well-documented. The Department of Homeland Security (DHS) has already received countless reports of LGBTQ, PLWHIV individuals' experiences with verbal, sexual and physical violence, medical negligence, inhumane housing conditions, and overuse of solitary confinement in both public and private detention centers.[2] Rather than being confined to a few detention centers, these reports are widespread and consistent, demonstrating the systemic inability of DHS to meet even basic standards of care for LGBTQ, PLWHIV migrants.

For example, just two months prior to Johana Medina's death, a complaint was sent to DHS detailing the rampant discrimination and violence inflicted on LGBTQ individuals at Otero County Processing Center, the detention center where Johana Medina died as a result of the substandard care she received in DHS custody.[3] Even after this complaint was received and after Johana Medina's death, ICE continues to deny transgender women and gay and bisexual men at Otero basic health care and provides misinformation on how to access hormone therapy. In fact, an investigative report published in 2018 demonstrated that DHS has received more than 200 complaints of abuse and mistreatment from individuals housed at Otero

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[1] The United States is additionally obligated under international law to provide adequate health care for detained immigrants. Namely, the United States is a signatory to the International Covenant on Economic, Social, and Cultural Rights, which guarantees everyone a right to physical and mental health. United Nations General Assembly, *International Covenant on Economic, Social and cultural Rights*, Art. 12, December 16, 1966, https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx.

[2] See National Immigrant Justice Center, Submission of Civil Rights Complaints Regarding Mistreatment and Abuse of Sexual Minorities in DHS Custody, available at http://www.immigrantjustice.org/sites/immigrantjustice.org/files/OCRCL%20Global%20Complaint%20Letter%20April%202011%20FINAL%20REDACTED.pdf; Sharita Gruberg, "Dignity Denied: LGBT Immigrants in U.S. Immigration Detention," (Center for American Progress 2013) available at https://www.americanprogress.org/wp-content/uploads/2013/11/ImmigrationEnforcement.pdf; Human Rights Watch, "Do You See How Much I'm Suffering Here? Abuse Against Transgender Women in US Immigration Detention," (Human Rights Watch 2016) available at https://www.hrw.org/sites/default/files/report_pdf/us0316_web.pdf; Letter from Rep. Kathleen Rice to DHS Secretary Kirstjen Nielsen (May 30, 2018)(available at https://kathleenrice.house.gov/uploadedfiles/2018.05.30_lgbt_immigrants_in_ice_detention_letter_to_sec_nielsen.pdf).

[3] ACLU New Mexico, Santa Fe Dreamers Project, and Las Americas: Immigrant Advocacy Center; Detention Conditions Impacting the Safety and Well-Being of LGBTQ Immigrants in the Otero County Processing Center, https://www.aclu-nm.org/sites/default/files/field_documents/advance_copy_of_3.25.2019_las_americas_santa_fe_dreamers_project_aclu-nm_letter_to_dhs_re_otero.pdf

County Processing Center, and yet, Otero continues to operate today and DHS has failed to take adequate actions to improve conditions at the facility.[4]

Another complaint filed by the American Immigration Council (Council) and the American Immigration Lawyers Association (AILA) in 2018 detailed the lack of access to basic medical care and mental health care at the Denver Contract Detention Facility in Aurora, Colorado.[5] DHS failed to meaningfully address the concerns raised in the complaint, and one year later, in June 2019, the Council and AILA supplemented the complaint with additional evidence of inadequate medical and mental health care.[6] Specifically, the complaint includes the case of a transgender woman who reported she was denied access to hormone treatment, and was subjected to serious sexual and verbal harassment by facility guards and other detained individuals.

On July 9th, 2019, twenty-nine transgender women and non-binary individuals held at Cibola County Correctional Center in New Mexico called for an investigation into poor medical services—including HIV care—and mistreatment at the facility.[7] In April, 2019, seven organizations, including the American Civil Liberties Union, investigated Cibola and reported that the center had inadequate medical and mental health care, abuses related to solitary confinement, discrimination and verbal abuse, and inappropriate meals, among other issues.[8]

The OIG's own investigation of five ICE facilities, including Santa Ana City Jail where the previous transgender housing pod was located and Otero County Processing Center, "identified problems that undermine the protection of detainees' rights, their humane treatment, and the provision of a safe and healthy environment" and "potentially unsafe and unhealthy detention conditions."[9] In an earlier inspection of the Essex County Correctional Facility, the OIG noted the "serious issues" it identified "not only constitute violations of ICE detention standards but also represent significant threats to detainee health and safety."[10]

Rather than take effective action to address the numerous complaints of abuse and mistreatment of LGBTQ, PLWHIV individuals in detention, DHS has focused on subjecting an increasing number of people to these horrific conditions. The number of individuals in immigration detention is at a historical

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[4] Craig, Nathan, and Margaret Brown Vega. "'Why Doesn't Anyone Investigate This Place?': Complaints Made by Migrants Detained at the Otero County Processing Center, Chaparral, NM Compared to Department of Homeland Security Inspections and Reports." El Paso, TX: Detained Migrant Solidarity Committee (DMSC) and Freedom for Immigrants (FFI), 2018.

[5] Failure to provide adequate medical and mental health care to individuals detained in the Denver Contract Detention Facility, https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_demands_investigation_into_inadequate_medical_and_mental_health_care_condition_in_immigration_detention_center.pdf

[6] SUPPLEMENT—Failure to Provide Adequate Medical and Mental Health Care to Individuals Detained in the Denver Contract Detention Facility, https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_supplement_failure_to_provide_adequate_medical_and_mental_health_care.pdf

[7] Laura Gomez, "Migrants held in ICE's only transgender unit plead for help, investigation in letter," *AZ Mirror*, July 9, 2019 https://www.azmirror.com/2019/07/09/migrants-held-in-ices-only-transgender-unit-plea-for-help-investigation-in-letter/.

[8] Detention Conditions Impacting the Safety and Well-Being of Immigrants in the Cibola County Correctional Center in Milan, New Mexico. April, 2019 https://www.aclu-nm.org/sites/default/files/field_documents/2019_04_15_nm_stakeholders_letter_to_crcl_re_cibola_county_correctional_center.pdf

[9] OIG-18-32

[10] OIG-19-20

high and keeps rising, despite the fact that many of these individuals are eligible for release. By the department's own count, 300 individuals who identify as transgender have been in the custody and supposed care of ICE since October of 2018 alone. This is the highest number of transgender migrants in the care of the U. S. government ever recorded. At the same time, DHS has failed to take measures to ensure the basic health and safety of this population. It is unjustifiable for the U.S. Government to subject an increasing number of individuals, including those qualified as vulnerable populations such as LGBTQ, PLWHIV individuals, to these dangerous conditions.

DHS Has Consistently Demonstrated It Is Incapable of Providing Adequate HIV Care

The stories included in this complaint shed light on the effects of growing roadblocks in access to basic healthcare as well as lifesaving HIV care in detention due to chronic, systemic medical neglect and lack of oversight in detention. While ICE has adopted three sets of detention standards, including PBNDS 2011, it does not require contractors to adopt any recent standards when it enters into new contracts or contract extensions. The result is a "patchwork system in which facilities are subject to differing standards and some are subject to no standards at all"[11], and people are outright denied access to care, delayed in receiving medical attention, and are left in conditions that exacerbate their physical and mental health ailments.

The risks that accompany substandard HIV care are serious, and they arise from the inconsistent or delayed access to treatment. This is why 2011 PBNDS standards have aimed—without success—to secure uninterrupted access to HIV/AIDS medication for people in detention.

The U. S. government recognizes that poor adherence to HIV treatment is associated with less effective viral suppression. The U. S. Department of Health and Human Services underscores that strict adherence to antiretroviral therapy is key to sustained HIV suppression, reduced risk of drug resistance, and survival, as well as decreased risk of HIV transmission.[12] An unsuppressed viral load may risk the immediate health of HIV positive individuals and it will also risk creating treatment resistance. If patients fail to respond to their given drug regimen, they are moved to second line drugs, which may be more expensive or difficult to manage. [13,14]

Evidence has shown that individuals with HIV who keep adherence to HIV medicine as prescribed can stay virally suppressed and thus have effectively no risk of transmission. In fact, the Centers for Disease Control and Prevention's (CDC) HIV Treatment as Prevention Technical Fact Sheet reports a 96% reduction in HIV transmission risk among heterosexual mixed-status couples where the HIV-positive partner started antiretroviral therapy (ART) immediately versus those delaying ART initiation.[15] Far too

[11] https://immigrantjustice.org/research-items/toolkit-immigration-detention-oversight-and-accountability

[12] US Department of Health and Human Services, "Guidelines for the use of antiretroviral agents in HIV-1-infected adults and adolescents". Revised July 2019. https://aidsinfo.nih.gov/guidelines/html/1/adult-and-adolescent-arv/

[13] Kenneth L. Schaecher, Addressing Adherence Challenges Associated With Antiretroviral Therapy: Focus on Noninfectious Diarr, The Importance of Treatment Adherence in HIV, September 29, 2013. https://www.ajmc.com/journals/supplement/2013/a472_sep13_hiv/a472_sep13_schaecher_s231

[14] Jane Mwangi, CDC Kenya (Centers for Disease Control and Prevention), Our Research in Kenya: Finding Ways to Improve HIV Treatment Access and Outcomes, https://blogs.cdc.gov/global/2012/07/26/our-research-in-kenya-finding-ways-to-improve-hiv-treatment-access-and-outcomes/

[15] Centers for Disease Control and Prevention CDC, Evidence of HIV Treatment and Viral Suppression in Preventing the Sexual Transmission of HIV. HIV Treatment as Prevention Technical Fact Sheet. https://www.cdc.gov/hiv/pdf/risk/art/cdc-hiv-art-viral-suppression.pdf

many people in detention are outright denied access to HIV-related care or experience significant delays. This delay of treatment is cruel, counterintuitive to ending HIV transmission, and causes irreparable harm.

Reports of Deficient Medical and Mental Health Care for LGBTQ, PLWHIV Individuals

Below are multiple accounts of medical negligence and mistreatment of LGBTQ, PLWHIV individuals in detention centers across the country. This by no means represents all of the stories of abuse and mistreatment, but rather provides a glance at the systemic harms and inadequate care provided to LGBTQ, PLWHIV individuals under the care of DHS and CBP. There are many stories not included here for fear of reprisal.

Detention Centers Managed by CoreCivic

Cibola County Correctional Center - Milan, New Mexico
A. is a transgender woman from El Salvador who has been detained in Cibola County Detention Center for almost 20 months. A.'s medical records indicate she suffered from advanced syphilis and, according to a pro bono medical evaluation, her medical records indicate that her condition has progressed to neurosyphilis, increasingly affecting her cognitive abilities. Despite this evidence and her counsel's advocacy, ICE has continuously failed to provide her penicillin, a well-known and easily accessible medication. ICE has also repeatedly refused to release A. from detention so she can get the medical treatment she requires.

Otay Mesa Detention Center - San Diego, California
G. is a 34-year-old HIV positive Salvadoran trans woman and activist who worked to advance trans rights in Latin America and the Caribbean prior to applying for asylum and was detained in male housing for more than 6 months in Otay Mesa in 2017. During this time, her HIV medication was withheld. Additionally, she was misdiagnosed with tuberculosis. Rather than treating her HIV, she was over-medicated in attempts to treat tuberculosis she did not have.

Otay Mesa Detention Center - San Diego, California
Y.E. is a transgender woman from Mexico. She was brutally raped, tortured, beaten and kept hostage by the cartels for months because she dressed as a woman. Again and again she was gang raped. The rapes caused tears in her anus and rectum. The rapes also resulted in her contracting HIV. After she presented herself at the border, lawfully asking for asylum, she was placed in a detention center and was taken off medication for HIV for a significant amount of time. In addition to requesting treatment for HIV, she repeatedly asked for help with the tears in her anus/rectum. The medical staff at the detention center refused to address it because the tearing did not happen at the facility and because they believed it to be too invasive. Because no treatment was given, she caught an infection that resulted in anal bleeding. She was held in custody for months before finally being released on parole.

Otay Mesa Detention Center - San Diego, California
S.A.G.C. is an HIV positive transgender woman who has been repeatedly abused and raped because of anti-transgender bias in her home country of El Salvador. The severity of the abuse in her country was such that during the credible fear interview both the asylum officer and the translator needed a moment because of the horrors she described. Although her health was deteriorating in detention and she felt harassed for being a transgender woman in an all-male pod, she was kept in custody until she was granted a $2500 bond—even though she had letters of support from her sponsor and the community that would be

accepting her. That bond amount was prohibitive to SA.G.C. and it was only after a bond fund paid for her release that she was able to get out of detention.

Otay Mesa Detention Center- San Diego, California
B.C.H. is an asylee from El Salvador. He fled El Salvador after his life was threatened by gangs on account of his sexual orientation and political opinion. B.C.H. entered Otay Mesa Detention Center in May of 2018 weighing 220 pounds. When he was released in September of 2018, he weighed only 190 pounds. B.C.H. required serious psychological support due to his traumatic history of sexual abuse and assault. While at Otay Mesa, he mentioned to Al Otro Lado that he was seeing a psychologist, but at one point, despite the threat of imminent death should he return to El Salvador, he was certain he wanted to stop fighting his case and return to El Salvador due to the conditions at Otay Mesa. We are unsure what, if any, psychological treatment he was receiving, and his unaddressed trauma combined with his extreme weight loss raised serious red flags regarding the adequacy of medical care at the facility. Despite his severe weight loss and mental trauma, his parole bond was set at $10,000, an amount impossible for him to pay.

Otay Mesa Detention Center- San Diego, California
S.Y.M.M. is a 47-year-old gay man from Honduras. He is blind in one eye and suffers from a myriad of health conditions, including hypertension and the growth of a cyst on his head. S.Y.M.M.'s ICE Medical Records indicate that the pain in his head resulting from the cyst on his scalp worsened significantly while detained. Additionally, at one point, one of his teeth became severely infected, and he was never treated for that ailment. S.Y.M.M.'s parole request was denied, and he was only able to leave the facility when Al Otro Lado submitted a new request. Even so, his bond was set at a prohibitively high $5,000. He was only released when a community organized to pay his bond.

Otay Mesa Detention Center- San Diego, California
R.E.P.L. is a transgender woman from Guatemala who was sexually abused by her father and her uncles. When she tried to escape the constant sexual abuse of the men in her family, local police tracked her down, assaulted her, and returned her to them. When she finally escaped her family, R.E.P.L. was taken in by a woman who was affiliated with the 18th Street Gang. This woman forced her under duress to be a sex worker, and R.E.P.L. was held captivate for two years. Police gang-raped R.E.P.L. when she tried to escape that woman's house and she had no choice but to flee Guatemala to seek protection in the United States. En route to the United States, R.E.P.L. was again violently gang-raped while in Mexico and believes she contracted HIV. R.E.P.L. requested asylum in January of 2019 and was subsequently detained at Otay Mesa Detention Center. She expressed her concern to staff at the facility that she was HIV positive, making countless requests in writing for an HIV test. Al Otro Lado staff reached out on numerous occasions to R.E.P.L.'s deportation officer to ensure she received the necessary testing but never received a response. While R.E.P.L. was detained at Otay, there was an outbreak of several infectious diseases, including mumps and chicken pox. Therefore, it was critical for her to know whether she had HIV or not, as her immune system may have been severely compromised. The lack of any initiative by the facility to ensure she was tested for HIV put her health at serious, life-threatening risk. Despite her traumatic past and serious health concerns, the immigration judge refused to grant her release on her own recognizance and set a bond in the amount of $1,500. She was only released after a community organized to pay her bond.

Cibola County Correctional Center- Milan, New Mexico
C.L. is a transgender woman from Peru who was in detained for nearly five years. She was transferred from Santa Ana Jail in California to Cibola County Correctional Center when Cibola first opened its

transgender unit. While in Cibola, she repeatedly requested medical care for Hepatitis C, which she'd been denied at Santa Ana, and continued to be denied treatment after the transfer. She was in need of urgent medical care several times while in detention, and recalls once being in the hospital for two weeks. She was shackled by her ankles and her wrists and two guards were posted outside her door. She wondered why they would do this when she was in no condition to escape.

Otay Mesa Detention Center- San Diego, California
Y is a transgender HIV-positive woman from Mexico. Upon her arrival at the border, Y was detained in San Ysidrio, where immigration officials confiscated her HIV medicine and kept her in a freezing room for nine days. Y asked three times for her HIV medication back and was denied each time. Y was later transferred to Otay Mesa Detention Center, where she was once again denied her life-saving medication for an entire month. Furthermore, the Otay Mesa medical staff refused to provide adequate treatment for the injuries Y suffered during a brutal sexual assault in Mexico. In Otay Mesa, Y was housed with the male population and was harassed by two detained men and an ICE official. When she tried to make complaints about the harassment to the facility manager, the manager dismissed her by referring to her complaint as "gossip."

Otay Mesa Detention Center - San Diego, California and Hudson County Correctional Facility - Kearny, New Jersey
E is a gay man from Honduras. Upon arrival to the United States, E was detained at the Otero County Processing Center and, later, at the Hudson County Correctional Facility. E faced continuous harassment in both detention facilities from guards and other detained individuals because of his sexual orientation. In Hudson, the officers and other individuals in detention constantly referred to E as "gay" instead of his name or other appropriate forms of address. E also had serious dental problems while he was in Hudson. However, the medical staff refused to provide E with the necessary medical treatment, in contradiction to the applicable Performance-Based National Detention Standards.

Otay Mesa Detention Center- San Diego, California
P is a 38-year old Honduran citizen and transgender woman living with HIV. She entered without inspection at the southern border in California on February 2, 2019, and was detained at Otay Mesa for about 6 months. In Honduras, local police stopped P because she was dressed in women's clothes and then they raped her. P's employer in Honduras continuously harassed and threatened her until one day they hired people to beat her up in front of several witnesses who came forward. While she was detained at Otay Mesa, her HIV medication was delayed and she never received hormone therapy. As a result, her mental and physical health deteriorated.

Detention Centers Managed by GEO Group, Inc.

Adelanto Detention Center - Adelanto, California
J. is a transgender man from El Salvador who has been detained in Adelanto Detention Center for about nine months. Before being detained, J. had been receiving gender-affirming hormone therapy for many years. Since he has been detained, however, J. has not received gender-affirming hormone treatment despite numerous requests. J.'s mental and physical health have significantly deteriorated as a result.

Adelanto Detention Center - Adelanto, California
J. is a gay man, a national of Mexico, and a Franco-Gonzalez class member, who was deemed -- by an immigration judge -- as non-competent to represent himself during his removal proceedings due to his mental health. J. was diagnosed with the following mental health disorders: major neurocognitive disorder

due to multiple etiologies with behavioral disturbance; amphetamine-type substance use disorder, severe, in a controlled environment; major depressive disorder, recurrent, severe with psychotic symptoms; unspecified neurodevelopmental disorder (history of a learning disability). Due to signs of his deteriorating health, in January 2018 his legal representative requested HIV testing for J. Despite being court ordered, the HIV test was not performed for more than seven months. J.'s medical records indicate that in August of 2018 he received a positive HIV diagnosis, and that GEO medical staff began antiretroviral treatment, over eight months after his legal representative first requested it.

Adelanto Detention Center - Adelanto, California

I.S.I identifies as LGBTQ and has a diagnosis of bipolar disorder. She has been in ICE custody since September of 2018. Despite complications with her mental health, she was found competent by an immigration judge and denied a free appointed immigration attorney. Since then, she has attempted to die by suicide at least four times. Her attorney at the Los Angeles LGBT Center was unable to locate her client for over two weeks during one of these periods. She is not safe in ICE Custody and does not feel safe. She reports that the medical care she is receiving is not helping her.

South Texas Detention Facility - Pearsall, Texas

A. is an HIV+ transgender woman asylum seeker who has been detained at the South Texas Detention Center ("STDC") since December 2014. A. has suffered from severe medical problems and improper treatment since her arrival at STDC. She has lost more than 25 pounds (and is now severely underweight at 89 pounds) since the start of detention, and has been suffering from insomnia, nausea, and loss of appetite because of the side effects of her medication, and possible incompatibility of her hormone therapy and antiretroviral drugs administered by the detention center. She only gets 3 hours of sleep each night, or sometimes none at all. Because of the symptoms from her medication, she struggles to consume and retain food, and relies on vitamins purchased with her own funds from the commissary to obtain nutrition and sustenance.

Although A receives nutritional shakes to supplement her meals, she continues to experience nausea, and the underlying problems of her medication possibly interfering with each other, or mis-prescribed medication has yet to be sufficiently addressed.

In June and July, 2019, she experienced two incidents where she fainted and lost consciousness for hours. In the first incident, other individuals in detention asked the guards for medical help, but either because of a delay in dispatch or response, medical services providers did not reach A. until hours later. In the second incident, which occurred in the late morning, she was taken to an outside facility, where she was told that her lungs were swollen and that she had a sinus infection, and merely given acetaminophen and returned to the facility in the afternoon. Unfortunately, even though A has raised these issues with the facility and with ICE, her medical issues have not been comprehensively addressed, and she continues to rapidly lose weight as a result of her nausea and lack of sleep, and her health continues to deteriorate. She expresses a fear of dying at STDC.

Aurora Detention Facility - Aurora, Colorado

L.M. is a transgender woman who was detained for six months in Aurora, where she was detained with men and was harassed on a regular basis. Soon after her arrival, she reported to detention center staff that she needed to continue the hormone treatment she had been receiving. Staff responded that she would be put on a list to see a doctor. However, L.M. did not receive a doctor's appointment for over two months. At the appointment, the medical provider told her they would need to consult her medical records to find her hormone prescription, and if they could not find it, would need to refer her to a specialist. She did not

receive any updates for another two months, at which point she received an appointment with a specialist, which was then canceled. L.M. finally received the appointment and her prescription the day before her release but never received the hormones.

Due to the abrupt end to her treatment, L.M. experienced nausea, difficulty sleeping, lack of appetite, mood changes, and depression during the six months she was detained. Due to the harassment she faced for being a transwoman detained with men, she reported these incidents to the detention center guards but their only response was to put her in solitary confinement, claiming it was for her own safety. She was put in solitary confinement several times for up to a month at a time, a practice that can rise to the level of inhuman and degrading treatment and even torture.

Detention Facilities Managed by LaSalle Corrections

Irwin County Detention Center- Ocilla, Georgia
S. is a bisexual woman from Jamaica who is HIV positive and has been residing in the U.S. since she was four years old. She was abandoned and became homeless when she was around ten years old and was sexually exploited throughout her teenage years. Given her prostitution-related charges, she has been forced to remain in ICE custody throughout the pendency of her proceedings. Since being detained, she has frequently gone days without her HIV medication. She has to write a letter to the warden every month to receive her HIV medicine and if she does not write the letter, she does not receive her refill. Occasionally, she receives the wrong brand of HIV medication. The head of medical at the facility has also made it difficult for S. to receive blood work, leaving S. unable to monitor her levels. In addition, a nurse disclosed S.'s HIV status to the guards.

Irwin County Detention Center- Ocilla, Georgia
C, an east Asian trans man, has been held in immigration detention for almost two years. For the first 19 months, he was held in solitary confinement solely because he is a transgender man. While in solitary, his health suffered due to inadequate medical care, including not receiving his blood pressure medicine, being given the wrong treatment for a severe illness which led to weeks of extreme stomach pain, and being fed food that made his diabetes worse. At one, point while he was getting a hormone shot, the person giving it to him was so incompetent that the syringe broke while inside his leg. Further, C has also been identified and confirmed to be a victim of trafficking by federal law enforcement. In fact, federal law enforcement confirmed that his convictions were tied to human trafficking but still, ICE refuses to release him because of his convictions. C was recently transferred out of Irwin Detention Center, but is still being held in immigration detention, despite ICE's awareness of his victim status.

Detention Centers Managed by ICE

Krome Service Processing Center- Miami, Florida
D. is a gay, HIV positive man from Russia. He had already applied for asylum, when he was unjustly detained in a Florida detention facility in 2017, while returning from a trip to the U.S. Virgin Islands. He went multiple days without access to antiretroviral medication and developed an opportunistic infection. Because he has a compromised immune system, this was life threatening. When he asked to see a doctor, D. was forced to spend multiple days in a freezing waiting room. ICE refused to release him until the Associated Press ran a story about his mistreatment.

DHS is Violating Legal Standards by Refusing Medical Treatment and Delaying Care

The inhumane and punitive conditions described above are in direct contravention of established law and norms. It is the responsibility of DHS to hold the detention facilities under its purview to the legal requirements and to appropriately penalize them when they continuously harm migrants in their care.

Constitutional Protections

The Fifth Amendment Due Process Clause of the U.S. Constitution protects substantive rights of "all persons" present in the United States, including detained immigrants.[16] As such, people in detention are entitled to, at a bare minimum, adequate medical care, as well as adequate food, shelter, clothing, and reasonable safety.[17]

Immigration detention is civil, not criminal, in nature.[18] Unlike criminal detention, civil detention cannot be punitive and any restriction on a person's liberty must be rationally related to a legitimate governmental goal.[19] In the context of criminal detention, the Eight Amendment clearly prohibits "deliberate indifference" on the part of the detention staff to a detained individual's "serious medical need[s]."[20] Courts have held that people in civil detention are entitled to a standard of care greater than – or at the very least, equal to – the standard of care afforded to people in criminal detention.[21] Indeed, the Ninth Circuit has held that, unlike people in criminal detention, civilly confined individuals need not prove "deliberate indifference" to demonstrate a violation of their Constitutional rights.[22]

The accounts of abuse and neglect detailed above describe profoundly deficient physical and mental health care, including the denial of life-saving HIV medication. As such, ICE and CBP have violated the higher Eighth Amendment standard, showing deliberate indifference to serious medical needs and failing to provide critical care. These failures on the government's part, which have caused detained immigrants to endure debilitating pain, suffer serious injury and have placed them in mortal danger, amount to Constitutionally prohibited punishment. It is clear that LGBTQ, PLWHIV immigrants cannot be housed safely in detention and therefore should be released.

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[16] *Zadvydas v. Davis,* 533 U.S. 678, 693 (2001).
[17] *See Youngberg v. Romeo*, 457 U.S. 307, 315-16, 324 (1982) (finding civil detainee entitled to adequate food, shelter, clothing, medical care and reasonable safety under the Fourteenth Amendment).
[18] *Zadvydas*, 533 U.S. at 690 (acknowledging that immigration detention is civil).
[19] *Bell v. Wolfish*, 441 U.S. 520, 535-539 (1979).
[20] *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) ("prison official's deliberate indifference to an inmate's serious medical needs is a violation of the Eighth Amendment's prohibition against cruel and unusual punishment").
[21] *Jones v. Blanas*, 393 F.3d 918, 931-34 (9th Circ. 2004), *cert denied*, 546 U.S. 820 (2005) (a civilly detained person is entitled to "'more considerate treatment' than his criminally detained counterparts. . . . Therefore, when a [civil] detainee is confined in conditions identical to, similar to, or more restrictive than those in which criminal counterparts are held, we presume that the detainee is being subjected to 'punishment.'" (internal citations omitted)); *see also Youngberg v. Romero*, 457 U.S. 307, 321-32 (1982) ("Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.").
[22] *Jones* 393 F.3d at 934; *see also Hydrick v. Hunter*, 500 F.3d 978, 994 (9th Cir. 2007) ("[T]he Eighth Amendment provides too *little* protection for those whom the state cannot punish." (emphasis in original, citations omitted)).

Statutory Law

Various federal and state statutes also protect detained immigrants. For instance, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 provide protections from discrimination and mandate access to adequate and reasonable accommodations for LGBTQ, PLWHIV immigrants with physical and mental disabilities who are detained by ICE and CBP.[23] Likewise, the Prison Rape Elimination Act imposes national standards for the prevention, reduction, and punishment of prison rape, including standards for the provision of physical and mental health services to individuals who have been the victim of sexual abuse.[24] The stories above illustrate that not only are detention centers failing to provide even the most basic care to LGBTQ, PLWHIV after experiencing sexual violence, they are placing people in inhumane segregation leading to a further deterioration of physical and mental health. This has forced many LGBTQ, PLWHIV individuals to abandon viable claims for asylum and return to the violent conditions from which they fled in the first place. This is the very outcome asylum protections were created to prevent.

Detention Standards

In addition to these legal obligations, ICE and CBP must comply with their own set of standards, which are designed to protect detained immigrants. Notably, as currently applied, these standards have failed to translate into adequate physical and mental health care for LGBTQ, PLWHIV individuals due to inconsistent application, insufficient oversight and lack of accountability. In other words, ICE and CBP are failing to comply with their own standards.

The most comprehensive of these standards, the 2011 Performance-Based National Detention Standards (2011 PBNDS), updated in 2016, set forth extensive medical care requirements for ICE. For instance, the 2011 PBNDS require appropriate physical, dental, and mental health care as well as pharmaceutical services, 24-hour access to emergency care, and timely responses to medical complaints for all detained people.[25] They also require language services for individuals with limited English proficiency during any physical or mental health appointment, treatment, or consultation.[26] The stories above illustrate that far too many LGBTQ, PLWHIV individuals are flat out denied access to care or are left waiting for months on end for treatment.

For PLWHIV, the facility has more specific requirements. For example, it must provide medical care consistent with national recommendations and guidelines disseminated through the U.S. Department of Health and Human Services, the CDC, and the Infectious Diseases Society of America, and must provide access to all medications for the treatment of HIV currently approved by the FDA.[27] Moreover, adequate supplies of such medications must be kept on hand to ensure newly detained individuals are able to

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[23] Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990), http://library.clerk.house.gov/reference-files/PPL_101_336_AmericansWithDisabilities.pdf.; Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (1973), https://www.gpo.gov/fdsys/pkg/STATUTE-87/pdf/STATUTE-87-Pg355.pdf.

[24] 6 C.F.R. §§ 115.81 - 115.83 (2014).

[25] U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011, 257-81 (2016), https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf.

[26] *Id.* at 264.

[27] *Id* at 263.

continue with their treatments without interruption.[28] Detained immigrants are entitled to request an HIV test at any time.[29] Clearly, this is not happening.

The 2011 PBNDS also mandate that special consideration be given to people at risk of sexual assault, including individuals who have self-identified as members of the LGBTQ community.[30] With specific regard to transgender individuals, the 2011 PBNDS require that those individuals who were receiving hormone therapy when taken into ICE custody, maintain continued access to such therapy.[31] The guidelines further demand that detained transgender people have access to "mental health care, and other transgender-related health care and medication based on medical need."[32] Once again, this complaint and others demonstrate that DHS is failing to meet these standards and transgender people are experiencing immense suffering as a result.

The other two national ICE standards — the National Detention Standards (NDS), issued in 2000 and the 2008 PBNDS – while less comprehensive than the 2011 PBNDS, also provide guidelines to ensure the health and safety of detained immigrants. These guidelines include provisions that establish access to health services,[33] mental health screenings and treatment plans,[34] and suicide prevention protocols.[35] These standards also require detention facilities to provide medical treatment to PLWHIV.[36]

In addition to these generalized detention standards, ICE also issued a memorandum concerning the care of detained transgender immigrants in 2015. The memorandum sets forth guidance to ensure the safety of transgender immigrants in ICE's custody. More specifically, the memorandum includes contract modifications for facilities to ensure access to adequate healthcare, including access to hormone therapy. The memorandum also states that during initial processing or risk classification assessment of an

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[28] *Id.*
[29] *Id.* at 263.
[30] *Id.* at 135.
[31] *Id.* at 273.
[32] *Id.* at 274.
[33] U.S. Immigration and Customs Enforcement, Detention Operations Manual: Medical Care (2000), https://www.ice.gov/doclib/dro/detention-standards/pdf/medical.pdf.; U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards: Medical Care, 1 (2008), https://www.ice.gov/doclib/dro/detention-standards/pdf/medical_care.pdf.
[34] U.S. Immigration and Customs Enforcement, Detention Operations Manual: Medical Care, 3 (2000), https://www.ice.gov/doclib/dro/detention-standards/pdf/medical.pdf.; U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards: Medical Care, 13-14 (2008), https://www.ice.gov/doclib/dro/detention-standards/pdf/medical_care.pdf.
[35] U.S. Immigration and Customs Enforcement, Detention Operations Manual: Suicide Prevention and Intervention (2000), https://www.ice.gov/doclib/dro/detention-standards/pdf/suciprev.pdf.; U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards: Suicide Prevention and Intervention, 1-2 (2008), https://www.ice.gov/doclib/dro/detention-standards/pdf/suicide_prevention_and_intervention.pdf.
[36] U.S. Immigration and Customs Enforcement, Detention Operations Manual: Medical Care, 7 (2000), https://www.ice.gov/doclib/dro/detention-standards/pdf/medical.pdf.; U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards: Medical Care, 7-8 (2008), https://www.ice.gov/doclib/dro/detention-standards/pdf/medical_care.pdf.

individual, the detention facility staff should inquire about a person's gender identity[37] and make an individualized placement determination to ensure person's safety, including whether detention is warranted. Where feasible and appropriate, ICE should house transgender immigrants in facilities that are equipped to care for transgender people.[38] ICE also has a Directive on Gender Dysphoria and Transgender Detainees which applies to all IHSC personnel and requires an IHSC medical provider to complete a physical examination for transgender individuals within two business days of intake and that a behavioral health provider must also perform a mental health evaluation for transgender patients within the same timeframe.[39] Furthermore, IHSC "must initiate and/or continue hormone therapy for [gender dysphoria] detainees as clinically indicated and in accordance with the IHSC Clinical Guidelines for the Treatment of GD."

Similarly, CBP has a set of standards to provide for the health and safety of individuals in its custody. These standards require CBP officials to inspect detained people for "any signs of injury, illness, or physical or mental health concerns . . . ,"[40] and in cases of emergency, CBP officials must immediately call medical services.[41] The standards also note that individuals known to be on life-sustaining or life-saving medical treatment, LGBTQ people, and individuals with mental or physical disabilities may require additional care and oversight.[42] Additionally the standards require that during transportation of a detained person, CBP officials must be on alert for signs of medical symptoms, and provide or seek medical care in a timely manner.[43]

While the strength of protections accorded by different detention standards varies, even the weakest standards set minimum requirements for the health and safety of detained people. Unfortunately, however, as the experiences of LGBTQ, PLWHIV individuals detailed in this letter demonstrate, ICE and CBP routinely fail to comply with the most basic requirements.

DHS Cannot Safely House LGBTQ, PLWHIV Individuals and Must Fix the Broken Oversight System that Allows These Offenses to Continue with No Accountability

ICE and CBP blatantly disregard the health of LGBTQ, PLWHIV individuals and repeatedly fail to not only meet legally required standards of care but even their own detention standards. The countless reports of outright denial of medical treatment and the continuous maltreatment clearly demonstrate that DHS cannot house LGBTQ, PLWHIV individuals safely. Furthermore, there is no reason to keep LGBTQ, PLWHIV people in detention in the first place.

Further, DHS is failing to meet their responsibility of oversight. DHS's own reports demonstrate that contracted agencies who are responsible for investigations do not take their responsibilities seriously. What's more, even when medical neglect and mistreatment is substantiated, DHS rarely uses its authority

[37] U.S. Dep't. of Homeland Security, *Further Guidance Regarding the Care of Transgender Detainees*, 2 (June 19, 2015) https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf.
[38] *Id.*
[39] IHSC Directive: 03-25 effective March 15, 2017.
[40] U.S. Customs and Border Protection, *National Standards on Transport, Escort, Detention, and Search*, 14 (Oct. 2015), https://www.cbp.gov/sites/default/files/assets/documents/2017-Sep/CBP%20TEDS%20Policy%20Oct2015.pdf.
[41] *Id.* at 17.
[42] *Id.* at 19.
[43] *Id.* at 6.

to implement penalties and address the conditions that led to the harm in the first place. For example, in a report looking at 2018 and 2019 inspection reviews of ICE detention facilities, the OIG concluded that ICE's monitoring systems do not ensure adequate oversight or systematic improvements in detention conditions, with some deficiencies remaining unaddressed for years.[44] Further, the OIG found that ICE did not adequately hold detention facility contractors accountable for their lack of compliance with performance standards because they failed to use contracting tools to hold them accountable. [45]

With this in mind, we demand that:

- First and foremost, ICE release all LGBTQ, PLWHIV people that are currently detained on their own recognizance.
- ICE comply with the OIG's January 29, 2019, recommendation and use its contracting tools to hold accountable those detention facilities that fail to meet these standards for care by imposing financial penalties and cancelling contracts for facilities that consistently fail to meet the standards.
- The DHS OIG work with the CRCL to immediately conduct a systemic investigation into the provision of medical and mental health care to LGBTQ, PLWHIV individuals in ICE custody
- DHS must strengthen its oversight of facilities and improve its audits of facilities, ensure timely cooperation of components with OIG and CRCL investigations, increase its use of unannounced inspections, and improve grievance procedures and take meaningful measures to end retaliation against individuals in custody who exercise their right to file a grievance.
- DHS must ensure that all people in detention are aware of their legal rights through developing and disseminating information that details the medical care that they are entitled to.
- Ensure that people are not held in CBP longer than the minimal amount of time it takes for processing, no longer than 24 hours.
- Ensure that CBP provide all persons in custody with timely medical screenings by a licensed health professional and require an EMT or other certified health professional to be on-duty and available to give medical attention at all times in CBP processing and holding stations. Ensure that the health professionals are competent on transgender and HIV related health care.
- Create a thorough, independent, and regular investigation process and standards to ensure that CBP is meeting designated standards and to document incidents of neglect and abuse. Develop specific policies that detail penalties for CBP facilities with documented cases of abuse and medical neglect.

Conclusion

We were deeply saddened and angered to learn of the death of Johana Medina Leon, who died on June 1st, 2019 after spending seven weeks in ICE custody. Her death came almost a year to the day of the death of Roxsana Hernandez, another transgender woman who should not have been detained and who died while in ICE custody. Both of these women experienced medical neglect and the stories in this complaint demonstrate that, tragically, the circumstances around their deaths are not outliers but in fact the norm for the treatment of transgender, as well as lesbian, gay, bisexual, and people living with HIV in ICE and CBP custody. The well-documented mistreatment of LGBTQ, PLWHIV individuals demonstrates that ICE and CBP are unable to adequately care for LGBTQ, PLWHIV people, or really any individuals, in their care.

[44] Office of Inspector General (OIG), ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements, https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf

[45] OIG, ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards,
https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf

Despite the frequent and ongoing complaints made to DHS, poor oversight and lack of accountability allows these conditions to continue. Neither DHS nor the detention centers that the department is responsible for overseeing are above the law and should receive appropriate consequences for these egregious offenses.

If you have any questions about the above information, please contact Ash Stephens at Ash@transgenderlawcenter.org or Sharita Gruberg at sgruberg@americanprogress.org.

Sincerely,

Transgender Law Center
Black LGBT Migrant Project
Familia Trans Queer Liberation Movement
Al Otro Lado
Las Americas Immigrant Advocacy Center
Center for American Progress
Los Angeles LGBT Center
Freedom for Immigrants
Santa Fe Dreamers Project
Southern Poverty Law Center
Immigration Equality
Center for Victims of Torture
National Immigrant Justice Center
National Center for Transgender Equality

EXHIBIT 22

SANTA FE DREAMERS PROJECT

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Santa Fe, NM 87504
Tel: (505) 490-2789
Fax: (505) 672-7912
allegra@santadredreamersproject.org
www.santafedreamersproject.org

April 17, 2020

To Whom-May-Concern:

We are writing this letter in support and anticipation of all transgender identified individuals being released from detention as soon as possible. The Santa Fe Dreamers Project is a non profit legal services organization that provides free legal representation and advocacy to detained transgender individuals nationwide. We also support transgender individuals when they leave detention to help ensure a smooth transition into life in the US and that individuals are supported and informed to proceed with their legal cases. We have helped resettle transgender individuals from detention to 11 different states and 20 major us cities. We have also been a part of assisting with several large scale release events in New Mexico, Washington, Colorado, and Texas. If transgender individuals are released from detention as a result of this litigation, we will ensure that all of their humantariant needs are met including but not limiting food, shelter, transportation, clothing and medical care.

We understand that there may be a concern that releasing several dozen transgender individuals at the same time could be chaotic, but because of our extensive history supporting transgender people after being released from detention, we know that that the plan we have in place will be successful. In fact, this week, 8 of our clients were released from detention with almost no prior notice from the government However, because we have experience organizing for releases, we activated and managed the situation capably. We worked closely with legal services groups and humanitarian and LGBTQ support groups in Denver. We quickly raised money to purchase a block of hotel rooms for two weeks to facilitate quarantine before proceeding with their individual release plans.

The nature of our work in each detention center requires relationships with on the ground legal, humanitarian, and LGBTQ support groups at every site. Additionally, we work closely with major national partners who work in transgender rights and the liberation of immigrants from detention. Some of these partners include: RAICES, Casa de Paz, Trans Queer Pueblo, Florence Project, RMAIN, ISLA, Transgender Law Center, Freedom for Immigrants, National Immigrant Justice Center, TransLatina Coalition, Familia, Gender Justice LA, VisibiliT, LA LGBTQ Center, Black LGBTQIA Migrant Project, Queer Detainee Empowerment Project, Transcend

SANTA FE DREAMERS PROJECT

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Arizona, Diversidad Sin Fronteras, Washington Immigrant Solidarity Network, and Entre Hermanos. Our partners in these local and nationwide coalitions, are ready and excited to swiftly organize for local releases. We are in an even more advantageous position because the Transgender Law Center has already secured nearly 100 thousand dollars to support the costs of hotel rooms and food throughout quarantine.

We are organized and funded. We recognize that a massive release could be considered challenging but we are prepared for this possibility. The energy, the cost, and the work it will take to coordinate housing and care for these individuals is easily worth securing their safety from the abject danger of detention during a deadly pandemic.

Please do not hesitate to contact me with concerns.

Sincerely,

Allegra Love
Executive Director, Santa Fe Dreamers Project

EXHIBIT 23

Wellspring
Philanthropic Fund

10 Times Square, Suite 1600
New York, NY 10018-6023
T (212) 609-2622
F (212) 609-2633
www.wpfund.org

April 16, 2020

To Whom It May Concern:

I am the General Counsel of Wellspring Philanthropic Fund. Our foundation is prepared to provide Transgender Law Center a grant of twenty-five thousand dollars ($25,000) if transgender people are released from immigration detention as a result of its litigation. This grant may only be used to cover the humanitarian needs of transgender people released from detention, including but not limited to: housing, clothing, food, medical care and transportation. If you have any questions about this grant, please contact me. My information is below. Thank you.

Sincerely,

DocuSigned by:
Jennifer Reynoso
CD51FCE1AE0149E...

Jennifer Reynoso
General Counsel
Wellspring Philanthropic Fund
jreynoso@wpfund.org

EXHIBIT 24

April 15, 2020

To Whom It May Concern:

My name is Francisco Buchting and I am the Vice President of Grants, Programs and Communications of Horizons Foundation. Horizons Foundation is a community foundation that has made millions of dollars in grants since 1980.

Our foundation is prepared to provide Transgender Law Center a grant of $15,000 dollars if transgender people are released from immigration detention as a result of this litigation. This grant can only be used to cover the humanitarian needs of transgender people released from detention including but not limited to: housing, clothing, food, medical care and transportation. If you have any questions about this grant, please contact me. My information is below. Thank you for your time.

Sincerely,

Francisco O. Buchting, Ph.D.
Vice President of Grants, Programs, and Communications

Horizons Foundation
Email: fbuchting@horizonsfoundation.org
Phone: (415) 398-2333 x116
Fax: (415) 398-4733

550 Montgomery Street, Suite 700
San Francisco, CA 94111
www.horizonsfoundation.org

EXHIBIT 25

Kolibri Foundation

To Whom It May Concern:

Our foundation is prepared to provide Transgender Law Center a grant of $15,000 if transgender people are released from immigration detention as a result of this litigation. This grant can only be used to cover the humanitarian needs of transgender people released from detention including but not limited to: housing, clothing, food, medical care and transportation. If you have any questions about this grant, please contact me. My information is below. Thank you for your time.

Sincerely,

Eileen Farbman
President
Kolibri Foundation
Eileen.farbman@gmail.com
(914) 260-0931

EXHIBIT 26

RADICAL IMAGINATION FAMILY FOUNDATION

APRIL 14, 2020

Transgender Law Center
PO Box 70976
Oakland, CA 94612

Dear Kris Hayashi,

I am pleased to inform you that the Board of the Radical Imagination Family Foundation (RIFF) is prepared to provide a grant of $40,000 to the Transgender Law Center to support the provision of humanitarian aid for transgender people pending their release from immigration detention as a result of litigation. This grant is restricted to cover humanitarian needs including but not limited to: housing, clothing, food, medical care and transportation. Please feel free to reach out if you have any questions.

Sincerely,

Luke Newton
Program Director

PO Box 961510
Boston, MA 02196

CERTIFICATE OF SERVICE

I, Matthew E. Kelley, hereby certify that a copy of the attached Motion for Temporary Restraining Order and Request for Emergency Hearing, supporting documents and proposed Orders, and the Complaint and supporting documents, were sent via courier on April 23, 2020 to:

Daniel Van Horn
Chief, Civil Division
U.S. Attorney's Office
501 Third Street, NW, Third Floor
Washington, DC 20530

Copies of the above-referenced documents in this case were sent via Federal Express on April 23, 2020 to:

Chad Wolf
Acting Secretary of the U.S. Department of Homeland Security
Office of the General Counsel
U.S. Department of Homeland Security
Washington, D.C. 20528

William Barr
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.,
Washington, D.C. 20520-0001

By: */s/ Matthew E. Kelley*
Matthew E. Kelley (Bar No. 1018026)