

8/15/2019

Dear Member of Congress,

We, the undersigned organizations, write to express our strong support for the Dignity for Detained Immigrants Act (H.R. 2415/ S. 1243). As lesbian, gay, bisexual, transgender, queer (LGBTQ) and allied organizations, we recognize the severe danger detention poses to LGBTQ immigrants and the imperative need for increased oversight of detention facilities and the rights of asylum seekers. The Act would protect LGBTQ people from arbitrary detention and violence within facilities and ensure their right to seek protection within the United States. We urge you to protect these basic rights and co-sponsor this critical bill.

Current Danger for LGBTQ Immigrants

In 2018, Roxsana Hernandez fled to the U.S. from Honduras. As a transgender woman with HIV, Roxsana faced severe threats of violence and persecution in her home country. However, Roxsana did not escape such abuse upon arriving to the U.S. While detained at the border, Roxsana suffered abuse and mistreatment and died from dehydration and complications related to HIV only weeks after arriving.¹ Roxsana is not alone. Johana Medina Leon, a 25-year-old trans woman from El Salvador entered US custody on April 1. Despite seeking safety, she was denied medical care and died seven weeks after being detained.²

LGBTQ people are more likely to be and remain detained, regardless of their flight risk or public safety risk. A 2016 Freedom of Information Act request from the Center for American Progress found that DHS detained 88 percent of LGBTQ immigrants who were eligible for release and not subject to mandatory detention, despite expressing fear of being targeted by other detainees and staff members because of their sexual orientation or gender identity.³ This fear is well-founded. LGBTQ people in detention are 97 times more likely to report being sexually victimized than non-LGBTQ people.⁴ Also, despite rules to the contrary, ICE routinely places transgender women with men or in solitary confinement. In

¹ Nicole Chavez, "Transgender Woman in Migrant Caravan Dies in ICE Custody," CNN May 31 2018, available at <https://www.cnn.com/2018/05/31/health/transgender-migrant-dies-ice-custody/index.html>

² Tina Vasquez, "The Details of Johana Medina Leon's Detainment and Death Matter," Rewire News June 6, 2019, available at <https://rewire.news/article/2019/06/06/the-details-of-johana-medinas-detainment-and-death-matter/>

³ Sharita Gruberg, "ICE Officers Overwhelmingly Use Their Discretion to Detain LGBT Immigrants," Center for American Progress 2016, available at <https://www.americanprogress.org/issues/lgbt/reports/2016/10/26/291115/ice-officers-overwhelmingly-use-their-discretion-to-detain-lgbt-immigrants/>.

⁴ Sharita Gruberg, "ICE's Rejection of Its Own Rules Is Placing LGBT Immigrants at Severe Risk of Sexual Abuse," Center for American Progress 2018, available at <https://www.americanprogress.org/issues/lgbt/news/2018/05/30/451294/ices-rejection-rules-placing-lgbt-immigrants-severe-risk-sexual-abuse/>. Letter from Rep. Kathleen Rice to 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.

2017, 1 in 8 transgender women detained by ICE was placed in solitary confinement.⁵ Solitary confinement often leads mental and emotional distress, with side effects including hallucinations, panic attacks, and suicidal impulses.⁶ Numerous studies have also found that LGBTQ immigrants in detention are subjected to verbal and physical abuse as well as withholding of critical medication such as HIV medication and hormone therapy.⁷ And because of the current bond system, many LGBTQ individuals are held in these unsafe conditions merely because they do not have the ability to pay their way out. Cesar Matias, a gay Honduran seeking protection in the US, was held for 4 years because he was unable to make bail.⁸

Act Summary

The Act would address these abuses. The Act would require DHS to obtain a warrant from an immigration judge to arrest individuals; in the case of warrantless arrests, detained people would have to be provided with a probable cause hearing within 48 hours. The Act would also put an end to mandatory detention, ensuring that only those who are a threat to the community are detained and creating a presumption of release. The Act also establishes a presumption that vulnerable individuals, including LGBTQ individuals, young people, and victims of crimes, should be placed in community-based supervision programs rather than detention facilities. The Act also removes the minimum bond amount of \$1,500 for release and requires immigration judges to consider an individual's ability to pay when setting bond.

How the Act Helps LGBTQ Immigrants

This Act would protect LGBTQ people from the abuses they face in detention and detention proceedings in four ways. First, the Act frames detention as a last resort and imposes a higher burden of proof for the detention of vulnerable people like LGBTQ individuals. Second, the Act requires DHS to establish detention standards which meet or exceed the ABA Civil Immigration Detention Standards, including providing proper training for staff. The Act subjects non-compliant DHS/ICE facilities to penalties, ending the impunity of private prisons that profit from the detention of immigrants with no accountability or meaningful oversight.⁹ Third, the Act requires data collection and reporting on the conditions of vulnerable detained populations, including LGBTQ people. Finally, by eliminating the minimum bail requirement and requiring immigration judges to consider the immigrant's ability to pay when setting the bond, the Act ensures that LGBTQ

⁵ *Id.*

⁶ Stuart Grassian, "Psychiatric Effects of Solitary Confinement," Wash. U. J. L. & Pol'y 325 (2006), available at https://openscholarship.wustl.edu/law_journal_law_policy/vol22/iss1/24

⁷ Human Rights Watch, "Do You See How Much I'm Suffering Here? Abuse against Transgender Women in US Immigration Detention," available at <https://www.hrw.org/report/2016/03/23/do-you-see-how-much-im-suffering-here/abuse-against-transgender-women-us>

⁸ Sharita Gruberg, "What Happens When Asylum Seekers Are Too Poor to Make Bail," April 22, 2016, available at: <https://talkpoverty.org/2016/04/22/asylum-seekers-too-poor-to-make-bail/>

⁹ Department of Homeland Security, "ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systematic Improvements," June 26 2018, available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>

immigrants do not remain in unsafe detention conditions merely because they cannot afford to pay.

By keeping more LGBTQ asylum seekers out of detention, the Act would eliminate an arbitrary and unfair barrier to obtaining asylum for the many LGBTQ immigrants who are fleeing life-threatening persecution and violence. Around the world, LGBTQ people experience high levels of persecution and nearly 80 countries categorically criminalize same-sex relationships.¹⁰ The Act supports LGBTQ asylum seekers by significantly reducing the likelihood of them being detained, which has a positive effect on asylum case outcomes. A study found that non-detained immigrants with legal representation had successful case outcomes 74 percent of the time, compared to detained immigrants with legal representation with only an 18 percent success rate.¹¹ By removing the barrier of detention, this Act will help to ensure that the success of an LGBTQ asylum-seeker's claim is based on its merits rather than on arbitrary factors. For many LGBTQ asylum seekers this could mean the difference between life and death.

For all of these reasons, we hope that you will support this important legislation.

For any questions, please contact Tyrone Hanley at THanley@nclrights.org or Sharita Gruberg at SGruberg@americanprogress.org.

Sincerely,

Advocates for Youth

African American Ministers In Action

AIDS Action Baltimore

AIDS Alabama

AIDS Alabama South

AIDS Foundation of Chicago

AIDS Project Rhode Island

AIDS United

American Academy for HIV Medicine

American Civil Liberties Union

¹⁰ Angus Carroll, "State Sponsored Homophobia 2016: A world survey of sexual orientation laws: criminalization, protection and recognition," (Geneva: ILGA, May 2016), available at http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf.

¹¹ Steering Committee of the New York Immigrant Representation Study Report, "Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings," *Cardozo Law Review* 33(2)(2011) available at http://www.cardozolawreview.com/content/denovo/NYIRS_Report.pdf.

American Sexual Health Association
API Equality-LA
APLA Health
Athlete Ally
Bienestar Human Services
BiNet USA
California LGBTQ Health and Human Services Network
Campaign for Youth Justice
Cascade AIDS Project
Center for American Progress
Center for Constitutional Rights
CenterLink: The Community of LGBT Centers
Council for Global Equality
Equality California
Equality Federation
Equality North Carolina
EqualityMaine
Equitas Health
Familia: Trans Queer Liberation Movement
Fenway Health
Forward Together
Gay Men's Health Crisis (GMHC)
Generation Progress
Global Justice Institute
Hispanic Health Network
Howard Brown Health
Immigration Equality Action Fund
Just Detention International
Justice Strategies

Lambda Legal
Latino Commission on AIDS
Latino Equality Alliance
Latinos Salud
Los Angeles LGBT Center
Mazzoni Center
Modern Military Association of America
Movement Advancement Project
National Black Gay Men's Advocacy Coalition
National Center for Lesbian Rights
National Center for Transgender Equality
National Council on Independent Living (NCIL)
National Equality Action Team (NEAT)
National Immigrant Justice Center
National LGBTQ Task Force Action Fund
National Working Positive Coalition
New York City Anti-Violence Project (AVP)
People For the American Way
PFLAG National
Positive Women's Network USA
Prevention Access Campaign
Pride Action Tank
Pride at Work
San Francisco AIDS Foundation
Sexuality Information and Education Council of the United States (SIECUS)
Silver State Equality
ST. JAMES INFIRMARY
The Global Justice Institute
The LGBT Center OC

The NYC Lesbian, Gay, Bisexual & Transgender Community Center

The Taifa Group

The Wall Las Memorias

TRANScending Barriers Atlanta

Transgender Law Center

Treatment Action Group (TAG)

Triangle Community Center

United We Dream

URGE: Unite for Reproductive & Gender Equity

Virginia Organizing

Whitman-Walker Health