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Shoba Sivaprasad Wadhia, Officer for CRCL  
Office for Civil Rights and Civil Liberties  
Department of Homeland Security  
Shoba.SivaprasadWadhia@hq.dhs.gov  
CRCLCompliance@hq.dhs.gov

Jennifer M. Fenton, Associate Director  
Office of Professional Responsibility  
U.S. Immigration and Customs Enforcement  
Department of Homeland Security  
ICEOPRIntake@ice.dhs.gov

Daniel Gersten, Acting Ombudsman  
Office of the Immigration Detention Omb.  
Department of Homeland Security  
Daniel.gersten@hq.dhs.gov  
OIDO\_Outreach@hq.dhs.gov

Joseph V. Cuffari, Inspector General  
Office of the Inspector General  
Department of Homeland Security  
DHS-OIG.OfficePublicAffairs@oig.dhs.gov

**COMPLAINT UNDERSCORING WHY PEOPLE WHO ARE TRANSGENDER AND NONBINARY SHOULD NOT BE DETAINED IN CIVIL IMMIGRATION DETENTION**

\*This complaint includes violations of the Rehabilitation Act of 1973. Please submit to the Section 504 division pursuant to 6 C.F.R. § 15.70.\*

Dear Ms. Sivaprasad Wadhia, Ms. Fenton, Mr. Gersten, and Mr. Cuffari,

American Immigration Council (“AIC”), National Immigration Project (“NIPNLG”), and Rocky Mountain Immigrant Advocacy Network (“RMIAN”) file this complaint on behalf of a group of five individuals<sup>1</sup> who are currently detained at the Aurora Contract Detention Facility<sup>2</sup> (“Aurora facility”), a prison privately owned and operated by The GEO Group, Inc. (“GEO”) where Immigration & Customs Enforcement (“ICE”) incarcerates people who have pending or recently concluded immigration legal matters.

Our clients and medical experts reveal that ICE cannot safely and humanely incarcerate people who are transgender and nonbinary (“TNB”). Immigration detention negatively impacts their mental health, impedes timely access to gender affirming care, and triggers prior trauma. Discrimination and mistreatment within ICE custody exacerbates the harm people who are TNB face. ICE detention fundamentally disrupts access to justice because people are ping-ponged from different jurisdictions, facilities, and hospitals, which results in delays in judicial proceedings. As a result, we call for an end to the practice of detaining people who are TNB in civil immigration detention. At a minimum, ICE must both implement new policies that provide more robust safeguards to TNB people in the agency’s custody as well as exert regular oversight to ensure that protective policies are followed in practice.

<sup>1</sup> Pseudonyms have been used to protect the identities of the complainants.

<sup>2</sup> The Aurora facility is also referred to as the Denver Contract Detention Facility. These names are used interchangeably by DHS, and both refer to the facility located at 3130 N. Oakland Street, Aurora, Colorado, 80010. This is the current address for each participant in this complaint.

This complaint raises violations of: (1) ICE Enforcement and Removal Operations' Performance-Based National Detention Standards 2011 ("PBNDS 2011")<sup>3</sup>; (2) ICE Policy Memorandum, "Further Guidance Regarding the Care of Transgender [People in Detention]," (Jun. 19, 2015)<sup>4</sup>; and (3) Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794 and its implementing regulations that are binding on the Department of Homeland Security ("DHS"), found at 6 C.F.R. § 15.30 *et seq.*

## **Transgender and Nonbinary People Experience High Rates of Trauma and Psychiatric Disabilities Resulting from Discrimination, Persecution, and Torture**

People who have a gender identity that does not match their sex assigned at birth often face stigma and mistreatment resulting from societal norms related to gender expression. The harms people face may include verbal, physical, and sexual abuse as well as violence, death threats, and attempted murders.<sup>5</sup> These cumulative traumatic experiences often lead to diagnoses of depression, post-traumatic stress disorder ("PTSD"), and suicidality.<sup>6</sup> Nearly 90 percent of people from Central America who are TNB report experiencing sexual and gender-motivated violence.<sup>7</sup> Past harm and systemic barriers to state-protection are the primary factors causing TNB people to flee and seek refuge in the United States.<sup>8</sup>

Incarceration can exacerbate depression, anxiety, trauma, and severe and persistent mental illness symptoms; increase the tendency for suicidal ideation or self-harm; and result in loss of hope and perspective, leading people to contemplate self-deportation.<sup>9</sup> Research shows that lengthy detention is associated with increased adverse mental health symptoms.<sup>10</sup> Extended periods of

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<sup>3</sup> U.S. Immig. & Customs Enf't, 2011 ICE Performance-Based National Detention Standards, revised 2016, <https://www.ice.gov/detain/detention-management/2011> [hereinafter "2011 ICE PBNDS"]; *see* U.S. Dep't of Homeland Sec., Immigration & Customs Enf't, Office of Detention Oversight Compliance Inspection, Compliance Inspection 2023-004-068, Denver Contract Detention Facility 12 (Mar. 2023), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/denverCDF\\_DenverCO\\_Mar14-16\\_2023.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/denverCDF_DenverCO_Mar14-16_2023.pdf) (detailing that the 2011 ICE PBNDS is binding on the Aurora facility).

<sup>4</sup> ICE Transgender Care Memorandum, (Jun. 19, 2015), <https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf>.

<sup>5</sup> Edward J. Alessi, Sarilee Kahn, Rebecca Van Der Horn, *A qualitative exploration of the premigration victimization experiences of sexual and gender minority refugees and asylees in the United States and Canada*, 54(7):936-48 *J. of Sex Res.* (2017); Rebecca A. Hopkinson et al., *Persecution experiences and mental health of LGBT asylum seekers*, 64(12):1650-66 *J. of Homosexuality* (2017).

<sup>6</sup> Edward J. Alessi, Sarilee Kahn, Sangeeta Chatterji, *'The darkest times of my life': Recollections of child abuse among forced migrants persecuted because of their sexual orientation and gender identity*, 1;51:93-105 *Child Abuse & Neg.* (2016); Marshall K. Cheney et al., *Living outside the gender box in Mexico: testimony of transgender Mexican asylum seekers*, 107(10):1646-52 *Am. J. of Pub. Health* (2017).

<sup>7</sup> Monica Malta et al., *Sexual and gender minorities rights in Latin America and the Caribbean: a multi-country evaluation*, 19 *BMC Int. Health & Hum. Rights* 31 (2019).

<sup>8</sup> Laura P. Minero et al., *Latinx trans immigrants' survival of torture in U.S. detention: A qualitative investigation of the psychological impact of abuse and mistreatment*, 22 (1-2):36-59 *Int. J. Transgend Health* (2021).

<sup>9</sup> *Id.*

<sup>10</sup> Janette P. Green & Kathy Eagar, *The Health of People in Australian Immigration Detention Centres*, 192 *MED. J. OF AUSTR.* 65-70 (2010), <https://doi.org/10.5694/j.1326-5377.2010.tb03419.x>; Allen S.

untreated psychotic symptoms are linked to increased risk for treatment-resistant symptoms, more frequent and longer subsequent psychotic episodes, and poorer long-term functional outcomes.<sup>11</sup>

Although detention weighs heavily on anyone whose liberty is stripped, it has a disproportionately negative impact on people who are TNB. This is because, as mentioned above, many TNB people flee abusive experiences and enter detention with layers of past trauma.<sup>12</sup> Time spent in ICE custody often triggers prior trauma, which is further compounded when people are placed in living arrangements with inappropriate gender assignments; are misgendered and deadnamed; and face transphobic threats and harassment within their confined setting, including from staff members charged with ensuring their safety and wellbeing.<sup>13</sup>

### **History of ICE Detaining and Abusing Transgender and Nonbinary People**

TNB persons often flee persecution in their home countries only to be detained by ICE and subjected to abuse, neglect, and mistreatment. While DHS statistics on the detention of TNB-identifying individuals began only in 2015,<sup>14</sup> TNB persons have shared their experiences of abuse in ICE detention for decades.<sup>15</sup> Under the Obama administration, DHS implemented a series of policies to attempt to mitigate some of the worst outcomes faced by transgender persons in ICE custody. But the policies clearly failed to improve conditions of confinement for TNB persons.

In 2015, ICE released a policy memorandum providing guidance to agency personnel regarding the provision of care for transgender people in its custody to supplement existing ICE detention

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Keller et al., *Mental Health of Detained Asylum Seekers*, 362 THE LANCET 1721–1723 (2003), [https://doi.org/10.1016/s0140-6736\(03\)14846-5](https://doi.org/10.1016/s0140-6736(03)14846-5).

<sup>11</sup> Robin Emsley, Bonginkosi Chiliza & Laila Asmal, *The Evidence for Illness Progression after Relapse in Schizophrenia*, 148 Schizophrenia Res. 117–121 (2013), <https://doi.org/10.1016/j.schres.2013.05.016>.

<sup>12</sup> Laura P. Minero, Sergio Domínguez Jr., Stephanie L. Budge, Bamby Salcedo, *Latinx trans immigrants' survival of torture in U.S. detention: A qualitative investigation of the psychological impact of abuse and mistreatment*, 22 (1-2):36-59 Int. J. Transgend Health (2021).

<sup>13</sup> *Id.*; Policy Brief, Elizabeth Kvach et al., “The Disproportionate Harm of Immigration Detention for Transgender and Nonbinary People Requires an End to the Use of Confinement,” <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Harm-of-Immigration-Detention-on-Transgender-People.pdf>.

<sup>14</sup> In the first six months of fiscal year 2024, ICE has detained at least 111 transgender-identifying persons. The rate at which ICE is detaining transgender persons this fiscal year far exceeds the detention rates for fiscal year 2023, when 166 transgender-identifying persons were held in ICE custody over the course of a year.

<sup>15</sup> See, e.g., Crosby Burns, Ann Garcia & Philip E. Wolgin, Ctr. for Am. Prog., *Living in Dual Shadows: LGBT Undocumented Immigrants* 20 (Mar. 8, 2013), <https://www.americanprogress.org/wp-content/uploads/sites/2/2013/04/LGBTUndocumentedReport-6.pdf>; Cristina Costantini, *Why Did the U.S. Lock Up These Women with Men?*, Fusion (Nov. 17, 2014), <https://web.archive.org/web/20220105213513/http://interactive.fusion.net/trans/>; Ben Ehrenreich, *Death on Terminal Island*, L.A Magazine (Sept. 1, 2008), <https://lamag.com/news/death-on-terminal-island>.

standards.<sup>16</sup> The memorandum promises that “ICE ERO will provide a respectful, safe, and secure environment for all [people it detains], including those individuals who [are] transgender.”<sup>17</sup> It prohibits “[d]iscrimination or harassment of any kind based on a [person’s] actual or perceived sexual orientation or gender identity”<sup>18</sup> but does not provide any redress when such rights are violated. The memorandum calls for the consideration of placement of people in “Protective Custody Unit[s],” which in effect subjects people to extended periods of solitary confinement, as a last resort.<sup>19</sup>

In addition to failing to meet its underlying goal of ensuring people in ICE custody are safe, secure, and respected, ICE’s 2015 guidance has some significant flaws. It fails to provide meaningful remedies for policy violations. It does not acknowledge the challenges that nonbinary people face when imprisoned by ICE, and the lack of such guidance explains why the needs of nonbinary people are largely misunderstood and unmet. Further, the language used to describe people who are TNB is not inclusive and does not reflect terminology adopted by the community it is meant to describe. Although this list is not exhaustive, it addresses some of the primary concerns voiced by the complainants.

ICE’s own data demonstrates the disproportionately harmful impact of solitary confinement on people with vulnerabilities, particularly transgender people and those with mental health and medical conditions.<sup>20</sup> ICE’s records reveal that “immigration detention facilities appear to have deliberately discriminated against immigrants identifying as transgender.”<sup>21</sup> And despite the 2015 policy memorandum, ICE quarterly statistics on solitary confinement “reveal[ed] that the number of transgender immigrants in solitary confinement more than doubled in the third quarter of 2023, the most recent quarter of available data shared by ICE.”<sup>22</sup>

As recently as 2019, a transgender woman detained by ICE was held in the men’s dorm at the Aurora facility.<sup>23</sup> She was “denied critical medical attention” and “suffered repeated verbal and sexual harassment.”<sup>24</sup> She was deprived of gender affirming care for months and ignored when she requested medical care. As a result, she experienced “changes in her mood, appetite, and

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<sup>16</sup> ICE Transgender Care Memorandum (Jun. 19, 2015), <https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf>.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 7.

<sup>20</sup> Physicians for Human Rights, “*Endless Nightmare*”: *Torture and Inhuman Treatment in Solitary Confinement in U.S. Immigration Detention* (Feb. 6, 2024), <https://phr.org/our-work/resources/endless-nightmare-solitary-confinement-in-us-immigration-detention/>.

<sup>21</sup> *Id.* citing HLS FOIA: Evaluations Conducted by the Department of Homeland Security’s Office for Civil Rights and Civil Liberties on ICE Detention Facilities Between 2012 and 2014, released on October 25, 2023.

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

<sup>23</sup> Am. Imm. Council, Am. Imm. Lawyers Assoc., Supplement—Failure to Provide Adequate Medical and Mental Health Care to Individuals Detained in the Denver Contract Detention Facility,” (Jun. 11, 2019), [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/complaint\\_supplement\\_failure\\_to\\_provide\\_adequate\\_medical\\_and\\_mental\\_health\\_care.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_supplement_failure_to_provide_adequate_medical_and_mental_health_care.pdf).

<sup>24</sup> *Id.*

sleep in addition to physiological changes such as hair regrowth” that led to “feelings of depression and hopelessness.”<sup>25</sup>

In 2020, a group of people detained in the Aurora facility who feared severe harm or death in light of the COVID-19 pandemic filed a joint habeas corpus petition. In it, petitioners who were transgender described experiencing depression while detained, yet “not receiving therapy or treatment” and significant delays in receiving antiretroviral medication to control the symptoms resulting from an HIV-positive diagnosis, and when medication became accessible, receiving it at inconsistent times.<sup>26</sup>

This complaint builds upon the prior record of abuse, discrimination, and neglect that TNB people have reported for years while detained at the Aurora facility. The descriptions of harm contained in this complaint are also set against the broader backdrop of more than a decade’s worth of detailed complaints filed by TNB persons with DHS oversight bodies and investigated by the Office for Civil Rights and Civil Liberties (“CRCL”).<sup>27</sup> These complaints, citing all manner of abuse ranging from assault by guards, to rampant sexual violence, rape, discrimination, medical abuse and neglect, misgendering, and misuse of solitary confinement, and the resulting investigations have occurred in both facilities designated by ICE as having a dedicated housing unit for transgender individuals, including the Cibola County Correctional Center and the Aurora facility, as well as those without designated units. What emerges with clarity from this and past complaints is that TNB persons cannot find safety and well-being within ICE custody and no policy can offer them adequate protection. An end to the incarceration of TNB persons is the sole solution.

### **Inadequate and Dangerous Provision of Healthcare**

Current policy and legal protections people who are TNB are afforded fail to protect them from experiencing harms related to inadequate access to necessary care. Our clients often describe needless delays in access to care, lack of communication regarding diagnoses and appropriate treatment options, and gaslighting from medical staff within the facility to fail to take their complaints seriously.

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<sup>25</sup> *Id.*

<sup>26</sup> *Codner v. Choate*, No. 20-CV-01050-PAB, 2020 WL 2769938, Docket No. 1 at 10 (D. Colo. Apr. 14, 2020).

<sup>27</sup> *See e.g.*, Memorandum from Enrique M. Lucero, Exec. Assoc. Dir., Enf. and Removal Ops., U.S. Immigr. & Customs Enf’t on Cibola County Correctional Center Complaints (Mar. 5, 2020), <https://www.dhs.gov/sites/default/files/2021-12/cibola-county-correctional-center-03-05-20.pdf>; Memorandum from Corey A. Price, Exec. Assoc. Dir., Enf. and Removal Ops., U.S. Immigr. & Customs Enf’t on Moshannon Valley Processing Center Complaint (Nov. 8, 2022), [https://www.dhs.gov/sites/default/files/2024-03/22\\_1108\\_crcl-rec-memo-to-ice-moshannon-valley-processing-center-redacted-foia-508.pdf](https://www.dhs.gov/sites/default/files/2024-03/22_1108_crcl-rec-memo-to-ice-moshannon-valley-processing-center-redacted-foia-508.pdf); Memorandum from Enrique M. Lucero, Exec. Assoc. Dir., Enf. and Removal Ops., U.S. Immigr. & Customs Enf’t on Otero County Processing Center Complaint (July 30, 2020), <https://www.dhs.gov/sites/default/files/2021-12/otero-county-processing-center-07-30-20.pdf>; Memorandum from Gary Mead, Exec. Assoc. Dir., Enf. and Removal Ops., U.S. Immigr. & Customs Enf’t on complaints from various detention facilities (Dec. 9, 2011), <https://www.dhs.gov/sites/default/files/publications/ice-detainees-segregation-and-medical-referrals.pdf>.

## ICE Detention Standards

The 2011 ICE PBNDS states that “[individuals in detention] shall have access to a continuum of health care services, including screening, prevention, health education, diagnosis and treatment” and “shall be able to request health services on a daily basis and shall receive timely follow up.”<sup>28</sup> The standards require that medical personnel be “appropriately trained and qualified” and that medical services be provided by a “sufficient number” of staff members.<sup>29</sup> A person held in detention “who is determined to require health care beyond facility resources shall be transferred in a timely manner to an appropriate facility.”<sup>30</sup>

## ICE Guidance on Care of People Who are Transgender

The guidance regarding the care of transgender individuals adopted in 2015 requires that all transgender persons be given access to “continued mental health care and other transgender-related health care based on medical need.”<sup>31</sup> Initial medical screenings must include inquiry into the person’s gender self-identification and history of transition-related care.<sup>32</sup> Transgender persons who were already receiving hormone therapy before being taken into ICE custody must be provided continuation of care, and all transgender persons (regardless of whether they previously received hormone therapy) must have access to “mental health care and other transgender-related health care and medication . . . based on medical need.”<sup>33</sup>

## Section 504 of the Rehabilitation Act of 1973

Section 504 supplements what is required by ICE policy and prohibits discrimination on the basis of disability in programs, services, or activities conducted by U.S. federal agencies, including DHS.<sup>34</sup> Under Section 504, “[n]o qualified individual with a disability in the United States, shall, by reason of [their] disability, be excluded from the participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Department.”<sup>35</sup> Section 504 forbids not only facial discrimination against individuals with disabilities, but also requires that executive agencies and departments, such as DHS, alter policies and practices to prevent discrimination on the basis of disability. Covered entities have an affirmative obligation under Section 504 to ensure that their benefits, programs, and services are accessible to persons with disabilities.<sup>36</sup> Reasonable accommodations necessary to prevent

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<sup>28</sup> 2011 ICE PBNDS, *supra* note 3 at 257.

<sup>29</sup> *Id.* at 259.

<sup>30</sup> *Id.* at 258.

<sup>31</sup> ICE Transgender Care Memorandum 10 (Jun. 19, 2015),

<https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf>.

<sup>32</sup> *Id.* at 16.

<sup>33</sup> *Id.*

<sup>34</sup> Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 794 *et seq.*; 6 C.F.R. § 15.30(b)(1)(i).

<sup>35</sup> 29 U.S.C. § 794(a); 6 C.F.R. § 15.30(a).

<sup>36</sup> U.S. Dep’t of Homeland Sec., Office for Civil Rights & Civil Liberties, Component Self-Evaluation and Planning Reference Guide 17–18 (Jun. 6, 2016), <https://www.dhs.gov/sites/default/files/publications/disability-guide-component-self-Emilialuation.pdf>; *see also* *Vinson v. Thomas*, 288 F.3d 1145, 1154 (9th Cir. 2002) (holding that once a government agency is alerted to the need for a reasonable accommodation, there is “a mandatory obligation to engage in an informal process ‘to clarify what the individual needs

disability discrimination are required unless modifications would create a “fundamental alteration” of the relevant program, service, activity, or would impose an undue hardship.<sup>37</sup> ICE adopted binding regulations to ensure that Section 504 is implemented within the agency.<sup>38</sup>

Section 504 and the Americans with Disabilities Act define disability as an “impairment that substantially limits one or more of the major life activities.”<sup>39</sup> This definition includes chronic illness, as well as physical, intellectual, developmental, psychiatric, visual, and auditory disabilities.<sup>40</sup> Evidence of a medical diagnosis is not required and proof from an individual’s personal experience demonstrating that the impairment is substantial is sufficient to qualify for Section 504 protections.<sup>41</sup> Once an entity is on notice of a person’s disability, it must affirmatively engage in an inquiry as to whether a reasonable accommodation is required to ensure the individual has equal access as persons without a disability to agency programs, services, and activities.<sup>42</sup> Failure to do so amounts to disability discrimination.<sup>43</sup>

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and identify the appropriate accommodation”) (quoting *Barnett v. U.S. Air, Inc.*, 228 F.3d 1105, 1112 (9th Cir. 2000)); *Pierce v. DC*, 128 F. Supp. 3d 250, 272 (D.D.C. 2015) (holding that “prison officials have an affirmative duty to assess the potential accommodation needs of inmates with known disabilities...and to provide the accommodations that are necessary...without regard to whether or not the disabled individual has made a specific request for accommodation).

<sup>37</sup> 28 C.F.R. § 35.150(a)(3).

<sup>38</sup> The Secretary of Homeland Security, through DHS Delegation Number 19003, delegated responsibility for coordinating the enforcement of the Department’s regulations issued pursuant to the requirements of Section 504 to the Officer for Civil Rights and Civil Liberties. 6 C.F.R. Part 15, *et seq.* For each complaint, the regulations require the Department to issue findings of fact, conclusions of law, a description of a remedy for each violation found, and a notice of the right to appeal to the Officer for Civil Rights and Civil Liberties. *See* 6 C.F.R. § 15.70(g)(1)(i)– (iii); *see also* U.S. Department of Homeland Security (DHS) Directive 065-01: Nondiscrimination for Individuals with Disabilities in DHS Conducted Programs and Activities (Non-Employment) (September 25, 2013) (establishing policy and implementation mechanisms for ensuring nondiscrimination for individuals with disabilities served by DHS-conducted programs and activities under Section 504).

<sup>39</sup> 29 U.S.C. § 705(20)(B); 42 U.S.C. §§ 12102(1)–(2).

<sup>40</sup> Margo Schlanger, Elizabeth Jordan, Roxana Moussavian, *Ending the Discriminatory Pretrial Incarceration of People with Disabilities: Liability Under the Americans with Disabilities Act and the Rehabilitation Act*, 17 *Harv. Law & Pol. Rev.* 1, 237–48 (2022).

<sup>41</sup> *Robertson v. Las Animas County Sheriff’s Dept.*, 500 F.3d 1185, 1194 (10th Cir. 2007) (applying an analogous analysis for how to determine whether an individual has a qualifying disability protected by the American with Disabilities Act).

<sup>42</sup> *See Updike v. Multnomah Cnty.*, 870 F.3d 939, 949 (9th Cir. 2017) (“[Section] 504 include[s] an affirmative obligation for public entities to make benefits, services, and programs accessible to people with disabilities.”).

<sup>43</sup> *See* Margo Schlanger, Elizabeth Jordan, Roxana Moussavian, *Ending the Discriminatory Pretrial Incarceration of People with Disabilities: Liability Under the Americans with Disabilities Act and the Rehabilitation Act*, 17 *Harv. Law & Pol. Rev.* 1, 257 (2022) (explaining that under Section 504, “liability attaches for disability discrimination based not on discriminatory intent but on failure, intentional or not, to provide individuals with disabilities an opportunity equal to that afforded nondisabled people to participate in or benefit from government programs, where—as the next section explains, equality could be accomplished by a reasonable modification to the rules or practices governing the service, program, or activity.”).

Being someone who is TNB is not, by definition, a disability and is not necessarily enough to meet the disability definition, but the U.S. Department of Justice has stated that gender dysphoria, which is often experienced by TNB persons, does fall within the definition and can be covered by the Rehabilitation Act and the Americans with Disabilities Act.<sup>44</sup> Dysphoria can trigger anxiety, depression, self-harm, and suicidality but can be treated through gender expression (changing given name and assigned pronouns, making aesthetic changes to physical appearance and dress), gender-affirming hormone treatment, and/or gender affirming surgery.<sup>45</sup> Gender affirming care is not categorically available within ICE detention, meaning people cannot access the treatment they require to manage their symptoms.

Concurrently, as discussed above, people who are TNB often have preexisting psychiatric disabilities stemming from complex trauma related to past mistreatment and abuse.<sup>46</sup> Compounding the problem, detention itself often causes people to decompensate and experience worsening mental health due to the pure fact that they are incarcerated. The adverse conditions of confinement can worsen chronic conditions and increase the risk of suicidality and self-harm.<sup>47</sup>

In the context of immigration detention, there are multiple mechanisms through which ICE may receive notice when people it detains exhibit, complain of, or are diagnosed with disabilities—including through mandatory medical appointments that take place within hours once someone is detained.<sup>48</sup> As a custodian, ICE is responsible for providing medical care to the people in its custody<sup>49</sup> and has broad access to medical records that indicate whether patients have a diagnosis or exhibit symptoms that implicate Section 504.<sup>50</sup>

ICE recognizes its obligations to ensure persons with disabilities are afforded appropriate care and accommodations or modifications under Section 504 of the Rehabilitation Act. Yet, in practice the Aurora facility systemically fails to adhere to its responsibilities, with potentially deadly consequences for TNB persons detained at the facility.

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<sup>44</sup> Statement of Interest of the United States, *Doe v. Georgia Dep't of Corrections*, No. 1:23-cv-5578-MLB ((N.D.G.A. Jan. 8, 2024)), [https://www.justice.gov/d9/2024-01/doe\\_v\\_gdc\\_statement\\_of\\_interest\\_2024.01.08.pdf](https://www.justice.gov/d9/2024-01/doe_v_gdc_statement_of_interest_2024.01.08.pdf).

<sup>45</sup> Cleveland Clinic, “Gender Dysphoria,” (Mar. 2022), <https://my.clevelandclinic.org/health/articles/22634-gender-dysphoria>.

<sup>46</sup> Edward J. Alessi, Sarilee Kahn, Sangeeta Chatterji, *‘The darkest times of my life’: Recollections of child abuse among forced migrants persecuted because of their sexual orientation and gender identity*, 1;51:93-105 *Child Abuse & Neg.* (2016); Marshall K. Cheney et al., *Living outside the gender box in Mexico: testimony of transgender Mexican asylum seekers*, 107(10):1646-52 *Am. J. of Pub. Health* (2017).

<sup>47</sup> Shana Tabak, Rachel Levitan, *LGBTI migrants in immigration detention*, 5(42): 47-49 *Forced Migration Rev.* (2013).

<sup>48</sup> 2011 ICE PBNDS, *supra* note 3 at 258 (requiring that each person processed into the facility “receive a comprehensive medical, dental and mental health intake screening as soon as possible, but no later than 12 hours after arrival at each detention facility.”).

<sup>49</sup> *Id.*

<sup>50</sup> *See, e.g., Matter of M-A-M-*, 25 I&N Dec. 474, 480 (BIA 2011) (recognizing DHS is often “in possession of relevant evidence” that implicates indicia of incompetence, including medical records it may access as the individual’s custodian).



TNB persons imprisoned at the Aurora facility who have disabilities are often punished for having a disability, in contravention of what is required under Section 504. In particular, the use of solitary confinement often exacerbates the symptoms of disabilities, causing health to worsen. “[I]ncarcerated people with mental illness are disproportionately assigned to extended solitary confinement, which is widely documented to cause physical and mental decompensation, and even lead to suicide.”<sup>51</sup> Complainants’ experiences illuminate a pattern within the Aurora facility of placing persons with disabilities at risk of self-harm in solitary confinement. “Death by suicide is the starkest example of how a lack of disability accommodations can curtail the legal rights of individuals with disabilities.”<sup>52</sup>

Despite binding law and regulations, the Aurora facility regularly violates its Section 504 obligations. For example:

### Charlotte

Charlotte was previously detained first in Texas and then Georgia but sought transfer to Aurora after being told that she would have better access to gender affirming care. She is incarcerated in the dorm designated for people who are transgender and complains about the amount of time she spends in her dorm, describing the 23-24 hours a day that she is in her room as feeling like “lockdown.” She feels “very depressed” and “deceived” because she thought the conditions of her confinement would improve if transferred to Aurora. “I thought they’d take care of us, give us more freedom, recognize that we have suffered the most, we are the most vulnerable. We came from our countries being horribly treated and we get here and they treat us horribly.”

Charlotte has seen a psychiatrist while detained in Aurora who prescribed her medication, like buspirone (which treats anxiety) and venlafaxine (which treats depression), but she says she is in the dark about her actual diagnoses because they were not explained to her. She says that in Georgia she received more regular medical attention and was taken directly to appointments without having to make a request each time she requires care. In Aurora, when Charlotte submits written requests for medical appointments, she receives responses in English that she does not understand.

### Myriah

Myriah has experienced barriers to safely accessing hormone therapy at the Aurora facility. Her first dose of estradiol (a form of estrogen) was delayed for two weeks despite her physician’s request that treatment be initiated because the Aurora facility’s medical staff failed to perform the lab work ordered. Understanding that medical staff at the Aurora facility frequently fail to do bloodwork in a timely way, Myriah’s physician verbally reviewed the written request for lab work with an Aurora nurse by phone. Still, by the time of her follow-up appointment with her doctor, Myriah’s lab work was not

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<sup>51</sup> Margo Schlanger, Elizabeth Jordan, Roxana Moussavian, *Ending the Discriminatory Pretrial Incarceration of People with Disabilities: Liability Under the Americans with Disabilities Act and the Rehabilitation Act*, 17 Harv. Law & Pol. Rev. 1, 245 (2022).

<sup>52</sup> *Id.*

done. This prevented her physician from being able to ascertain her hormone levels, which could risk complications that can be life threatening, including blood clots, heart attack, and stroke. Lab tests to evaluate Myriah’s kidney function and electrolytes had also not been done. Spironolactone (anti-androgen medication) can affect kidney function and electrolyte values and rarely can increase the risk for kidney failure and severe electrolyte abnormalities that can lead to cardiac arrhythmias and death. Myriah’s lab results were not available to her physician until her next follow up, a month later. During that follow-up appointment, her physician was able to review the Aurora facility’s medical records for Myriah and ascertained that Myriah had been administered a different dose of Spironolactone as had been prescribed by her doctor.

### Elsa

Elsa, a transgender woman detained at the Aurora facility draws a sharp distinction between the quality of the gender-affirming care she receives through the facility’s partnership with Denver Health and the regular health care provided at the facility. She reports that the facility takes two to three days to answer written medical requests, and that the only offer beyond scheduling a medical appointment that could take days longer is ibuprofen—even for nausea or anxiety. Elsa has needed care beyond this but received no follow-up from two medical exams performed at the facility over six months ago. Specifically, medical exams were carried out eight months ago on her thyroid and seven months ago on her liver, but if the results came back, ICE did not inform Elsa. She worries that the same liver problem that her mother died from may be affecting her. She suffers from nausea and abdominal pain and separately needs thyroid care. While she awaits the results of her tests, Elsa, who is on hormone replacement therapy, is considering stopping that treatment. She fears dying at the Aurora facility due to medical neglect.

### Omar

Omar, who is nonbinary and transgender, would start hormone replacement therapy if they could be assured that they would not be placed in solitary confinement. They have been told repeatedly that, if they started therapy, they would be placed in “protective custody” (solitary confinement) because the Aurora facility has no nonbinary or men’s transgender housing unit. This is so, despite other trans men having been detained in Aurora in the past, so Omar is very likely receiving misinformation that is preventing them from accessing the treatment they require. Omar feels desperate to feel in community with other transgender persons and requested on multiple occasions to be placed in Aurora’s transgender dorm. When Omar first arrived at the Aurora facility and sought housing in a dorm with other trans persons, staff told them they had to have a “boy part” (meaning a penis) to be assigned to that housing unit.

### Victoria

Victoria, who has been detained in ICE custody for more than two years, is on hormone replacement therapy but has faced months-long waits to see doctors about her hypertension. She recalls that on one occasion her “blood pressure was so high, [she]

thought she was going to die.” Victoria believes the processed food served at the Aurora facility, combined with the lack of access to the outside, meaningful access to exercise, and the stress and anxiety caused by prolonged detention, has aggravated her high blood pressure.

Stress, anxiety, and sadness affect Victoria on a daily basis. She wants to see a therapist to better understand herself, be able to express what she feels, and have more control of her life and her emotions. Despite her desire to do this work, Victoria has no access to therapy in ICE detention at the Aurora facility.

Isolation and a lack of connection to others in the facility are some of the hardest aspects of detention within the transgender housing unit for Victoria. “It doesn’t matter what security level you are, what color uniform we are wearing, we can’t talk with other women detained in other dorms within the trans pod.” “I think they’re afraid that we will pass contraband or something.” With only one or two other transgender women detained in her dorm, Victoria feels like she is being punished, especially since she has seen cisgender women detained at the facility able to talk to each other. She wishes she had that freedom. “It is better for your mental state to be able to talk to other people,” she said.

Victoria has waited for eyeglasses to correct her vision for over two years. She uses a pair of glasses with the wrong prescription that were given to her by another detained person who entered the facility with a pair of glasses. When Victoria inquired about accessing eyeglasses, Aurora facility staff told her there is a backlog and to request a new medical appointment to get glasses. In addition, Victoria has not been treated for dental issues, which cause her pain.

Rather than affirmatively striving to provide adequate medical and mental health care to TNB persons in detention, staff at the Aurora facility place people at risk.

### Elsa

To try to calm herself one night during a mental health episode, Elsa worked on making a bracelet until a guard insulted her and told her to go to sleep. The next day, guards took Elsa to a medical provider in the facility who threatened to place her in solitary confinement. She went to the bathroom and cut herself on her left arm and neck because she could not bear being mistreated in this way.

Elsa grapples with finding a way to stay mentally balanced every day, but finds that staff at the Aurora facility consistently find ways to undermine her efforts. She hears voices when she does not busy herself, and after staff muted the volume on the television and made sound only available to those who could afford headphones and batteries from the commissary, the voices grew worse.

Even when she’s been in a medical crisis, Elsa reports that medical staff lock her alone in a small room where she must knock on the door to get attention, even to go to the bathroom.

She experiences panic attacks in such small and isolated confinement and thinks about harming herself.

### **Dehumanizing Culture and Mistreatment in the Aurora Facility**

When it comes to providing a safe environment for survivors of assault or violence, the 2011 ICE PBNDS is clear: “The facility will use a coordinated, multidisciplinary team approach to effectively respond to all incidents of sexual abuse or assault and address any safety, medical, or mental health needs.”<sup>53</sup> The standards assert that “[s]taff shall be alert to potential risks or signs of sexual abuse or assault, and take appropriate action to mitigate any identified risks or protect a [detained person] as necessary.”<sup>54</sup> The PBNDS counsels detention center staff to listen to survivors of abuse, and states that “[i]f it is documented, suspected, or reported that a [detained person] has been physically or sexually abused or assaulted, the [person’s] perception of [their] own safety and well-being shall be among the factors considered in reclassification.”<sup>55</sup> Staff have a responsibility to “immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse or assault, retaliation against individuals who reported an incident, or any staff neglect or violation of responsibilities which may have contributed to an incident or retaliation.”<sup>56</sup>

The ICE Directive on the Use of Segregation states that “[p]lacement in segregation should occur only when necessary and in compliance with applicable detention standards.”<sup>57</sup> The directive generally requires that ICE “shall take additional steps to ensure appropriate review and oversight of decisions to retain [persons in detention] in segregated housing for over 14 days.”<sup>58</sup> For cases of individuals “for whom heightened concerns exist based on known special vulnerabilities and other factors related to the [person’s] health or the risk of victimization,” however, ICE must undertake appropriate review and oversight “for any length of time” when someone is held in solitary confinement.<sup>59</sup>

Regarding recreation and time spent outside, the 2011 ICE PBNDS states that “[i]f outdoor recreation is available at the facility, each [person detained] in general population shall have access for at least one hour, seven days a week, at a reasonable time of day, weather permitting.”<sup>60</sup> “If only indoor recreation is available, [persons detained] in general population shall have access for no less than one hour, seven days a week and shall have access to natural light.”<sup>61</sup>

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<sup>53</sup> 2011 ICE PBNDS, *supra* note 3 at 127.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 65–66.

<sup>56</sup> *Id.* at 127–28.

<sup>57</sup> U.S. Dept. of Homeland Sec., U.S. Immigration and Customs Enforcement, 11065.1: Review of the Use of Segregation for [Persons Detained by ICE], (Sept. 4, 2013), [https://www.ice.gov/doclib/detention-reform/pdf/segregation\\_directive.pdf](https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> 2011 ICE PBNDS, *supra* note 3 at 371.

<sup>61</sup> *Id.*

Further, ICE guidance on care for people who are transgender underscores that the agency recognizes that it must meet the safety and well-being needs of persons who are transgender, though fails to explicitly delineate its obligations to nonbinary persons. In addition to making housing placements that provide appropriate care, ICE must “ensure sensitive information, such as a [person’s] gender identity, is not used to [their] detriment by ICE personnel or detention facility staff or other [people in detention], is not shared with other [people in detention], and is not shared with others who do not have a need to know the information.”<sup>62</sup> The guidance references “LGBTI Sensitivity and Awareness Training” detention facility staff would ideally have received in order for the facility to be appropriate for housing transgender persons.<sup>63</sup>

The experiences of TNB people detained at the Aurora facility show that ICE is not adhering to its own standards pertaining to safety and solitary confinement. Staff routinely fail to provide detained persons with a safe and controlled environment, and sometimes go as far as to place people it detains at risk by habitually discounting their safety concerns until an incident occurs. Aurora facility staff sometimes perpetrate acts of violence against detained TNB persons themselves. They punish TNB people who have experienced these traumas in detention by subjecting them to solitary confinement, weaponizing the use of solitary and making them feel as though their legitimate concerns for their wellbeing and safety are unimportant and unheard. For example:

#### Elsa

Guards at the Aurora facility did not take any action when Elsa, a transgender woman who was initially detained in a men’s dormitory, reported another person had repeatedly masturbated in front of her because there were no cameras in the bathroom where it happened. It took others reporting the same behavior for guards to act. When guards moved Elsa to the transgender women’s dorm, another person engaged in conduct that she found upsetting, which she then reported to her psychiatrist. Instead of working with the individual who had done this, facility staff put Elsa into solitary confinement for 15 days. Facility staff did not address the problem until two other individuals reported that this person had also engaged in conduct that was disturbing to them.

Elsa was assaulted by guards at the Aurora facility after a guard falsely alleged that Elsa hit her. A review of video footage later found that Elsa had not in fact hit the guard. Before conducting an investigation, guards picked up and threw Elsa against a wall, stepping on her foot and causing her pain, before putting her in solitary confinement.

On another occasion, Elsa covered the window of her cell with food scraps so guards could not watch her use the bathroom. She noticed guards through her covering laughing and pointing at her. Later, guards placed her in solitary confinement, allegedly for her own safety. In solitary, Elsa experienced a skin rash and took off her shirt to quell the burning sensation. When she asked guards to allow her to take a shower, they took her with her

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<sup>62</sup> ICE Transgender Care Memorandum 10 (Jun. 19, 2015), <https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf>.

<sup>63</sup> *Id.* at 4.

shirt still off to a shower block in another part of the detention facility, making her fear for her safety.

### Omar

Omar, who is currently housed in the women's dormitory in the Aurora facility has been continually outed by the guards in their unit. The guards have told new women in the unit "we have a transgender here," which Omar fears puts them at great risk of harm or discrimination by the women. "They'll eat me alive if they know," Omar said.

The same guards have, despite being put on notice that Omar uses they/them pronouns and wishes to be referred to as "Omar," consistently deadnamed and misgendered them.

On a different occasion, a guard saw Omar put on boxers and asked them why they were wearing boxers. Omar responded, "because I'm trans." The guard said, "Why are you in the females' dorm if you're a trans?" and told Omar they were not permitted to wear boxers. Omar told the Lieutenant about this occurrence but reported no apparent follow up.

### Charlotte

Charlotte and friends in her room were making paper flowers to brighten and beautify their space. This activity helped pass the time, provided a creative outlet, and lifted their morale. One of the officers said that the women could not keep the flowers in their dorm because they were a fire hazard and confiscated them from their room.

### Victoria, Charlotte, and Myriah

Victoria, Charlotte, and Myriah are all apprehensive about a specific female guard who is assigned to the housing unit for transgender women at Aurora. Victoria has experienced this guard peering at her through the glass on the door of her dorm. Charlotte, Myriah and the other women in her dorm experienced the same guard making fun of them after they complained that she had confiscated all of their personal hygiene products, like their toothbrushes and toothpaste, and replaced them with menstrual pads and tampons, which she knows they do not need. But she said something to them like, "If you were real women, you would need these things." The same guard told them that they had to ask her for their personal hygiene products when they wanted to use them, stripping them of their most basic agency. This guard told Myriah to "walk like a man." On another occasion, the guard threw away an LGBTQ pride flag in Charlotte's and Myriah's dorm. A male guard in the unit yells at women in a way that many find triggering and retraumatizing. When Myriah reported these guards' behavior to ICE officers, they told her they would speak with her about it on a specific date, but never returned.

Despite ICE guidance on the availability of outdoor recreation and access to fresh air and sunlight by detained persons outside of their housing units, the Aurora facility fails to provide TNB persons with access to this essential programming. Instead of allowing all TNB individuals

outdoor recreation as required by the 2011 ICE PBNDS, the Aurora facility only makes available a small cell with caging instead of a roof that is part of the housing unit.<sup>64</sup>

### Elsa

The space where Elsa is permitted to “go outside” is not really outside at all—it’s a small cell with four walls and an open hole instead of a ceiling, covered by caging. Guards permit her to go there, usually alone, once every two days.

### Victoria

Victoria was permitted to go outside on the first week of April 2024 for the first time in eight months. “Being outside was so incredible,” she said, “it felt like a new experience.” She was able to spend an hour and a half outside, playing soccer. Though, she thinks the only reason she was allowed to experience the true outdoors is because of an investigation of the facility, but guards did not give her and others a reason for the change. When Victoria has asked guards why recreation time is consistently canceled, they have told her that the facility does not have enough staff to hold recreational activities. Victoria, who has been detained in ICE detention for over two years, felt emotionally and psychologically mistreated at the Pine Prairie ICE Processing Center, where she was detained before she was transferred to the Aurora facility. But at Pine Prairie she could spend time outside and get exercise. By comparison, the Aurora facility feels to her like a “maximum security prison.”

Individuals detained at the Aurora facility—including TNB persons—are not provided with basic necessities like soap, in spite of the 2011 ICE PBNDS requirement that personal hygiene items be provided.<sup>65</sup>

### Victoria

Among the things Victoria must pay for at the Aurora facility is soap. “Prices have gone up in the commissary—it is so expensive.” Two other items that are indispensable but come at a price at the facility are headphones that tune into a radio frequency connected to the television, and batteries for those headphones. This is because recently the facility turned off all sound to the televisions and the only way to listen to programming is through headphones. The headphones run only \$2, but batteries cost \$5 to \$6 dollars. The facility only pays Victoria \$1 a day for her work cleaning the facility. She must work for nearly a full week to hear the television.

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<sup>64</sup> A 2019 Office of the Inspector General report of the Essex County Correctional Facility reported similar enclosure at the Essex facility and found that it did not meet the 2011 ICE PBNDS standards. *See* U.S. Dept. of Homeland Sec., Office of Inspector Gen., OIG-19-20, *Issues Requiring Action at the Essex County Correctional Facility in Newark, New Jersey* 9 (Feb. 13, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-20-Feb19.pdf>.

<sup>65</sup> 2011 ICE PBNDS, *supra* note 3 at 105.

## Elsa

Elsa hears voices when she is not engaged in something. Watching television helped her, but now only those who can afford headphones and batteries from the commissary can access volume from the TV.

## **Misgendering, Harassment, and the Adverse Impact of Facility Transfers**

ICE's 2015 memorandum promises that ICE ERO will provide a respectful, safe, and secure environment" and prohibits "[d]iscrimination or harassment of any kind based on a [person's] actual or perceived sexual orientation or gender identity."<sup>66</sup> Many of the experiences included in this complaint start with the misgendering of the complainant, their incarceration alongside people of differing genders from them, which in turn led to harassment and a feeling of insecurity. The creation of a "trans pod" where ICE detains TNB people does not cure the resulting harm.

Further, many people who are TNB are transferred between different facilities and jurisdictions, which causes delay in their immigration proceedings. This has a cascading effect because delayed adjudications result in TNB people experiencing disproportionately prolonged detention. Compounding the problem are ICE appeals in cases when a TNB person prevails in their immigration proceedings. For example, as of the filing of this complaint, ICE has detained Victoria for 764 days,<sup>67</sup> Elsa for 698 days, and Charlotte for 544 days, respectively.

## Victoria

This is the second complaint filed by Victoria, who previously experienced transphobia, harassment, and medical negligence while detained in Pine Prairie, Louisiana.<sup>68</sup> Upon intake, Victoria disclosed to staff within the Pine Prairie facility that she was a trans woman, but officials told her that she had two choices: be detained in the men's dorm or be placed in solitary confinement. For over a year, ICE detained her with cisgendered men where she faced "disparaging and threatening comments" that were "on account of her perceived gender identity."<sup>69</sup> She reports that while she was mistreated

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<sup>66</sup> ICE Transgender Care Memorandum 10 (Jun. 19, 2015), <https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf>.

<sup>67</sup> The District Court for the District of Colorado found that Victoria's detention is prolonged and her continued detention without an individualized bond hearing violates the Fifth Amendment's procedural due process guarantee. *Juarez v. Choate*, No. 1:24-CV-00419-CNS, 2024 WL 1012912, at \*5 (D. Colo. Mar. 8, 2024). Nevertheless, despite the federal court order, the Executive Office for Immigration Review still has not provided her with a constitutionally adequate bond hearing and ICE has not considered alternatives to detention. She remains detained as a result.

<sup>68</sup> Nat'l Immig. Justice Ctr., *Harassment, Pervasive Fear, and Transphobic Abuse: Trans Woman Requests Civil Rights Investigation Into Civil Rights Violations at the Pine Prairie ICE Detention Center*, (Jul. 27, 2023), <https://immigrantjustice.org/staff/blog/harassment-pervasive-fear-and-transphobic-abuse-trans-woman-requests-civil-rights>.

<sup>69</sup> Nat'l Immig. Justice Ctr., CRCL Complaint "Request for Investigation into Violations of Transgender Care Standards" (Jul. 7, 2023), [https://immigrantjustice.org/sites/default/files/content-type/commentary-item/documents/2024-03/CRCL-complaint-letter\\_ICE-abuse-Pine-Prairie\\_July2023-1.pdf](https://immigrantjustice.org/sites/default/files/content-type/commentary-item/documents/2024-03/CRCL-complaint-letter_ICE-abuse-Pine-Prairie_July2023-1.pdf).



psychologically, the conditions felt better in Pine Prairie because she could spend time outside, regularly exercise, and experienced better treatment from the guards within the facility.

In Aurora, Victoria dislikes being placed in a room with only one or two other women at a time, saying that it is not far off from solitary confinement. She reports that she “cannot talk with the other women detained in other rooms within the trans pod. It doesn’t matter what security level we are, what color we are wearing, we can’t talk.” She struggles with being treated differently from the cisgender women she observes, who have many others with whom they can interact in their dorms. “It feels like I’m being punished for a crime.” The conditions in the Aurora facility serve as a deterrent and prevent people from pursuing their legal claims. “People break. They sign their deportations after being here too long because they can’t take this treatment. They don’t want to keep fighting their cases here because the system is so bad. I think it is intentionally bad here. It is a way to get people to give up on themselves.”

### Charlotte

Initially, ICE detained Charlotte in Texas. Then the agency sent her to Georgia where it detained her for a year with men before transferring her to Aurora. Some men harassed her, but she was afraid to report them to officials while they shared the same dorm. When she finally made a report, she was interviewed by a Prison Rape Elimination Act (PREA) officer but told that there was not sufficient basis for the investigation to proceed.

Charlotte feels like “ICE is treating LGBTQ+ rights like a game. They have us here like circus monkeys or circus clowns.” She emphasizes that her case and those of the other women detained in her dorm move slowly and that “many trans women are in detention for a long time.” She calls for an end to ICE detention, especially for people who are TNB. From Charlotte’s perspective as a trans woman, she says, “We are in a horrible situation. [ICE doesn’t] have us as a priority, but we need our rights.”

## **Recommendations**

ICE cannot keep TNB people in its custody safe, ensure their overall wellbeing, or safeguard TNB people’s timely access to justice. As a result, we urge your offices to recommend:

- (1) The immediate and permanent end to ICE’s practice of detaining TNB people in civil immigration custody.
- (2) “When case management is necessary for TNB individuals for whom there is a flight risk or safety concern, community-based and not-for-profit alternatives-to-detention should be adopted, with a focus on ensuring TNB people in the U.S. understand their rights to guarantee their safety and basic needs are met.”<sup>70</sup>

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<sup>70</sup> Policy Brief, Elizabeth Kvach et al., Williams Inst., *The Disproportionate Harm of Immigration Detention for Transgender and Nonbinary People Requires an End to the Use of Confinement 2* (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Harm-of-Immigration-Detention-on-Transgender-People.pdf>.

- (3) Creation of liability mechanisms to ensure implementation of and adherence to policies to protect vulnerable populations like TNB people, especially at for-profit detention centers. Violators should lose their federal contracts.
- (4) Clear guidance that when a person's rights are violated and they are made to feel unsafe and threatened within a carceral setting, release is the most appropriate recourse.
- (5) Ensure transparency and accountability of any violations of agency standards and policies.
- (6) Provide policy guidance instructing ICE Office of the Principal Legal Advisor (OPLA) attorneys that appeals of immigration judge decisions granting relief for persons who are TNB are strongly discouraged.

Until that happens, we request that you:

- (7) Investigate the specific incidents reported here; make recommendations for appropriate corrective actions for staff involved in misconduct; recommend the immediate release of all complainants whom ICE continues to detain; and issue Z-holds for all complainants not otherwise protected from deportation as well as for anyone directly impacted by the Aurora facility's abusive policies who could provide additional information during the course of a broader investigation.
- (8) Recommend systemic policy reforms including an updated policy memorandum that supersedes the 2015 ICE Transgender Care Memorandum that:
  - (a) includes terminology accepted by people who are TNB to describe themselves;
  - (b) delineates specific factors that ICE must consider when assessing release, emphasizing that the longer a person is detained, the greater the need for release becomes and that no one should be detained for longer than a year;
  - (c) ensures facilities have policies in place to protect and house nonbinary persons, such as permitting nonbinary noncitizens to request housing in the dorm that feels most appropriate to them;
  - (d) Ensures TNB people are provided gender-affirming clothing, regardless of where they are housed. This includes but is not limited to bras, underwear, packers, and binders.
- (9) Provide robust training on Section 504 and ICE's affirmative obligation to provide reasonable accommodations or modifications to persons with qualifying disabilities detained in ICE custody.
- (10) Ensure that there is oversight and enforcement of Section 504's requirements such that individuals in ICE custody have meaningful access to the protections it affords.
- (11) Notify each complainant of the results of any investigation of the allegations included in this complaint "[n]ot later than 180 days" from its receipt, including "findings of fact and conclusions of law; a description of a remedy for each violation found; and a notice of the right to appeal." 6 C.F.R. § 15.70(g)(1).

Respectfully submitted,

American Immigration Council  
National Immigration Project (NIPNLG)  
Rocky Mountain Immigrant Advocacy Network