

Congress of the United States
Washington, DC 20515

May 30, 2018

Dear Secretary Nielsen:

We write to express our concerns regarding the detention of lesbian, gay, bisexual and transgender (LGBT) immigrants in Immigration and Customs Enforcement (ICE) custody. These individuals, particularly transgender women, are extremely vulnerable to abuse, including sexual assault, while in custody. ICE recently provided Representative Kathleen M. Rice (NY-04) with information about LGBT people in its custody, including incidents of sexual assault, the use of solitary confinement, and custody decisions for transgender people. We found much of the information shared on vulnerable populations detained in ICE custody disturbing.

The high rate of sexual assault of LGBT people in immigration detention was particularly shocking. Although LGBT people accounted for just 0.1% of ICE's detained population in FY 2017, they accounted for a staggering 12% of victims of sexual assaults reported in ICE detention. ICE policies for years have recognized that LGBT immigrants, particularly those who are transgender, are vulnerable to abuse while detained. DHS's own Prison Rape Elimination Act (PREA) standards require an individualized custody determination for transgender people.¹ Yet ICE reported to Representative Rice that, as of December 2017, 4 of the 17 facilities in which transgender women were detained were all-male and the rest were a mix of male and female populations. ICE did not provide information about whether transgender women were housed with men or women in those facilities.

Although DHS's PREA rules state that solitary confinement should only be used for detainees vulnerable to sexual abuse or assault, like LGBT immigrants, "when no other viable housing options exist, as a last resort" and even then "for the least amount of time practicable," ICE reported to Representative Rice that it placed 14 transgender people in involuntary solitary confinement in FY 2017 and an additional 25 transgender people requested placement in solitary confinement for protection because their placement in the general population was so unsafe.² Of the 298 transgender people ICE detained in FY 2017, 13% were placed in solitary confinement. We find this figure troubling and remain concerned about the length of time that LGBT immigrants are kept in solitary detention.

ICE's intake system recognizes the risks LGBT immigrants face in detention and allows ICE officers to use their discretion to release members of vulnerable populations. In 2016, a report by the Center for American Progress found that ICE officers used this discretion to release only 12% of individuals.³ Reports indicate that ICE officers have been even more reluctant to release anyone, including LGBT immigrants, over the past year.

We strongly urge you to use existing prosecutorial discretion to ensure that, in the absence of extenuating circumstances, LGBT individuals are released from custodial detention and that parole or alternatives to detention, such as supervised release and community placements, are used instead to ensure the safety of this population throughout their immigration proceedings.

¹ <https://www.gpo.gov/fdsys/pkg/FR-2014-03-07/pdf/2014-04675.pdf>

² <https://www.gpo.gov/fdsys/pkg/FR-2014-03-07/pdf/2014-04675.pdf>

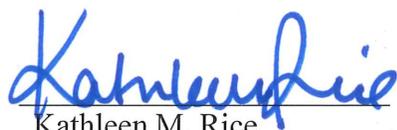
³ <https://www.americanprogress.org/issues/lgbt/reports/2016/10/26/291115/ice-officers-overwhelmingly-use-their-discretion-to-detain-lgbt-immigrants/>

To address the concerns raised above, we ask the following questions regarding ICE's protocol for LGBT detainees:

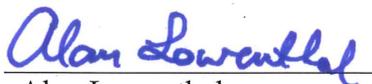
1. What steps are you taking to ensure ICE fully complies with the requirement for individualized custody determinations for transgender people?
2. Do existing contract terms limit ICE's ability to include facility assignment consistent with gender identity in an initial Individualized Detention Plan (IDP)?
3. What steps has DHS taken to ensure full implementation of the Prison Rape Elimination Act and adherence to DHS PREA regulations in ICE facilities?
4. Why is DHS using limited detention resources to house so many people who are vulnerable to physical, medical, and psychological harm in detention—including LGBT people, past victims of sexual abuse, persons with disabilities, pregnant women, and elderly people?

We urge you to act swiftly to address these issues. The safety and security of many individuals depend on it. We thank you in advance for your response.

Sincerely,



Kathleen M. Rice
Member of Congress



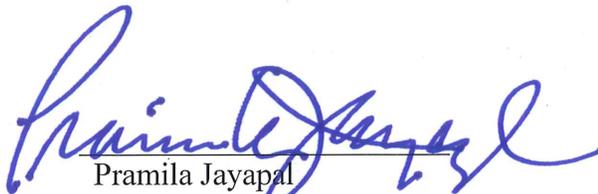
Alan Lowenthal
Member of Congress



Ruben J. Kihuen
Member of Congress



Frank Pallone, Jr.
Member of Congress



Pramila Jayapal
Member of Congress



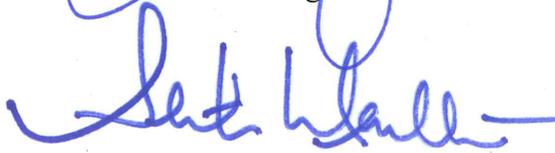
Charlie Crist
Member of Congress



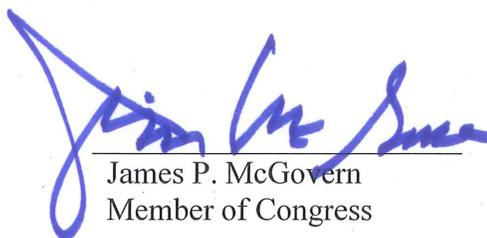
Zoe Lofgren
Member of Congress



Joseph P. Kennedy, III
Member of Congress



Seth Moulton
Member of Congress



James P. McGovern
Member of Congress



Mark Pocan
Member of Congress



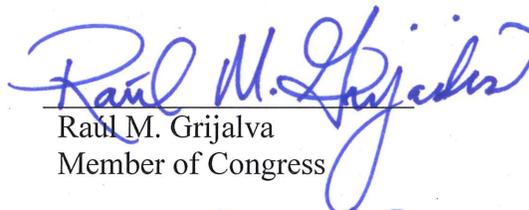
Ro Khanna
Member of Congress



Tulsi Gabbard
Member of Congress



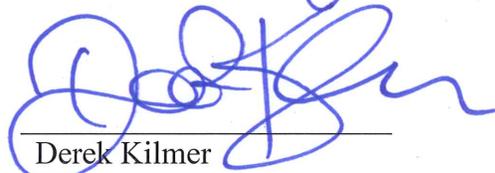
Sean Patrick Maloney
Member of Congress



Raul M. Grijalva
Member of Congress



J. Luis Correa
Member of Congress



Derek Kilmer
Member of Congress



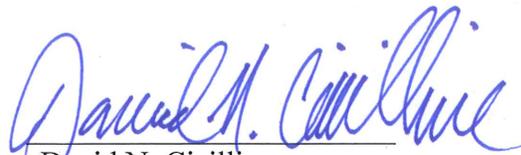
Jimmy Gomez
Member of Congress



Carol Shea-Porter
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Bonnie Watson Coleman
Member of Congress



David N. Cicilline
Member of Congress



Adriano Espaillat
Member of Congress



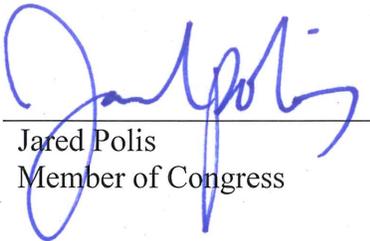
Adam Smith
Member of Congress



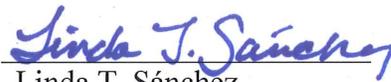
Niki Tsongas
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Barbara Lee
Member of Congress



Jared Polis
Member of Congress



Linda T. Sánchez
Member of Congress



Rick Larsen
Member of Congress



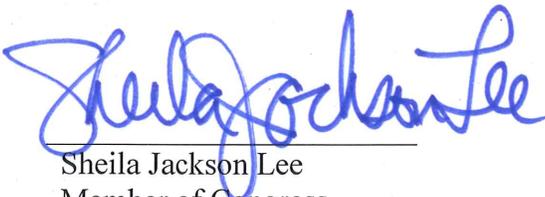
Jan Schakowsky
Member of Congress



Eleanor Holmes Norton
Member of Congress



Dina Titus
Member of Congress



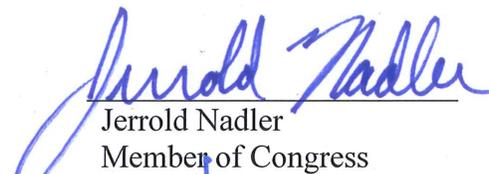
Sheila Jackson Lee
Member of Congress



Mark Takano
Member of Congress



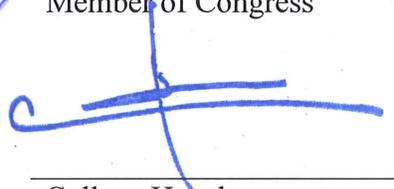
Jamie Raskin
Member of Congress



Jerrold Nadler
Member of Congress



Scott H. Peters
Member of Congress



Colleen Hanabusa
Member of Congress