

IMMIGRATION REFORM

As our political system fails to deliver meaningful immigration reform, millions of individuals and families in the United States face unspeakable hardships, including the forced separation of families, escalating deportations of individuals with deep roots in their communities who have committed no serious wrongdoing, and indefinite detention in cruel and abusive conditions. The government's failure to recognize LGBT families exacerbates the hardships on our community, and transgender people frequently find their relationships challenged regardless of the gender of their partner. For trans people who have legal status, documents that reflect the wrong gender contribute to the discrimination trans immigrants face.

Current immigration enforcement policies, most notably the failed and dangerous Secure Communities program, make our communities less secure by enlisting local law enforcement to enforce immigration laws, and undermining community trust in law enforcement. Although transgender immigrants are at high risk of being victims of violent crime, they are frequently afraid to seek assistance from law enforcement. According to the NTDS, 46% of all transgender people, and 51% of Latino transgender people, state that they are uncomfortable seeking police assistance¹. Programs such as Secure Communities make an extremely vulnerable population even less likely to report crimes or be willing to testify in criminal cases and create incentives for racial profiling.

¹ *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 162.

Finally, immediate action is needed to reform our costly and inhumane system of prolonged immigration detention, in which transgender people—many of them fleeing violence and persecution in their countries of origin—are particularly vulnerable to abuse. The Department of Homeland Security (DHS) in 2009 promised substantial reforms, and NCTE has worked with many other human rights advocates to see reforms enacted, but little has changed. DHS still detains hundreds of thousands of people each year in harsh facilities rife with abuse, and lacks any binding standards or meaningful accountability for those it contracts with to operate them. Transgender detainees are still subjected to abuse, prolonged isolation, and deprivation of medical care. And DHS has inexcusably opposed applying national rules to implement the Prison Rape Elimination Act (PREA) to its facilities despite recent incidents of sexual abuse.

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Policy steps

- Congress should pass comprehensive immigration reform that includes the Uniting American Families Act, which would grant equal immigration rights to bi-national same-sex couples.
 - Congress should pass the DREAM Act to provide youth who grew up in the U.S. and go to college or serve in the military with legal status and a path to citizenship.
 - Congress should pass the Refugee Protection Act, which would provide critical protections for refugees and their families and eliminate arbitrary filing deadlines for those seeking asylum.
 - U.S. Citizenship and Immigration Services should hold green card applications of foreign-born same-sex spouses of U.S. citizens and residents in abeyance until the courts or Congress resolve the constitutionality of the Defense of Marriage Act.
 - U.S. Citizenship and Immigration Services should provide a clear policy for recording updated gender designations on immigration documents, based on existing policy for updating U.S. passports and federal personnel records.
 - U.S. Citizenship and Immigration Services should clarify through internal guidance that the Defense of Marriage Act does not apply to a marriage that was recognized as a different-sex marriage where and when it was entered into, regardless of a spouse's prior or subsequent gender transition.
- The Department of Justice should promulgate final regulations to implement the Prison Rape Elimination Act (PREA) that apply fully to all detention facilities, including immigration detention facilities administered by U.S. Immigration and Customs Enforcement and the Office of Refugee Resettlement.
 - The Department of Homeland Security should halt the controversial Secure Communities program, which deters vulnerable populations from seeking police assistance.
 - The Department of Homeland Security should expand the use of alternatives to secure detention and end the detention of asylum-seekers, transgender people, people with HIV, and other vulnerable groups.
 - The Department of Homeland Security should put an immediate end to the use of prolonged segregation of transgender detainees, survivors of abuse, and others at risk of abuse.
 - The Department of Homeland Security should implement a standardized risk assessment and classification system and train its officers on identification of vulnerable LGBT individuals and asylum-seekers.
 - The Department of Homeland Security should adopt formal guidelines for medical care for transgender detainees, based on the World Professional Association for Transgender Health (WPATH) Standards of Care and the policies of the Federal Bureau of Prisons.