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Congress of the United States
House of Representatives
Washington, DC 20515

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June 29, 2023

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street N.W.
Washington, D.C. 20548

Dear Comptroller General Dodaro:

We write to request that the Government Accountability Office (GAO) conduct a study examining the living conditions of transgender people detained in federal prisons and federally funded prisons and jails. Almost one in six transgender people are incarcerated at some point in their lives.¹ Among Black trans people, that number is one in two.² Therefore, the ethical treatment of incarcerated transgender people is of the utmost importance to protecting the human rights of trans people.

Trans people are primarily incarcerated in facilities in accordance with their sex assigned at birth, raising grave safety concerns—particularly for trans women of color. Reports from prisons and jails routinely unearth pervasive harassment, sexual assault, and other forms of physical violence against trans people perpetrated by both other incarcerated people and facility staff. Nearly one-third of incarcerated trans people surveyed in 2015 were sexually or physically assaulted by other incarcerated people or staff during detention in the past year.³ One in five trans people reported being assaulted by staff in the past year of incarceration and 22 percent reported being assaulted by other incarcerated people.⁴ In some cases, pleas by incarcerated people for their safety resulted in transfer to solitary confinement—a practice that several United Nations experts and bodies consider a form of torture when imposed for extended periods.⁵

Transgender people in jails and prisons also experience significant barriers to medical care. Advocacy groups and news outlets regularly report incidents of prison staff denying trans people hormone replacement therapy and gender-affirming surgeries even when doctors determine them medically necessary, resulting in severe emotional distress leading to serious self-harm in some cases. In a 2015 survey, more than one-third of incarcerated trans people who had been on hormone replacement therapy prior to incarceration reported being denied their treatment in the past year of incarceration.⁶ An earlier survey found that 14 percent of trans people also encountered discrimination in routine medical care unrelated to their transition.⁷

The denial of gender-affirming care is only exacerbated by a lack of access to clothing and commissary items that align with the person's gender identity. For example, one transgender woman, Lindsay Saunders-Velez, was routinely written up for wearing women's undergarments

and presenting as a woman while incarcerated in a men's prison in Colorado. In 2018, she won a settlement with the Colorado Department of Corrections to be housed in a women's facility after she reported being sexually assaulted multiple times.⁸

In addition to the existential threats transgender people in jails and prisons face every day, they may be subject to discrimination in discipline as well as work and educational opportunities. While there is some evidence of this type of discrimination, more research is necessary to understand its prevalence and implications.⁹

The treatment of transgender people in jails and prisons raises significant legal concerns. Lower court decisions have established precedent that pervasive sexual assault and the denial of medical care to transgender people violates the Eighth Amendment's protection against cruel and unusual punishment.¹⁰ On these grounds, some incarcerated transgender people have successfully petitioned to be transferred to facilities in line with their gender identity. Moreover, practices in these facilities may violate the Prison Rape Elimination Act, which established a "zero tolerance policy" for sexual assault in prisons.¹¹

We request that the Government Accountability Office produce a report examining the jail and prison conditions of transgender people and the practices and policies of jails and prisons toward them. This report should include a census of transgender people in detention at federal prisons and federally funded jails and prisons based on a confidential survey as well as interviews with select respondents. Acknowledging challenges posed by the small population size and importance of confidentiality, the data should be disaggregated by race and gender whenever possible. At a minimum, the report should:

- Provide a breakdown of the transgender jail and prison population by gender and whether they are held in a men's or a women's facility in alignment with their gender.
- Analyze incarceration practices and policies of prisons and jails regarding housing transgender people and evaluate their alignment with federal guidance from the Bureau of Prisons.
- Survey the housing preferences of transgender people.
- Include the number and success rate of petitions for transfer to a facility of another gender.
- Estimate the rate of sexual assault and physical violence against incarcerated transgender people.
- Estimate the incidence of the solitary confinement of trans people.
- Estimate the rate of disciplinary actions taken against trans people.
- Evaluate access to gender-affirming medical care and routine medical care for incarcerated trans people, including, but not limited to, hormone replacement therapy, mastectomies, breast augmentation, vaginoplasty, metoidioplasty, and phalloplasty.
- Evaluate the access of transgender people to gender-affirming commissary items and clothing, including toiletries, undergarments, etc.

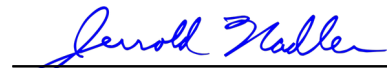
The GAO has an opportunity to shed light on this critical issue. Research on the transgender prison and jail population is very limited and much of the available data is years old. Yet these studies, such as the GAO's 2019 report on transgender detention practices by Immigration and

Customs Enforcement, are critical to understanding how to best protect the safety of vulnerable incarcerated populations.¹² By conducting a study, the Government Accountability Office will take the first step toward necessary reforms. We appreciate your attention to this issue and look forward to further engaging with you in this matter.

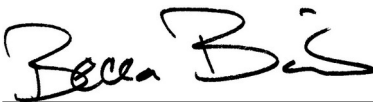
Sincerely,



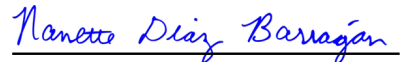
Pramila Jayapal
Member of Congress



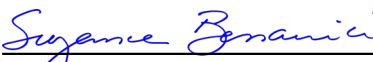
Jerrold Nadler
Member of Congress



Becca Balint
Member of Congress



Nanette Diaz Barragán
Member of Congress



Suzanne Bonamici
Member of Congress



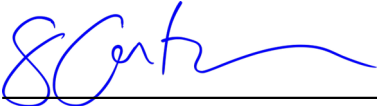
Jamaal Bowman, Ed.D.
Member of Congress



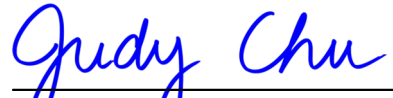
Cori Bush
Member of Congress



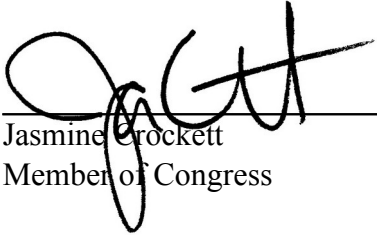
Greg Casar
Member of Congress



Sean Casten
Member of Congress



Judy Chu
Member of Congress



Jasmine Crockett
Member of Congress



Mark DeSaulnier
Member of Congress



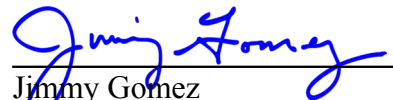
Adriano Espaillat
Member of Congress



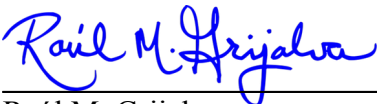
Robert Garcia
Member of Congress



Jesús G. "Chuy" García
Member of Congress



Jimmy Gomez
Member of Congress



Raúl M. Grijalva
Member of Congress



Sheila Jackson Lee
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Henry C. "Hank" Johnson, Jr.
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Sydney Kamlager-Dove
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Barbara Lee
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Summer Lee
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James P. McGovern
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Eleanor Holmes Norton
Member of Congress



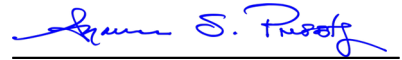
Donald M. Payne, Jr.
Member of Congress



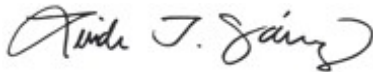
Mark Pocan
Member of Congress



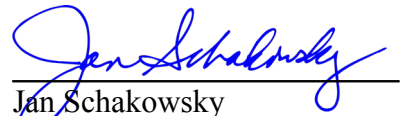
Katie Porter
Member of Congress



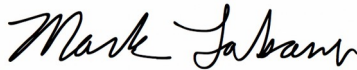
Ayanna Pressley
Member of Congress



Linda T. Sánchez
Member of Congress



Jan Schakowsky
Member of Congress



Mark Takano
Member of Congress



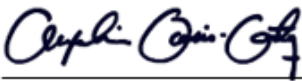
Bonnie Watson Coleman
Member of Congress



Nikema Williams
Member of Congress



Frederica S. Wilson
Member of Congress



Alexandria Ocasio-Cortez
Member of Congress

CC: The Honorable Colette Peters, Director, Federal Bureau of Prisons

¹ Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. Injustice at Every Turn: A Report of the National Transgender Discrimination Survey. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf#page=172

² Ibid.

³ James, S.E., Herman, J.K., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality, 2016.

https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf

⁴ Ibid.

⁵ Press release. February 28, 2020. "United States: prolonged solitary confinement amounts to psychological torture, says UN expert." <https://www.ohchr.org/en/press-releases/2020/02/united-states-prolonged-solitary-confinement-amounts-psychological-torture>

⁶ James et. al.

⁷ Grant et. al.

⁸ Transgender Law Center. "Saunders-Velez v. Colorado Department of Corrections." Accessed May 5, 2023.

<https://transgenderlawcenter.org/case/saunders-velez-v-colorado-department-of-corrections/>

⁹ Herring, Tiana, Widra, Emily. "What the Survey of Prison Inmates tells us about trans people in state prison." Prison Policy Institute. Published March 31, 2022.

https://www.prisonpolicy.org/blog/2022/03/31/transgender_incarceration/

¹⁰ Lambda Legal. "Transgender Incarcerated People in Crisis." Accessed May 5, 2023.

<https://www.lambdalegal.org/know-your-rights/article/trans-incarcerated-people>

¹¹ https://www.schatz.senate.gov/imo/media/doc/bop_letter_8-9-18.pdf

¹² United States Government Accountability Office. "Immigration Enforcement: Arrests, Detentions, and Removals, and Issues Related to Selected Populations." December 2019. <https://www.gao.gov/assets/gao-20-36.pdf>