



Living in Dual Shadows

LGBT Undocumented Immigrants

Crosby Burns, Ann Garcia, and Philip E. Wolgin March 2013



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**Correction, April 24, 2013: This report incorrectly stated the number of binational same-sex couples. The correct number is 24,700.*

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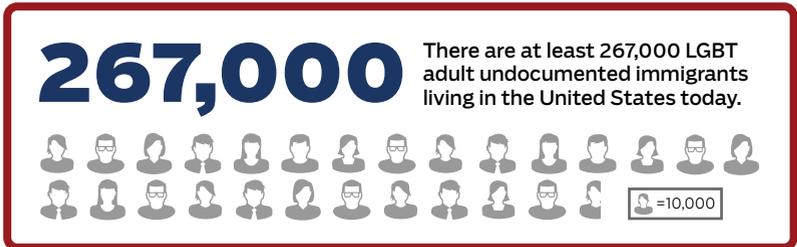
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The LGBT undocumented

By the numbers

Of the 11 million undocumented immigrants in the United States today, hundreds of thousands identify as lesbian, gay, bisexual, and transgender, or LGBT. In a first-of-its-kind analysis, a report by the Williams Institute at UCLA estimates the number of LGBT-identified undocumented adults living in the United States today.

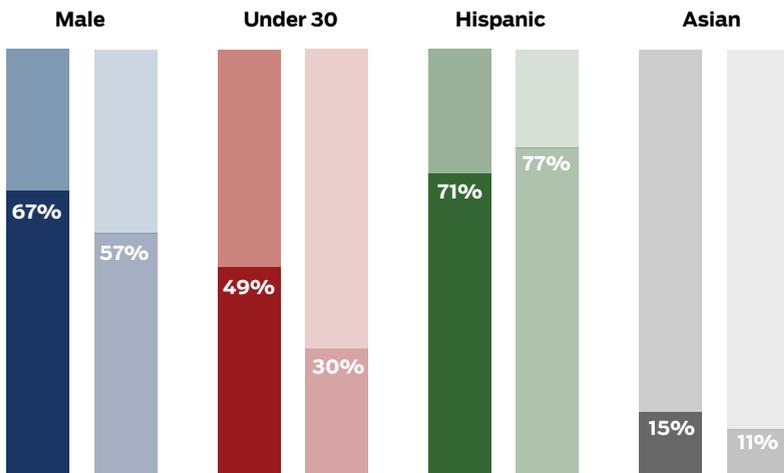


For them, a path to citizenship would mean:

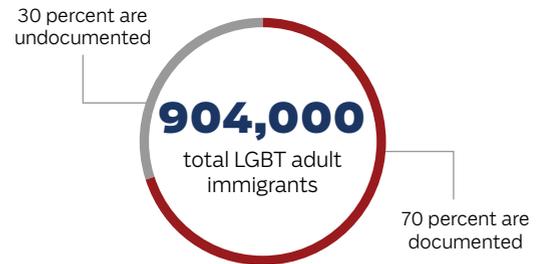


LGBT adult undocumented immigrants are more likely to be male, younger, less likely to be Hispanic, and more likely to be Asian.

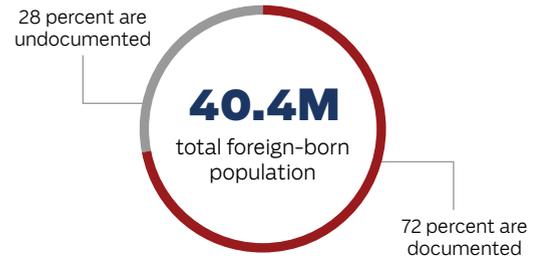
LGBT undocumented All undocumented



There are an estimated 904,000 LGBT adult immigrants in the United States today, 30 percent of whom are undocumented.



This roughly matches the breakdown of the entire foreign-born population.



There are an estimated **24,700*** binational same-sex couples (one native-born U.S. citizen and one noncitizen) in the United States today.

Because of the Defense of Marriage Act, U.S. citizens and residents cannot sponsor a same-sex partner for family-based immigration, unlike their heterosexual counterparts. Including the provisions of the Uniting American Families Act in immigration reform would end discrimination against binational same-sex couples.

Source: Gary Gates, "LGBT Adult Immigrants in the United States" (Los Angeles: The Williams Institute, 2013).

*Correction, April 24, 2013: This report incorrectly stated the number of binational same-sex couples. The correct number is 24,700.

Introduction and summary

When Pulitzer Prize-winning journalist José Antonio Vargas came out as undocumented in an essay published in *The New York Times* in the summer of 2011, he was “coming out” for the second time in his life.¹ The first time occurred when Vargas raised his hand in history class during his junior year of high school after watching a documentary on Harvey Milk—the first openly gay person to be elected to public office in California—and told his classmates and teacher that he was gay. And while we’ve known that there are thousands of people like Vargas who are undocumented and who also identify as lesbian, gay, bisexual, and transgender, or LGBT, we’ve known little about their actual numbers or demographic characteristics.²

In a first-of-its-kind analysis, the Williams Institute at UCLA—which researches sexual-orientation and gender-identity law and public policy—today estimates that there are at least 267,000 LGBT-identified individuals among the adult population of undocumented immigrants. Undocumented people who identify as LGBT are more likely to be male and younger; less likely to be Hispanic; and more likely to be Asian than the overall undocumented population.³ And because LGBT undocumented people find themselves at the intersection of two already marginalized groups—the LGBT population and the undocumented population—they are among society’s most vulnerable individuals.

With this report, we build upon the Williams Institute’s demographic findings by first unpacking demographic characteristics of the population, and then detailing the disparities and hardships that make the LGBT-identified members of the undocumented population among the most vulnerable members of our society. These issues—including employment insecurities, wage and income disparities, and health inequities—would be significantly lessened if undocumented LGBT immigrants were given a chance to earn legal status and, eventually, citizenship. Passing an immigration reform bill with a direct road map to earned citizenship would lift these immigrants out of the shadows, treat them with the dignity that they deserve, and enable them to become full and equal participants in our society, economy, and democracy.

Because LGBT undocumented people find themselves at the intersection of two already marginalized groups—the LGBT population and the undocumented population—they are among society’s most vulnerable individuals.

Citizenship cannot solve all of the issues facing the LGBT undocumented community, however, and the second and third parts of this report deal with the specific challenges facing this population. We begin with the issues facing LGBT families, including the inability to sponsor a same-sex spouse or partner through family-based immigration preferences. This section details the emotional and economic pain of separation when family members are detained or deported. We then address the challenges that LGBT immigrants encounter when they come into contact with the immigration-enforcement system. Specifically, we examine how U.S. detention centers fail to provide an adequate level of safety and care to LGBT immigrants—including to those living with HIV—who are routinely mistreated, discriminated against, and denied health care while in detention. Finally, we look at the particular obstacles—legal and otherwise—facing LGBT asylum seekers in the United States.

To alleviate the burdens facing undocumented immigrants who identify as LGBT and their families, this report makes the following recommendations.

Pass immigration reform, that:

Includes a path to citizenship: Legalizing the at least 267,000 undocumented immigrants in America who identify as LGBT and providing them with a roadmap to citizenship would give them the legal certainty that they will not be torn away from their families and communities, give them the ability to work legally and earn higher wages, and allow them to become full and equal members of society.

Ends discrimination against binational same-sex couples: Including the provisions of the Uniting American Families Act in immigration reform would finally give U.S. citizens and permanent residents in same-sex couples the ability to sponsor their loved one for family-based immigration. If passed, the law would not only extend sponsorship rights to U.S. citizens and residents with same-sex spouses but also to those with committed same-sex partners—which is important, considering that same-sex couples cannot marry in 41 states. For this reason, passage of the Uniting American Families Act will be necessary even if Congress or the courts repeal the Defense of Marriage Act, the discriminatory law that prevents these couples from accessing family-based immigration preferences that are afforded to all other couples.

Fixes and protects family-based migration: On top of ensuring that LGBT immigrants are included in family reunification, immigration reform must do more to fix and protect the family preference visa system. The more than 4 million people stuck on backlogs waiting for a family visa must be granted a quick and reasonable path to reunification. Potential fixes include the Reuniting Families Act, which would—among other things—recapture visas that are lost to bureaucratic delay by allowing unused visa slots from one year to carry over into the next, and raise the per-country limits that restrict any one sending country to only 7 percent of all yearly visas—thus treating Mexico and Luxembourg equally, as if they were equal in size and circumstance.⁴

Grants young people access to education and citizenship: Including the provisions of the DREAM Act in immigration reform would provide thousands of undocumented LGBT youth with an expedited roadmap to citizenship, giving them the ability to reach their full potential even sooner. Those who entered the United States prior to age 16 and are currently under the age 35 would be able to earn their citizenship by completing high school and some college or U.S. military service.

Repeal the federal Defense of Marriage Act

One of the many reasons that Congress and the Supreme Court need to repeal the Defense of Marriage Act is to ensure that the government treats all families equally under existing immigration law. Congress can and should swiftly pass the Respect for Marriage Act, which would legislatively repeal the Defense of Marriage Act. Alternatively, in *United States v. Windsor*—a case currently pending before the Supreme Court—the court could strike down the section of the law that denies federal benefits and protections to same-sex couples. The repeal of the Defense of Marriage Act would then allow the federal government to treat all families equally for the purpose of family-based immigration.

Modify detention and asylum standards to address the issues facing the LGBT-identified undocumented community

Implement and vigorously enforce existing standards: Over the past four years, the Department of Homeland Security has issued guidance, rules, and regulations that promote the safety and well-being of LGBT detainees. The department

has taken similar administrative actions to ensure that LGBT asylum seekers are treated with dignity and given a fair asylum hearing. While these policies are significant steps forward, the Obama administration must work to implement and enforce them in practice.

To reform detention standards, the administration should:

- Provide sensitivity training on a regular basis to detention staff working with LGBT detainees and create oversight to ensure compliance
- Ensure that detention staff understand their role in preventing, detecting, and responding to physical and sexual abuse of LGBT detainees
- Investigate allegations of abuse, discrimination, neglect, denial of medical services, and violence against detainees, including those who are LGBT
- Revoke the contracts of and funding for detention centers that fail to adequately implement and enforce these standards
- Provide increased access to legal services for people in detention, including those who are LGBT

Pass the Detainee Basic Medical Care Act: The Detainee Basic Medical Care Act would fill significant gaps in the detention health care system that have resulted in substandard medical treatment and even deaths among immigrant detainees. The proposed law contains a provision that requires immigration officials to ensure that immigrants continue to have access to medications prescribed prior to their detention, including those for transgender and HIV-positive detainees. This bill also gives immigration detainees with serious medical or health care conditions priority consideration for release on parole, on bond, or into an alternate to detention program, which again will benefit transgender and HIV-positive detainees. Third, and perhaps most importantly, by providing a basic floor of medical care to detainees, this proposal would help to address the significant health issues and inequities facing the LGBT undocumented population.⁵

Expand the use of alternatives to detention: To protect the most vulnerable detainees from mistreatment—particularly LGBT detainees—policymakers should consider alternatives to traditional detention such as house arrest or ankle monitors. These are common-sense cost-saving solutions that would advance the

twin goals of monitoring the undocumented and protecting the most vulnerable detainees from avoidable mistreatment. In fact, detentions cost taxpayers \$122 per day or more, while alternatives to detention can cost as little as \$12 per day, a savings that allows the detainee to remain with their family and in their community.⁶

Another alternative to traditional detention for LGBT detainees is to create special facilities that separate LGBT detainees from others in detention without placing them into administrative segregation. In 2012 the Department of Homeland Security created the country's first dedicated protective custody unit for LGBT detainees.⁷ While creating new facilities for LGBT detainees is not optimal, it is better than putting them in solitary confinement or putting them in harm's way.

End the one-year filing deadline for asylum seekers and ensure standards: The one-year deadline to apply for asylum is arbitrary and has resulted in the denial of protections to thousands of otherwise legitimate asylum seekers. Because of the one-year ban, LGBT people are often forced to return to their home countries and risk persecution or death because of their sexual identity. Congress must repeal the one-year filing deadline and allow all people with a well-founded fear of persecution the right to asylum guaranteed by international law.

The Department of Homeland Security should also ensure that the training included in its LGBT refugee manual is implemented in practice. All too often asylees are at risk of having their cases dismissed if they do not conform to stereotypes about what it means to be a gay man or lesbian woman. All asylum adjudicators must ensure that they give each and every asylum seeker a fair hearing—one that is free of prejudice.

The LGBT-identified undocumented immigrant community

Like all undocumented immigrants, LGBT undocumented immigrants are all too often torn from their families by a broken and outdated immigration system that is harmful to our society, our economy, and our values. In this section we examine the demographic characteristics of this population, outline the particular vulnerabilities that LGBT undocumented immigrants face, and argue that providing a road map to earned citizenship is a critical component of advancing the economic and physical well-being of LGBT people in the United States.

Number of LGBT-identified undocumented individuals

According to research from the Williams Institute at UCLA, there are at least 267,000 LGBT undocumented adult immigrants in the United States today.⁸ An additional 637,000 LGBT adult immigrants have legal status. In other words, of the approximately 904,000 LGBT immigrants living in the United States today, 70 percent have legal status and 30 percent are undocumented. This roughly matches the breakdown of the entire foreign-born population, of which 72 percent are documented and 28 percent are undocumented.⁹

Two notes of caution: These calculations are inherently conservative and take into account under-reporting by self-identified LGBT undocumented individuals, particularly among people who are, as the Williams Institute points out, reluctant to identify as such.¹⁰ Thus, these total figures represent the lower-bound estimates of the true LGBT undocumented population in this country. Furthermore, the 267,000 immigrants figure includes only adult immigrants; it does not account for the undocumented immigrants under the age of 18 who identify as LGBT. Given these factors, it is likely that the number of undocumented immigrants who identify as LGBT is significantly higher than estimated.

According to research from the Williams Institute at UCLA, there are at least 267,000 LGBT undocumented adult immigrants in the United States today.

Demographic characteristics

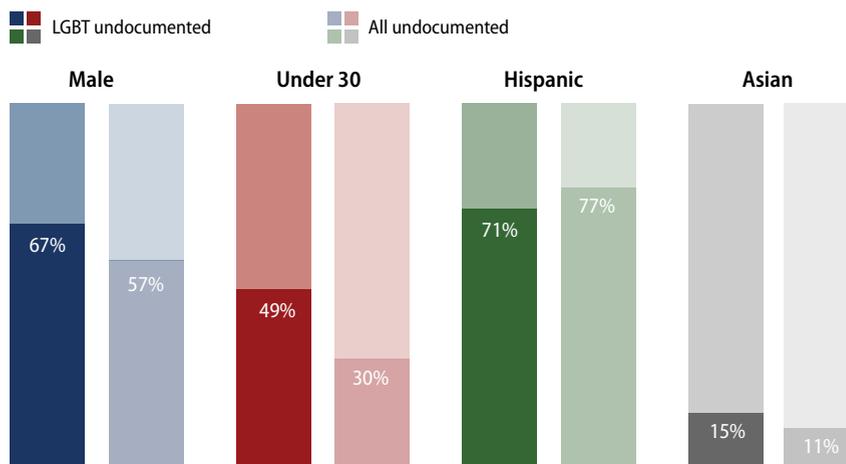
The Williams Institute found that 67 percent of LGBT-identified immigrants who are undocumented are men, and 33 percent are women. This figure represents a significant difference from the total undocumented population, which is 57 percent male and only 43 percent female, indicating that the LGBT-identified undocumented cohort is more likely to be male than the average undocumented immigrant.¹¹

The LGBT undocumented population is also younger than the general undocumented population. A full 49 percent of those who identify as LGBT and are undocumented are adults under the age of 30. That is well above the 30 percent of the total undocumented population that falls in this same age range. In fact, according to the Williams Institute, undocumented adult immigrant under age 30 are twice as likely as the broader undocumented immigrant population to identify as LGBT.¹²

Asian immigrants who identify as LGBT are the most likely to also identify as LGBT, with 3.6 percent of Asian undocumented immigrants reporting that they are also LGBT. Hispanic undocumented immigrants are next, with 2.5 percent identifying as LGBT. In terms of sheer population size, approximately 189,000 LGBT-identified adult immigrants are Hispanic—71 percent of all LGBT-identified undocumented adults—40,000, or 15 percent, are Asian or Pacific Islander, 22,600, or 8.5 percent, are white, and 15,400, or 5.8 percent, are black.¹³

Snapshot of LGBT-identified undocumented immigrants

The LGBT-identified undocumented population compared to all undocumented immigrants



Source: Gates, "LGBT Adult Immigrants in the United States."

- LGBT-identified undocumented immigrants are more likely to be male.
- LGBT-identified undocumented immigrants are younger.
- LGBT-identified undocumented immigrants are less likely to be Hispanic.
- LGBT-identified undocumented immigrants are more likely to be Asian.

Hardships and disparities facing LGBT undocumented immigrants

Undocumented LGBT immigrants face numerous challenges endemic both to their lack of immigration status and to their sexual orientation and gender identity. For those who are both LGBT and undocumented, this double minority status has compounding harmful effects on their social, economic, and psychological well-being that make them among our society's most vulnerable people.

Employment insecurity

Both undocumented and LGBT workers face employment insecurity and discrimination. Without legal status, undocumented immigrants are unauthorized to work legally in the United States; consequently, they are all too often exploited by their employers and have few avenues for recourse. Unauthorized immigrants in a National Employment Law Project national study had some of the highest rates of workplace and employment discrimination, with a full 85 percent of respondents reporting, for example, overtime rate violations. And because of their status, many undocumented immigrants are too fearful to come forward and report these violations.¹⁴ A comprehensive study from the Williams Institute found that LGBT people suffer from high rates of workplace discrimination based on their sexual orientation or gender identity.¹⁵ In another study, the National Center for Transgender Equality and the National Gay and Lesbian Task Force found that 90 percent of transgender people have experienced some form of harassment or mistreatment on the job, or report having taken some action such as hiding who they are to avoid it.¹⁶

Like undocumented immigrants who fear coworkers revealing their undocumented status to employers or immigration officials, LGBT workers similarly fear being “outed” on the job, based on a well-founded fear of discrimination and harassment should their coworkers or supervisors discover their sexual orientation or gender identity. And like undocumented immigrants, LGBT workers in general are not afforded the full range of protections necessary to shield them from employment discrimination. In a majority of states, for example, it is perfectly legal under state law to fire someone based on their sexual orientation or gender identity.¹⁷ Given the employment insecurities facing both LGBT and undocumented people, those that find themselves at the intersection of these two populations face extreme difficulties in finding and securing a job.

Income insecurity

Both undocumented immigrants and LGBT Americans face significant economic inequity. Undocumented immigrants have a median income that is \$14,000 less per year than the median household income for U.S.-born residents.¹⁸ And contrary to commonly held stereotypes, families headed by same-sex couples make on average \$15,500 less per year than families headed by opposite-sex couples.¹⁹ Children in both LGBT-headed families and households headed by undocumented parents are nearly twice as likely to be living in poverty as children in families headed by opposite-sex, U.S.-citizen parents.²⁰ Transgender people face an even more significant economic burden, with 15 percent of the population earning less than \$10,000 per year—a rate of poverty nearly four times that of the general population.²¹ While no data exist on the median household income of LGBT undocumented immigrants, the combination of the undocumented and LGBT statuses means that it is all but a certainty that this population's earnings are especially low.²²

Health insurance coverage gaps

Undocumented immigrants and LGBT people are more likely to lack sufficient health insurance coverage compared to the general population. In 2007, the year for which data are most recently available, more than half—59 percent—of adult undocumented immigrants did not have health insurance, compared to only 15 percent of people in the general population who were uninsured that same year.²³ Research from the Institute of Medicine shows that gay and lesbian adults are roughly twice as likely as the general population to be without health insurance coverage, and rates of insurance coverage are even lower for some populations of transgender and bisexual individuals—namely, individuals who are racial or ethnic minorities.²⁴ Undocumented immigrants are barred from accessing federal health care benefits, including the ability to purchase insurance through the exchanges set up by the Affordable Care Act.²⁵ This lack of coverage is largely why LGBT undocumented people often forgo medical treatment, and even when they do seek treatment, they face a significant financial burden when it comes to paying for that care.²⁶

Mental health disparities

A significant body of research from the National Center on LGBT Health shows that LGBT people suffer from worse health outcomes compared to the non-

LGBT population. According to the research, LGBT people are at greater risk for cancer, depression, and alcoholism, all of which are largely due to the stigma and minority stress associated with sexual orientation and gender identity-based discrimination.²⁷ Other studies reveal that immigrants are similarly at a high risk for negative health outcomes. Undocumented immigrants more frequently have jobs with higher occupational hazards, for example, which put them at greater risk of injury.²⁸ Children growing up in communities that have experienced detentions and deportations exhibit a range of mental health issues and express a constant fear that their loved ones will be taken from them—a fear that they carry with them as they develop and grow.²⁹ For both groups—undocumented immigrants and LGBT people—the overall lack of health insurance coverage compounds these health problems because it often means forgoing preventive care.

A road map to citizenship and further research

Many advocates in the LGBT movement are working to address the economic, social, and health-related disparities outlined above. The Human Rights Campaign, for example, recently released a comprehensive report, “Living Outside the Safety Net: LGBT Families and Social Security,” which calls on Congress to end the unequal practice of denying LGBT families full and equal access to Social Security benefits.³⁴ In another example, the National Center for Transgender Equality and the National Gay and Lesbian Task Force released a comprehensive report in 2011 that uncovered the extreme economic hardships and health disparities facing transgender people in the United States.³⁵ It is work such as this that has helped and will continue to advance the financial and physical livelihood of LGBT people and their families.

Building off of this important work, an immigration reform bill that includes a road map to earned citizenship is and should be a critical priority toward achieving equality for LGBT people. Passing comprehensive immigration reform that legalizes undocumented immigrants and provides them with a road map to citizenship will go a long way toward alleviating many of the burdens that come with undocumented status. Specifically, legalization will allow the 267,000 undocumented LGBT immigrants to find peace of mind in knowing that they and their families will not be torn apart by deportations, they will have the chance to earn higher wages, they will have greater access to health care and other social services, and their jobs will be more secure.

An immigration reform bill that includes a road map to earned citizenship is and should be a critical priority toward achieving equality for LGBT people.

Yenny: Fleeing from parental abuse, a DREAMer fights for reform

Yenny, 21, had a turbulent childhood in Peru. Her father, a policeman, subjected her to brutal abuse because she identifies as queer. At age 10, after enduring countless beatings, Yenny left her home in Peru and traveled to the United States, where her mother and younger brother would welcome her. Leaving Peru was bitter sweet for Yenny—yes, she was escaping years of violence at the hands of her father, but she was leaving behind her beloved grandmother, a woman she calls “her inspiration.”

Upon arriving in New York, Yenny encountered an uphill battle. The stress of her double minority status as undocumented and queer pushed her to think about taking her own life. Some friends and family rejected her because of her sexual orientation, while many employers were unwilling to employ her due to her undocumented status. Yenny felt her dream of someday becoming a social worker slipping away from her. What pulled Yenny out of the depths of despair and into action was learning of the tragic story of Joaquin Luna, an 18-year-old Texas DREAMer who committed suicide after leaving behind letters expressing anxiety about his undocumented status.³⁰

Understanding that she had to do something to bring her family, her community, and herself out of the shadows, Yenny joined the Queer Undocumented Immigrant Project in 2012. The initiative aims to build bridges between the immigration and the LGBT advocacy communities with the goal of securing equality on both fronts. Their priority in 2013 is to ensure that LGBT individuals and families are included in immigration reform.³¹



Yenny, bottom row fourth from left, and other Queer Undocumented Immigrant Project organizers at a strategy session in February 2013.

Yenny received legal status last year after applying for the Special Immigrant Juveniles Status, which provides foreign-born youth living in the United States who have been abused, abandoned, or neglected a chance to get a green card and remain in the country legally.³² With a green card in hand and the peace of mind that she will not be returned to her abusive father, Yenny hopes to fulfill her dream of traveling back to Peru to see her grandmother.

In the meantime, Yenny remains at the forefront of the effort to pass immigration reform that includes a roadmap to citizenship for the 11 million undocumented immigrants living among us, including her mother and brother. “If I don’t see my community and my family smiling, I’m not going to smile,” she says, her determination undeniable.³³

While it is impossible to put an exact dollar amount on the economic value of legalizing the nation's 267,000 undocumented LGBT immigrants, we do know from previous work that legalization and a road map to citizenship translates into higher wages. A 1996 U.S. Department of Labor study, for example, found that legalized workers under the Immigration Reform and Control Act made 15 percent higher wages within five years of legalization.³⁶ Likewise, University of Southern California economists Manuel Pastor and Justin Scoggins found that naturalized citizens make between 8 percent and 11 percent higher wages than legal permanent residents.³⁷ Legalizing LGBT immigrants and giving them a road map to citizenship will undoubtedly translate into more money in the economy, as higher wages lead to more spending on goods and services, which in turn helps businesses grow and hire more people. Higher wages also mean more tax revenue for federal, state, and local governments. Simply put, citizenship is good for both immigrants and the nation as a whole.

Still, discrimination and wage and health gaps among LGBT immigrants will persist even after legalization. Combating discrimination against workers based on their sexual orientation and gender identity—something that is legal in the majority of states—will require legislation such as the Employment Non-Discrimination Act, a bill that would make it illegal under federal law to discriminate against LGBT workers. And even if the LGBT undocumented population was given a roadmap to legalization, same-sex couples are still only afforded the rights and responsibilities of marriage in nine states.³⁸ Without adequate relationship-recognition laws, LGBT people—documented or undocumented—will continue to experience discrimination in accessing safety net programs and in the tax code, meaning that they will have to spend more of their income on things such as access to health care—which might otherwise be taken care of through the safety net—to reach parity with non-LGBT people.³⁹

More research is required to fully understand the experience of being both LGBT and undocumented. We only know so much about this population due to limitations on the data that are collected on people's legal status, sexual orientation, and gender identity. We must work to fill these research gaps so that advocates are better suited to address the economic, physical, and mental health issues of this vulnerable population—even after Congress passes immigration reform.

We turn next to specific immigration issues facing the undocumented LGBT community, beginning with issues facing LGBT families and then exploring issues facing LGBT migrants as they come into contact with the immigration-enforcement regime.

Challenges for LGBT families

LGBT families face specific challenges when it comes to family reunification. The federal government’s definition of family, for example, fails to recognize families headed by same-sex couples, barring them from receiving the same rights to reunification as other married couples. And when it comes to immigration enforcement, LGBT immigrant families face significant challenges—including the real possibility of family separation—if one partner is detained or deported.

The Defense of Marriage Act continues to tear binational couples apart

One of the primary foundations of U.S. immigration law is that families have the right to reunite, and that individuals should not have to choose between the people they love and the country they love. U.S. citizens, for example, can sponsor an immediate relative such as a spouse, a parent, or an unmarried minor child for legal permanent residency—a green card—outside of the caps placed on the number of visas issued. Within these numerical caps, U.S. citizens and legal permanent residents can sponsor a range of family members, including siblings and adult children. Fully two-thirds of the legal immigrants who have come to the United States since the 1960s have attained legal status through family-based immigration.⁴⁰

LGBT immigrants, however, face unequal treatment when it comes to family reunification. The Defense of Marriage Act defines marriage as the union between one man and one woman for the purposes of federal law. In doing so, the law bars the government from recognizing the legally valid marriages of same-sex couples. This means that for the purposes of immigration, U.S. citizens and legal permanent residents are unable to obtain a green card for their same-sex spouses or partners through family-based immigration preferences.⁴¹ And because spouses of citizens and legal permanent residents can apply for citizenship after only three years, rather than the normal five-year naturalization wait period, even those LGBT immigrants who are able to gain a visa in another manner—often under

Individuals should not have to choose between the people they love and the country they love.

categories such as employment-based visas—are unable to take advantage of the shorter path to full citizenship accorded to other married immigrants.⁴²

Sadly, thousands of families remain at risk of being senselessly separated when a same-sex foreign-born spouse or partner is deported. In updated figures from its November 2011 report, “Same-sex Couples and Immigration in the United States,”⁴³ the Williams Institute estimates that there are approximately 32,300 binational same-sex couples—in which one spouse or partner is a native-born U.S. citizen and one is a noncitizen—residing in the United States today.⁴⁴

While it is not possible to estimate the exact proportion of the 24,700* binational same-sex couples that include an undocumented immigrant, we do expect that a significant portion of these couples would secure a legal status through the passage of an immigration reform bill that provides a road map to legal status for undocumented immigrants. Still, for those binational couples in which the nonresident is either in the United States on a temporary visa or still living abroad, the legalization provisions of immigration reform will offer no chance for family reunification.

Losing talented Americans and immigrants

Our nation’s discriminatory immigration policies impose significant economic and emotional harm on binational same-sex couples. Couples such as Lisa and Deb, profiled below, must spend down their life savings on legal fees, plane tickets, and moving expenses simply to be with one another. Equally unfair is that binational same-sex couples must endure the indignity of being told by their government that their relationship is not worthy of equal treatment.

The harm caused by the inability to sponsor a same-sex spouse or partner for residency, however, goes beyond the immigrants themselves. In many cases, U.S. citizens—even those who are native born—are forced to leave the country because their same-sex spouses cannot secure a visa. In this way, the spousal sponsorship issue is an impediment to our economic competitiveness. Because of this discriminatory policy, talented doctors, engineers, and scientists are denied family-based immigration visas and are sent back to—or must remain in—their home countries. When this happens, the United States loses out on critical sources of talent that help it remain competitive. For these reasons, a broad coalition of businesses—from American Airlines to Nike to Bain & Company to Pfizer—has publicly opposed the discriminatory treatment of binational same-sex couples.⁴⁵

Lisa and Deb: The face of our nation's discriminatory immigration policies



Lisa and Deb

“It was like love at first sight,” says Lisa, recalling when she first met Deb in New York six years ago. Although Deb—who was visiting the United States on a tourist visa—lived in Scotland and Lisa lived in New York City, the couple decided to make the international relationship work by flying back and forth between their two countries. But after a while, the committed couple recognized that the travel was unsustainable

and that it was time to move in together. As Lisa says, “You can’t go on like that forever.”

While both women wanted to reside in the United States—where Lisa worked as a doctor and Deb was a highly sought-after decorative artist—the Defense of Marriage Act prohibited Lisa from sponsoring Deb for residency, a right that would have been afforded to the couple if they were heterosexual. Torn between the country she loved and the woman she loved, Lisa ultimately made the decision to leave the United States and move to Scotland so that she and Deb could be together.

The inability to sponsor Deb for residency imposed a significant emotional and financial toll on the couple. Having left her stable job as a doctor, Lisa had to spend down her retirement savings to pay for legal fees, moving expenses, and flights simply to be with her partner. Furthermore, Lisa would only be able to practice medicine in the United Kingdom as a specialist registrar, the equivalent of a resident or trainee doctor in the United States. If Lisa wanted to work as a fully

trained and accredited doctor in the United Kingdom, she would be required to retrain for four additional years—training that she had already received as a postgraduate in the United States.

But the harm was not limited to just Lisa and Deb. Lisa’s inability to sponsor Deb for permanent residence had a ripple effect that went far beyond the couple. In New York City Lisa estimates that she served between 2,000 and 3,000 clients a year in a high-volume health clinic that largely worked with the LGBT community and HIV-positive patients. Her departure from the United States has meant that thousands of vulnerable individuals lost a caring and highly skilled clinician. Lisa’s plight also highlights the broader economic harm of this policy. As Lisa notes, the couple would have bought a car and a house—among many other goods and services—and paid taxes if they had been allowed to remain in the United States.

Four years later, Lisa and Deb now live in Cambridge, Canada, where their relationship is fully recognized and Lisa is able to practice medicine. For many couples, the sacrifices and hardships involved in moving, making new friends, and leaving parents behind—as well as those suffered through lost income and the inability to find a permanent place to settle down—would have been insurmountable. But as Lisa says, “It was never an option to lose the relationship.”

Lisa and Deb keep hope alive that one day U.S. policymakers will act so that they and other international couples like them can have the opportunity to live as a committed couple together in the United States if and when they so choose.⁴⁶

Stalled family unification

The right of families to be together is one of the key foundations of our nation's immigration policy, and yet there are currently more than 4 million people backlogged in the immigration system and waiting for a visa. In some cases, the waiting times are decades long. Under current U.S. immigration law, no country can receive more than 7 percent of all green cards in a year—a policy that treats Mexico and Luxembourg the same even though they are equal in neither size nor circumstance. Certain countries with large populations—in particular, Mexico, India, China, and the Philippines—have particularly long backlogs: The siblings of Filipino immigrants, for example, would have to have applied before July 15, 1989—more than a 23-year wait—to receive a green card in March 2013. Adult children of legal permanent residents from Mexico would have to have applied prior to March 15, 1993—a 20-year wait.⁴⁷ These arbitrary backlogs are difficult on all groups, but they are particularly difficult on the LGBT undocumented population, which comprises a higher percentage of Asian immigrants—and consequently some of the longest backlogs—than the general undocumented population.⁴⁸

Family separation

In addition to binational couples, undocumented and LGBT communities are confronted with significant burdens when it comes to family life in the United States. Undocumented immigrants face a constant fear of being torn away from their family members through detention and deportation. Even though two-thirds of undocumented immigrants have been in the country for more than a decade—and an even higher percentage live in families with children that are among the native born—their length of residency and familial status offers them little security from immigration enforcement.⁴⁹ The Obama administration has set a new record for deportations, having removed more than 400,000 people per year, including more than 200,000 undocumented parents of U.S. citizens between July 2010 and September 2012 alone.⁵⁰ The Applied Research Council estimates that 5,100 citizen children of undocumented immigrants currently live in foster care because their parents have been detained or deported.⁵¹ The economic strain and emotional pain that separation causes immigrant families cannot be overemphasized.

LGBT families face a particularly high risk of having their children taken from them and placed in foster care after a detention or deportation. Child welfare

The Applied Research Council estimates that 5,100 citizen children of undocumented immigrants currently live in foster care because their parents have been detained or deported.

systems in many states already often funnel children of same-sex parents into the foster care system under the deeply flawed assumption that the system is better equipped to support the development of that child than loving same-sex parents. If a same-sex partner is detained or deported, even in cases where the other partner is a U.S. citizen or legal permanent resident, there is a strong chance that prejudices in the system and a lack of relationship recognition will lead to their children being taken from them.⁵² More research is needed to understand how many families face this situation.

Administrative action to protect LGBT families from deportation

Over the past few years, President Barack Obama has taken significant action to halt deportations of binational same-sex couples, though more can be done. In 2011 the Department of Homeland Security issued prosecutorial discretion guidelines that refocused government resources on removing those immigrants who pose a threat to public safety or national security—instead of law-abiding individuals. In line with this policy, the Homeland Security guidelines instruct immigration officials to halt the deportations of individuals with significant “family relationships” in the United States, and the Department later clarified that family relationships include “long-term same-sex partners.” This move represented the first time the Obama administration put in writing a policy that protects gay and lesbian couples that are threatened with deportation and family separation.⁵³

Still, with evidence that prosecutorial discretion is not being implemented well or uniformly—indeed, in the first year of the program, less than 2 percent of immigration cases reviewed by the Obama administration under the policy actually received prosecutorial discretion—it is very likely that the policy is not doing enough to protect LGBT undocumented families.⁵⁴ Immigration reform that includes legal status and eventual citizenship for all undocumented immigrants living in the country would go a long way toward ensuring that the 267,000 undocumented LGBT immigrants do not see their families separated. Even if immigration reform fails to pass, however, the administration can take additional steps to protect this population such as expanding programs to cover LGBT families. It can expand, for example, the Deferred Action for Childhood Arrivals program, which allows undocumented youth to receive a two-year reprieve from deportation and a work permit.⁵⁵

Immigration enforcement and the LGBT undocumented population

The issues facing the LGBT immigrant population go beyond those that could be covered under an inclusive immigration reform bill—even one that provides a road map to citizenship and includes the Uniting American Families Act. Even with immigration reform, some people will inevitably come into contact with the immigration-enforcement system, including individuals who are LGBT.

This section looks at two of the critical enforcement issues facing the LGBT immigrant community. First, we examine how the U.S. detention system fails to provide an adequate level of safety and care to LGBT immigrants, who all too often experience discrimination, harassment, and physical sexual violence while in detention. Second, we examine the particular obstacles that LGBT asylum seekers face when seeking refuge from countries that persecute them based on their sexual orientation or gender identity.

LGBT detainees: Unique obstacles and challenges

Among the main consequences of our broken immigration system is the rise of immigration detention. Undocumented immigrants, asylum seekers, and even individuals with minor visa violations are among the thousands of people who are funneled into a decentralized system of privately run prisons, county jails, and federal facilities every year.⁵⁶ According to the Global Detention Project, the United States possesses the largest immigration detention system in the world.⁵⁷ In 2011 immigration officials placed 429,000 individuals in immigration detention centers across the United States, and over the past decade, a total of 3 million people have spent time in immigration detention.⁵⁸

Detention centers all too often foster less than humane conditions for detainees, who lack access to legal counsel, experience discrimination and harassment at the hands of detention officials and other detainees, are transferred without notice away from their families, and are denied a basic level of health care while in deten-

According to the Global Detention Project, the United States possesses the largest immigration detention system in the world.

tion. The failure of our detention systems to provide an adequate level of safety and care to detainees is a problem for all immigrants. But LGBT immigrants may be especially impacted by the inhumane conditions of detention.

Though it is not possible to make precise estimates, of the over 400,000 men, women, and children that Immigration and Customs Enforcement detains each year, thousands are LGBT. And because many asylum seekers—40 percent of the entire immigrant detention population—are placed in mandatory detention while they await an asylum hearing, a significant number of LGBT asylum seekers languish in detention facilities each year.

Discrimination, harassment, and physical violence

When LGBT immigrants end up in mandatory detention facilities, they experience some of the worst forms of discrimination, harassment, and mistreatment, as well as denial of basic health care. These immigrants are sadly targeted for mistreatment because of their sexual orientation and gender identity. The National Immigration Justice Center points to clients such as Juan⁵⁹—a detainee who was sexually assaulted by two other detainees in part “because of his perceived effeminacy”—as an example of the mistreatment faced by LGBT immigrants in detention. According to the National Immigration Justice Center, “Despite repeated requests for a transfer to another facility because he feared for his safety [Juan] was not transferred until three months after the incident.” And among the remedies suggested at the Otero County Detention Center in New Mexico where Juan was being held, one guard “told him publicly, ‘Walk like a man, not like a gay man’”—as if that would stop Juan’s abuse.⁶⁰

Transgender detainees experience perhaps the worst forms of mistreatment. They are all too often misplaced in housing that is discordant with their actual gender identity. Transgender women, for example, are placed in male detention housing, and transgender men are placed in female detention housing. Because of this misplacement, transgender detainees are particularly vulnerable to physical and sexual victimization. This is especially true for transgender women who are incorrectly placed in male housing and subjected to invasive strip searches by male officers. According to one study from the University of California Irvine, sexual assault is 13 times more prevalent among transgender detainees than among the prison population as a whole, with fully 6 in 10 transgender detainees reporting being sexually assaulted by a detention official or another detainee.⁶¹

Of the over 400,000 men, women, and children that Immigration and Customs Enforcement detains each year, thousands are LGBT.

One detainee's story: Bamby Salcedo



Bamby Salcedo

While living in her home country of Mexico, Bamby was regularly beaten, sexually abused, and even incarcerated because she was transgender. Bamby came to the United States in 1985 at the age of 17 seeking asylum from persecution based on her gender identity. After making her claim in 2005, immigration officials placed Bamby in a U.S. detention facility while she waited for her asylum claim to be adjudicated.

While in detention, Bamby continued to experience discrimination, mistreatment, and physical violence based on her gender identity, much of it due to the fact that she was placed in male housing. Immigration officials failed to recognize that putting her in male housing would put her in danger of harassment and abuse at the hands of the other detainees. Bamby recalls being forced to shower alongside approximately 10 men, who according to Bamby, “laughed, some made hateful comments, and yelled out sexual remarks. It was completely embarrassing, degrading, and scary.” In one instance, a male detainee attacked her while she was in the bathroom and ended up fracturing her nose, among other injuries.

After being assaulted, Bamby was placed in administrative segregation (otherwise considered a punishment akin to solitary confine-

ment) in an effort to protect her from physical and sexual victimization while in detention. As Bamby notes, most people are put in administrative segregation for misbehaving, but “as transgender people, we are placed in that unit because of who we are.”

Bamby's story also illustrates the pitfalls of the arbitrary one-year deadline in immigration law. With little knowledge of U.S. law, Bamby did not know that she had to file for asylum prior to the one-year anniversary of her arrival within the United States. Asylum seekers filing after one year have to prove “extraordinary circumstances” which caused them to miss the one-year deadline.⁶² With no such circumstances, Bamby was unable to secure asylum.

Luckily, Bamby was granted “withholding of removal” status, which means an immigration judge determined that Bamby would be extremely likely to experience persecution if deported back to Mexico. Her new status means that she will not be deported, but it leaves her in legal limbo: withholding of removal status grants no right to apply for residency, a right that is conferred to individuals who have been granted asylum in the United States.

Bamby is just one of the many LGBT detainees and asylum seekers who face unique hardships and often insurmountable obstacles when encountering the immigration system. Even through these challenges, Bamby has been able to make a life for herself in America. She is now an advocate for her community, serving as President of the TransLatin@ Coalition.

Segregation

In an effort to ensure the safety and care of detainees, Immigration and Customs Enforcement officials often opt to place LGBT detainees in administrative segregation rather than place them alongside other detainees, where they may be at increased risk for mistreatment. While detention personnel may be acting in what they consider to be the best interests of detainees, administrative segregation is otherwise considered a punitive measure similar to solitary confinement.⁶³

LGBT detainees in administrative segregation can be kept in total isolation for up to 23 hours a day without access to library resources, outdoor recreation, or legal services that are otherwise available to detainees. Segregating LGBT detainees heightens a sense of helplessness and fosters depression, increasing the risk of self-harm. Administrative segregation also imposes limits on when and for what length of time detainees can visit with loved ones. While immigration officials may segregate LGBT detainees to protect them from potentially violent detainees, this policy clearly falls short, perpetuating the unequal treatment of detained LGBT immigrants.⁶⁴

LGBT detainees in administrative segregation can be kept in total isolation for up to 23 hours a day.

HIV-positive detainees denied health care

U.S. detention centers do a woeful job of providing a basic level of health care to detainees. In particular, HIV-positive detainees are among those who are systemically denied medication, refused access to mental health services, and given substandard health care from personnel while in state and local jails, private detention facilities, and publically run detention centers.⁶⁵

HIV-positive detainees face a number of obstacles in accessing life-saving drugs and treatments necessary to prevent the spread of the virus while in detention. In numerous instances, HIV-positive detainees have been denied medication such as antiretroviral drugs that suppress HIV and stop the progression of the HIV disease. Due to overcrowding and unsanitary detention conditions, many HIV-positive detainees acquire infections while in immigration custody but fail to receive proper treatment due to a lack of specialized medical care within the facility. Victoria Arrelano, a 23-year-old transgender HIV-positive immigrant, died in custody in a San Pedro detention center in 2007 after being denied essential medical care to treat her AIDS.⁶⁶ HIV-positive detainees such as Arrelano have also been denied medication and life-saving treatments even when they had access to and relied upon those medications and treatments prior to arriving in deten-

tion.⁶⁷ For these detainees, the denial of medication poses a significant threat to their health and longevity as people living with HIV.

Transgender detainees denied medically necessary services

Transgender detainees are denied a host of medically necessary services. Many transgender individuals who relied upon hormone therapies prior to their detention are denied access to those treatments—even though groups such as the American Medical Association and the American Psychological Association have affirmed that hormone therapy can be a medically necessary treatment for what is known as gender identity disorder.⁶⁸ While the terminology of “disorder” is increasingly outdated, it describes the significant mental, emotional, and physical stress that transgender people experience when their outward sex conflicts with their inward sense of gender. Mirroring discrimination in health care that transgender people experience even outside of detention—such as outright denial of care—transphobic medical personnel may deny transgender detainees adequate health care, meaning that the medical needs of transgender detainees—whether a bout of the flu, a broken bone, or cervical cancer—all too often go unmet. And even if medical personnel are required to treat a detainee, it is possible that they may deliver suboptimal care—a form of medical-care discrimination transgender people also experience outside of detention.

For both HIV-positive and transgender detainees, these problems are compounded when detainees are transferred between detention facilities, which occurs frequently and often without notice. When this happens, detainees’ medical care is often interrupted, and they may go days without receiving any medication—or they may be transferred to another facility where that treatment and care is denied. For example, an HIV-positive patient may be given access to a daily regimen of antiretroviral medication at one facility—one that rightly serves the basic health care needs of its detainees—but he or she may be denied those drugs at another facility.

President Obama has acted to help LGBT detainees

Over the past four years, the Obama administration has instituted a number of reforms to the immigration detention system to make it more humane, safe, and

fair for immigrant detainees. Two of those reforms in particular have had a positive impact on addressing the specific problems and needs of LGBT detainees.

First, in March 2012 the Department of Homeland Security released new detention standards—titled “Performance-Based National Detention Standards”—that aimed to improve the treatment and condition of LGBT detainees. These standards contain a number of significant guidelines to help detention personnel identify LGBT detainees that are at a high risk for mistreatment—for example, recognizing that transgender individuals are especially vulnerable to discrimination and denial of medical services.⁶⁹

To mitigate mistreatment, the standards require that strip searches of transgender detainees be conducted in private and allow transgender immigrants to continue to receive medically necessary hormone therapy if they received it prior to being detained. Under these standards, immigration officials must not determine a transgender detainee’s housing based solely on their physical anatomy and instead house detainees in accordance with their gender identity. Importantly, the new detention standards also recognize the need to provide adequate health care to detainees living with HIV. This includes ensuring that “all FDA medications currently approved for the treatment of HIV/AIDS are accessible” to HIV-positive detainees.⁷⁰

In addition to these new standards, the Obama administration has taken further action to prevent the sexual abuse of detainees, including those who are LGBT. As part of the Prison Rape Elimination Act of 2003, the Department of Homeland Security issued a final rule in December 2012 that proposes standards for officials to be trained to prevent, detect, and respond to sexual abuse and assault in detention facilities. This training includes teaching officials “how to communicate effectively and professionally with detainees, including gay, bisexual, transgender, intersex, or gender nonconforming detainees.”⁷¹ The rule also says that detention facilities should consider whether an inmate’s sexual orientation or gender identity puts them at risk for sexual victimization, taking appropriate action to prevent abuse. This rule—like the 2012 Performance-Based Standards—should be closely monitored to ensure it is fully implemented.⁷²

LGBT asylum seekers: Unique obstacles and challenges

Under the U.N. Convention on the Status of Refugees, individuals with a well-founded fear of persecution must be granted the right of asylum in other countries.⁷³ In 1994 the U.S. government recognized persecution based on sexual orientation as grounds for attaining asylum status, and since that time it has included persecution based on gender identity.⁷⁴ Even so, LGBT asylum seekers face specific challenges in the United States because of their sexual orientation and outdated standards for protection.

Nearly 80 countries have laws that in some way criminalize people who are LGBT. In five of those countries—Iran, Mauritania, Saudi Arabia, Sudan, and Yemen—the punishment for violating such laws is death. In addition to persecution codified in government laws, repressive societies may also threaten the safety of LGBT people when their sexual orientation or gender identity does not conform—or is not seen as conforming—to prevailing cultural, political, or social norms. Many homophobic and transphobic societies fail to provide adequate medical health care for individuals who are HIV-positive because of their sexual orientation and gender identity.⁷⁵

In both cases, the livelihoods of LGBT people are at stake, as they risk losing their job, face criminal penalties and imprisonment, are subject to medical abuse, and face the threat of honor killings or execution based on their sexual orientation or gender identity. As a result, many LGBT individuals have fled their home countries—and the human rights abuses within them—in search of countries that are safer and offer a more tolerant environment for LGBT people.⁷⁶

Since one's sexual orientation and gender identity is not always readily apparent, LGBT asylum seekers are at risk of having their cases dismissed because they fail to conform to stereotypes about what it means to be a gay man or lesbian woman. In one particular case documented by Immigration Equality, a leading organization working with LGBT asylum seekers, an Albanian lesbian who had been threatened with gang rape to “cure” her of her lesbianism was denied asylum

because she was young, attractive, and single.⁷⁷ In cases such as this one, nonfeminine gay men and nonmasculine lesbian women have been denied asylum and deported back to their home country because they failed to conform to stereotypes of what it is to be a gay man or lesbian woman.

The one-year ban on asylum seekers is especially problematic for LGBT people

U.S. immigration law dictates that asylum seekers must file for asylum within one year of entering the United States. This arbitrary filing deadline has prevented many individuals from seeking affirmative asylum relief, and consequently, it has resulted in the denial of asylum protections to thousands of otherwise legitimate refugees. In fact, one study conducted by the National Immigrant Justice Center, Human Rights First, and Pennsylvania State Law's Center for Immigrants' Rights, found that in approximately 46 percent of cases where the filing deadline is an issue, it is the only reason cited by the Board of Immigration Appeals as justification for denial of asylum.⁷⁸

Like all immigrants, far too many LGBT people are denied asylum based on this technicality. After years of living in societies that ask LGBT people to suppress their sexual orientation and gender identity, LGBT asylum seekers in the United States may not immediately come to terms with their identity. Immigration judges and asylum officers all too often fail to fully grasp the psychological aspects of enduring systematic trauma and repression and of being forced to flee a country as a result of one's sexual orientation or gender identity.⁷⁹ Developing a sense of one's own sexual orientation or gender identity is an intensely personal and sensitive issue. Because of the one-year ban, LGBT people are often forced back to their home countries, where their lives are literally at risk because of persecution based on their sexual orientation or gender identity.

Like all immigrants, far too many LGBT people are denied asylum based on [a] technicality.

President Obama has taken steps to address issues facing LGBT asylees

The Obama administration has taken a number of steps to address the unique difficulties that LGBT refugees experience when articulating their claims for asylum. In the fall of 2011, the Department of Homeland Security created a training module on LGBT issues that is mandatory for all officers adjudicating refugee and asylum claims. This module, called "Guidance for Adjudicating LGBTI Refugee

and Asylum Claims,” was developed after two years of coordinating between U.S. Citizenship and Immigration Services and Immigration Equality, the premier organization dedicated to achieving full equality for LGBT immigrants.⁸⁰

This comprehensive guide for immigration officials lays out the appropriate terminology and questions to ask when discussing the deeply personal issue of a refugee’s sexual orientation or gender identity. The manual also instructs immigration officials not to rely on stereotypes of gay and lesbian individuals and includes specific examples of harm that may constitute persecution of LGBT people, as well as a nonexhaustive list of possible one-year filing-deadline exceptions that may apply for LGBT people, including recently “coming out” as LGBT.

When serious harm, gang rape, and even death are distinct possibilities that could result from persecution in one’s home country based on one’s sexual orientation or gender identity, it is critical that the United States remains a beacon of freedom and tolerance for all people with a well-founded fear of persecution, including individuals who are LGBT.

Recommendations

This report has illustrated many of the issues and burdens facing the nation's approximately 267,000 LGBT undocumented immigrants. Beyond simply knowing the number of people who fall in this category, more research is needed both in terms of the types of obstacles and hardships they experience, as well as the policies that Congress and the administration can adopt to lessen those obstacles and hardships. With that caveat, we make the following recommendations to alleviate the burdens facing undocumented LGBT-identified immigrants:

Pass immigration reform, that:

Includes a path to citizenship: Legalizing the at least 267,000 undocumented immigrants who identify as LGBT and providing them with a roadmap to citizenship would give them the legal certainty that they will not be torn away from their families and communities, would give them the ability to work legally and earn higher wages, and would allow them the opportunity to become full and equal members of society.

Ends discrimination against binational same-sex couples: Including the provisions of the Uniting American Families Act in immigration reform would finally give U.S. citizens and permanent residents in same-sex couples the ability to sponsor their loved one for family-based immigration. If passed, the law would not only extend sponsorship rights to U.S. citizens and residents with same-sex spouses, but also those with committed same-sex partners, which is important considering that same-sex couples cannot marry in 41 states. For this reason, the Uniting American Families Act will be necessary even if Congress or the courts repeal the Defense of Marriage Act, the discriminatory law that prevents these couples from accessing family-based immigration preferences afforded to all other couples.

Fixes and protects family-based migration: On top of ensuring that LGBT immigrants are included in family reunification, immigration reform must do more to

fix and protect the family preference system. The over 4 million people stuck on backlogs waiting for a family visa must be granted a quick and reasonable path to reunification. Potential fixes include the Reuniting Families Act, which would, among other things, recapture visas that are lost to bureaucratic delay by allowing unused visa slots from one year to carry over into the next, and raise the per-country limits that restrict any one sending country to only 7 percent of all yearly visas (thus treating Mexico and Luxembourg equally, as if they were equal in size and circumstance.)⁸¹

Grants young people access to education and citizenship: Including the provisions of the DREAM Act in immigration reform would put thousands of undocumented LGBT youth on an expedited roadmap to citizenship, giving them the ability to reach their full potential even sooner. Those who entered the United States prior to age 16 and are currently under the age 35 would be able to earn their citizenship by completing high school, and some college or U.S. military service.

Repeal the federal Defense of Marriage Act

One of the many reasons that Congress and the Supreme Court need to repeal the Defense of Marriage Act is to ensure that the government treats all families equally under existing immigration law. Congress can and should swiftly pass the Respect for Marriage Act, which would legislatively repeal the Defense of Marriage Act. Alternatively, in *United States v. Windsor*, a case currently pending before the Supreme Court, the Court could strike down the section of the law that denies federal benefits and protections to same-sex couples. The repeal of the Defense of Marriage Act would then allow the federal government to treat all families equally for the purpose of family-based immigration.

Modify detention and asylum standards to address the issues facing the LGBT-identified community

Implement and vigorously enforce existing standards: Over the past four years the Department of Homeland Security has issued guidance, rules, and regulations that promote the safety and wellbeing of LGBT detainees. The department has taken similar administrative actions to ensure that LGBT asylum seekers are treated with dignity and given a fair asylum hearing. While these policies are

significant steps forward on paper, the Obama administration must work to implement and enforce them in practice.

To reform detention standards, the administration should:

- Provide sensitivity training on a regular basis to detention staff working with LGBT detainees and create oversight to ensure compliance
- Ensure that detention staff understand their role in preventing, detecting, and responding to physical and sexual abuse of LGBT detainees
- Investigate allegations of abuse, discrimination, neglect, denial of medical services, and violence against detainees, including those who are LGBT
- Revoke the contracts of and funding for detention centers that fail to adequately implement and enforce these standards
- Provide increased access to legal services for people in detention, including those who are LGBT

Pass the Detainee Basic Medical Care Act: The Detainee Basic Medical Care Act would fill significant gaps in the detention health care system that have resulted in substandard medical treatment and even deaths among immigrant detainees. The proposed law contains a provision that requires immigration officials to ensure that immigrants continue to have access to medications prescribed prior to their detention, including those for transgender and HIV-positive detainees. Second, this bill gives immigration detainees with serious medical or health care conditions priority consideration for release on parole, on bond, or into an alternate to detention program, which again will benefit transgender and HIV-positive detainees. Third, and perhaps most importantly, by providing a basic floor of medical care to detainees this proposal would help to address the significant health issues and inequities facing the LGBT undocumented population.⁸²

Expand the use of alternatives to detention: To protect the most vulnerable detainees from mistreatment, particularly LGBT detainees, policymakers should consider alternatives to traditional detention such as house arrest or ankle monitors. These are commonsense cost-saving solutions that would advance the twin goals of monitoring the undocumented and protecting the most vulnerable

detainees from avoidable mistreatment. In fact, detentions cost taxpayers \$122 per day or more, while alternatives to detention can cost as little as \$12 per day, a savings that allows the detainee to remain with their family and community.⁸³

Another alternative to traditional detention for LGBT detainees includes creating special facilities that separate LGBT detainees from others in detention without placing them into administrative segregation. In 2012 the Department of Homeland Security created the country's first dedicated "protective custody unit" for LGBT detainees.⁸⁴ While creating new facilities for LGBT detainees is not optimal, it is better than putting LGBT detainees in solitary confinement or to putting them in harm's way.

End the one-year filing deadline for asylum seekers and ensure standards: The one-year deadline to apply for asylum is arbitrary and has resulted in denying protections to thousands of otherwise legitimate asylum seekers. Because of the one-year ban, LGBT people are often forced to return to their home countries and risk persecution or death because of the sexual identity. Congress must repeal the one-year filing deadline and allow all people with a well-founded fear of persecution the right to asylum guaranteed by international law.

The Department of Homeland Security should also ensure the training included in its LGBT refugee manual is implemented in practice. All too often asylees are at risk of having their cases dismissed if they do not conform to stereotypes about what it means to be a gay man or lesbian woman. All asylum adjudicators must ensure that they give each and every asylum seeker a fair hearing, free of prejudice.

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