



U.S. Immigration  
and Customs  
Enforcement

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MEMORANDUM FOR: Assistant Directors  
Deputy Assistant Directors  
Field Office Directors  
Deputy Field Office Directors  
Assistant Field Office Directors  
ICE Health Service Corps

FROM: Thomas Homan  
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SUBJECT: Further Guidance Regarding the Care of Transgender Detainees

Purpose

This memorandum provides further guidance regarding the placement and care of transgender adult detainees in the custody of U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO).

Background

This guidance complements existing ICE detention standards, ICE Policy 11062.2: Sexual Abuse and Assault Prevention and Intervention (SAAPI) (May 22, 2014), and the requirements of the U.S. Department of Homeland Security (DHS) regulation titled, "Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities," 79 Fed. Reg. 13,100 (Mar. 7, 2014), hereafter DHS PREA Standards. The security and safety of ERO employees, detainees, detention staff, and members of the public are paramount in the exercise of this guidance.

As in all cases, if an individual is not subject to the requirements of mandatory detention, Field Office Directors (FODs) should continue to consider whether the use of detention resources is warranted for a given individual and shall consider, on a case by case basis, all relevant factors in this determination, including whether an individual identifies as transgender. While the FODs may exercise prosecutorial discretion at any stage of an enforcement proceeding, it is generally preferable to exercise such discretion, if warranted, as early in the case or proceeding as possible.

*cited in Avendano - Hernandez v. Lynch  
No. 13-73744 archived on September 30, 2015*

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ICE ERO will provide a respectful, safe, and secure environment for all detainees, including those individuals who identify as transgender. Discrimination or harassment of any kind based on a detainee's actual or perceived sexual orientation or gender identity is strictly prohibited. Moreover, ICE ERO reaffirms its commitment to provide effective safeguards against sexual abuse and assault for all individuals detained in ERO custody.

### 1. Data Systems and Form I-213

- a. ERO Law Enforcement Systems and Analysis (LESA), in consultation and collaboration with other relevant ICE and ERO components, is directed to update, to the extent practicable, all appropriate data systems (including, but not limited to, EAGLE, EARM, and other systems that receive data from ERO-related data systems for statistical, medical, or other purposes) to: (1) capture a detainee's "Biological Sex" or "Sex" (*See* Attachment 1: Definitions) as Male, Female, Intersex, or Unknown (*Note*: data systems should not use the category or header of "Gender" to capture and record a detainee's "Sex"); and (2) add a data field, which may be in the form of a check-box, to record if the detainee identifies as "Transgender." ERO LESA should also ensure that the identification of "Transgender" appears conspicuously on the Form I-213 "Record of Deportable/Inadmissible Alien" when printed.

### 2. Initial Processing

- a. During the initial processing of an individual taken into ERO custody, the FOD, or his/her designee, shall ensure ERO personnel record a detainee's "Biological Sex" or "Sex" as Male, Female, Intersex, or Unknown on the Form I-213 and within applicable data systems.
- b. In those circumstances during initial processing when a detainee: (1) self-identifies as transgender or otherwise identifies with a gender different from that which corresponds with his or her biological sex (e.g., a biological male who identifies as a woman); or (2) responds affirmatively during Risk Classification Assessment (RCA) module screening that he or she may be at an elevated risk in a detention setting because of his or her actual or perceived gender identity and/or gender expression, the FOD shall ensure ERO personnel ask if the detainee would like to formally disclose his or her gender identity.
- c. The following script is appropriate, but not required, for use by ERO personnel in these circumstances and should be communicated in a language and manner the detainee can understand:

*Do you wish to disclose your gender identity (please note you are not required to disclose information about your gender identity which you are not comfortable sharing)?*

If the detainee answers affirmatively, ERO personnel should then ask:

*Do you identify as a man, a woman, or as transgender?*

If the detainee indicates he or she self-identifies as transgender, or has a gender identity different from his or her biological sex, ERO personnel shall record the initial determination in the appropriate data systems.

- d. If the individual identifies that he or she is transgender, the same should also be noted on the Form I-213 and the Form I-213 should indicate any other information he or she disclosed related to his or her gender identity.
- e. When processing an individual who identifies as transgender, ERO personnel should be aware that he or she may:
  - i. Exhibit a gender expression (i.e., external and objective manifestations of gender, such as, but not limited to, one's preferred name, pronouns, clothing, makeup, haircut, behavior, voice, or body characteristics) that appear to indicate a gender different from the sex listed on the detainee's identity documentation.
  - ii. Carry official documentation, including medical documentation, recognized by ICE officials or a government entity (local, state, or federal) that indicates a gender identity different from the detainee's biological sex or lists the detainee's gender identity as transgender.
  - iii. Possess prescription medication (e.g., hormones), as verified by a qualified medical professional, that indicates a gender identity different from the detainee's biological sex.
- f. The detainee shall not be disciplined for refusing to answer any gender identity-related questions during processing, for not disclosing complete information in response to questions asked about gender identity, or for falsely reporting that he or she is not transgender.
- g. If at any time during initial processing ERO personnel determine additional privacy is needed to further address issues, questions, or answers referenced above with the detainee, the FOD, to the extent practicable, shall ensure ERO personnel make appropriate accommodations (such as using an office or unoccupied holding cell) to converse with the detainee in private.
- h. Pursuant to the DHS PREA Standards, the FOD shall ensure sensitive information, such as a detainee's gender identity, is not used to the detainee's detriment by ICE personnel or detention facility staff or other detainees, is not shared with other detainees, and is not shared with others who do not have a need to know the information.



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- i. Pursuant to the DHS PREA Standards, searches shall be conducted in a professional and respectful manner, and in the least restrictive manner possible, consistent with security needs. At no time shall any search be conducted solely for the purpose of determining a detainee's biological sex.

### 3. Initial Placements

- a. When a detainee identifies as transgender, ERO shall make individualized placement determinations to ensure the detainee's safety.
  - b. In determining the appropriateness of a facility to house the detainee, ERO should consider:
    - i. Facilities within the Field Office's Area of Responsibility (AOR) that have incorporated the "ICE Detention Facility Contract Modification for Transgender Care," (See Attachment 2) and, therefore, maintain a functioning Transgender Classification and Care Committee (TCCC);
    - ii. Facilities within the AOR that operate a Protective Custody Unit (PCU) for transgender detainees; or
    - iii. Facilities within the AOR that demonstrate best practices in the care of Lesbian, Gay, Bi-sexual, Transgender, or Intersex (LGBTI) detainees, to include, but not limited to:
      - (1) the availability of medical personnel who have experience providing care and treatment to transgender detainees (to include the delivery of hormone therapy) and
      - (2) detention facility staff who have received LGBTI Sensitivity and Awareness Training.
  - c. If placement into a facility described in Sections 3.b.i-iii above is not practicable, the FOD shall ensure the facility chosen for placement within his or her AOR is able to appropriately care for the individual. FODs are reminded that placement into segregation should occur only when necessary and in compliance with applicable detention standards. In particular, placement into administrative segregation due to a detainee's identification as transgender should be used only as a last resort and when no other temporary housing option exists. If the facility is unable to meet these requirements, or if the detainee expresses concerns regarding his or her placement or conditions of confinement, the FOD, in consultation with his or her Office of Chief Counsel, shall examine options for transfer of the detainee to a different facility. Attachment 3 lists DHS PREA and Performance Based National Detention Standards 2008 and 2011 (PBNDS) requirements related to transgender detainees.
4. Transfers: Transfers shall comply with ICE Policy 11022.1: [Detainee Transfers \(Jan. 4, 2012\)](#). In addition, FODs should consider any transfer request made by the detainee related to his or her transgender identification. Should FODs need guidance on initial placement or subsequent transfer decisions, they are encouraged to reach out to the National ERO LGBTI Coordinator and ERO Field Operations.

5. Care of Transgender Detainees in ICE Facilities: ERO Custody Management, in consultation and collaboration with other relevant ICE Directorates or Programs and components (including the Office of Acquisition Management and the Office of Detention Policy and Planning), will work with willing ICE service vendors to incorporate the model procedures outlined in Attachment 2, “ICE Detention Facility Contract Modification for Transgender Care” into facility contracts.
6. ERO LGBTI Field Liaisons
  - a. Each ERO FOD shall designate a specially trained employee at the supervisory level to serve as an LGBTI Field Liaison<sup>1</sup>. The LGBTI Field Liaison will regularly communicate with the National ERO LGBTI Coordinator (*See* section 7 below) and report to ERO Headquarters on the progress of implementing and maintaining the provisions of this memorandum. The LGBTI Field Liaison will also coordinate with the Prevention of Sexual Assault (PSA) Coordinator in his or her Field Office where their responsibilities and work overlap.
  - b. In detention facilities that have adopted the “ICE Detention Facility Contract Modification for Transgender Care,” the ERO LGBTI Field Liaison will be available to actively participate on the facility’s TCCC.
  - c. Each ERO LGBTI Field Liaison will also participate in all relevant training offered by ERO Headquarters on the subject of this memorandum.
7. National ERO LGBTI Coordinator
  - a. ERO will designate a National LGBTI Coordinator. The National ERO LGBTI Coordinator will: (1) serve as the primary point of contact and subject matter expert for ERO regarding the care and treatment of LGBTI detainees in ERO custody; (2) evaluate information collected from EAGLE, EARM, RCA and other relevant ICE information technology systems regarding the care and custody of LGBTI detainees; (3) assist the field and ERO Headquarters Directorates in utilizing information about LGBTI detainees to help ensure compliance with the provisions of this memorandum; (4) continue to refine and deliver training on the provisions of this memorandum; and (5) coordinate with ICE’s PSA Coordinator where their responsibilities and work overlap.
  - b. The National ERO LGBTI Coordinator shall also organize and convene a standing working group to assess the implementation and maintenance of this memorandum, advise agency leadership on issues affecting LGBTI detainees in ERO custody, further explore best practices and strategies, and make additional recommendations when necessary. The standing working group should meet no less than quarterly and at a

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<sup>1</sup> The ERO LGBTI Field Liaison selected by the FOD may also be the local field ERO Prevention of Sexual Assault (PSA) Coordinator or other HQs collateral duty assignment (e.g. Segregation Review Coordinator).

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minimum include members from ERO Custody Management, ERO Field Operations, ICE Health Service Corps, the ICE Office and Detention Policy and Planning, DHS Office for Civil Rights and Civil Liberties, and one or more ERO LGBTI Field Liaisons. The working group may also consult with outside stakeholders, including representatives of non-governmental organization and academic institutions, as appropriate.

- c. The National ERO LGBTI Coordinator shall assist in addressing public inquiries related to the care and custody of transgender detainees. Inquiries may be received from detained or non-detained individuals, their family members, attorneys or representatives, and advocacy groups, among others.
- d. The National ERO LGBTI Coordinator shall also establish and maintain regular reporting mechanisms that pertain to the demographics of the transgender detainee population. The reports shall be reviewed and approved prior to any internal and/or external dissemination.

8. **Training:** As described above, the National ERO LGBTI Coordinator, in consultation with relevant ICE and ERO Headquarters Directorates, shall continue to refine and deliver training materials, to include the use of ICE's Virtual University, to assist FODs, ERO LGBTI Liaisons, and other relevant Field Office personnel in the implementation of this memorandum.

### No Private Right of Action

This guidance is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

### Attachments

1. ICE Detention Facility Contract Modification for Transgender Care
2. PREA and PBNDS Requirements Related to Transgender Detainees
3. Definitions

### **ATTACHMENT 1: ICE Detention Facility Contract Modification for Transgender Care**

[ \_\_\_\_\_ (FACILITY)] will comply with the following requirements related to the care and custody of transgender detainees:

#### **Transgender Care**

- 1) **Intake:** Upon arrival at the detention facility, intake personnel shall review the detainee's record and documentation. If the record indicates the detainee's gender identity differs from his/her biological sex, intake personnel shall only ask questions related to gender identity when such information is necessary to ensure the safety and security of other detainees and staff. In addition, the facility shall ensure that sensitive information, such as the detainee's gender identity, is not used to the detainee's detriment by facility personnel or other detainees.
  - a) Intake personnel shall accurately record the detainee as transgender. The detainee shall be treated as a protective custody detainee for the duration of the intake process.
  - b) The detainee shall be temporarily housed (i.e., in a location away from the general population, to include in a medical unit or protective custody) for no more than 72 hours (excluding weekends, holidays, and exigent circumstances) until classification, housing, and other needs can be assessed by a Transgender Classification and Care Committee as delineated below. In particular, placement into administrative segregation due to a detainee's identification as transgender should be used only as a last resort and when no other viable housing options exist.
- 2) **Transgender Classification and Care Committee**
  - a) The facility shall create and operate a Transgender Classification and Care Committee (TCCC).
  - b) In facilities **staffed** by the ICE Health Service Corps (IHSC):
    - i) The TCCC shall be comprised of a dedicated facility medical representative, facility mental health representative, a facility classification supervisor, the Enforcement and Removal Operations (ERO) Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Field Liaison, and a supervisory representative designated by the Field Office Director (FOD) (the supervisory representative from the ERO FOD can be the ERO LGBTI Field Liaison).
    - ii) The TCCC may utilize remote forms of communication (i.e., phone or video-conference) to facilitate meetings and other activities.
  - c) For facilities **not staffed** by IHSC:



- i) The TCCC shall include the IHSC Field Medical Coordinator (FMC), in addition to a dedicated facility medical representative, a facility mental health representative, a facility classification supervisor, the ERO LGBTI Field Liaison, and a supervisory representative designated by the FOD (at the FOD's discretion, the supervisory representative can include the ERO LGBTI Field Liaison).
- d) The TCCC shall be chaired jointly by a representative from the facility and an ERO representative, preferably the ERO LGBTI Field Liaison.
- e) The facility staff members, including medical and mental health personnel, will have appropriate training and experience in working with transgender persons.

**3) *Transgender Classification and Care Committee Determinations:***

- a) ***Meeting with the Detainee:*** In preparation for the TCCC meeting, the TCCC designated facility medical representative(s) shall meet with the detainee as soon as practicable after the detainee's arrival to the facility to gather information necessary to solicit the detainee's preferences and requests with regard to housing, searches,<sup>2</sup> and other matters. The ERO LGBTI Field Liaison may also participate in any meeting with the detainee. The communication between the TCCC representative(s) and the detainee shall be in a language and manner the detainee can understand and should be conducted using the TCCC Determination Question Guide provided at the conclusion of this document.
- b) ***Meeting of the TCCC:*** The TCCC shall meet and provide a classification assessment no later than 72 hours (excluding weekends, holidays, and emergencies) after the detainee's arrival to the facility to assess medical, psychological, housing, and other needs.
- c) ***Classification Assessment:*** As part of the transgender classification assessment, the TCCC shall, at a minimum, consider:
  - i) The detainee's self-identification;
  - ii) An assessment of the effect of possible placements on the detainee's health and safety, conducted by a medical or mental health professional (which may coincide with the full medical assessment done in accordance with the applicable ICE detention standards);
  - iii) The detainee's record and available documentation, including forms and notes from initial processing, medical/mental health records, booking records, identification documents, etc.; and

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<sup>2</sup> Whenever practicable, the detainee's request should be honored but not to the detriment of the safety and security of the facility or facility staff.



- iv) Observations provided by medical or mental health representative(s), to include those based upon the latest Diagnostic and Statistical Manual of Mental Disorders (DSM) criteria for the diagnosis of Gender Dysphoria.
- d) **Detention Plan:** Once the TCCC determines the detainee's transgender classification, the TCCC shall construct an individualized Detention Plan for each transgender detainee. As part of its Detention Plan assessment, the TCCC shall, at a minimum, consider:
- i) All records and prior assessments, including medical/mental health records, and an assessment of the effects of any housing placement on the detainee's health and safety that has been conducted by a medical or mental health professional;
  - ii) The detainee's preferences and requests;
  - iii) The detainee's self-assessment of his or her safety needs (i.e., does the detainee feel threatened or at risk of harm?);
  - iv) The detainee's documented criminal history and past and/or current behavior;
  - v) The TCCC's determination of the detainee's safety/security needs, including documented and self-reported history of sexual assault, victimization, or predatory behavior;
  - vi) The detainee's physical, medical, or mental health, or special needs;
  - vii) Privacy issues, including showers, single-cell sleeping arrangements, etc.;
  - viii) Available beds and/or housing;
  - ix) Whether the housing assignment would pose a safety risk to other detainees (*See* Section 3.e.ii "Safety, Security, and Privacy"); and
  - x) Effects of housing assignment on resources, including facility staff.
- e) **Requirements within the Detention Plan:** Consistent with existing ICE policy and detention standards, the individualized Detention Plan shall, at a minimum, contain the following requirements:
- i) **Housing Assignment:** Options to include:
    - a. General housing consistent with the detainee's biological sex;
    - b. General housing consistent with the detainee's gender identity;
    - c. A protective custody unit; or
    - d. Medical or administrative segregation.

- ii) Safety, Security and Privacy: The TCCC shall address the safety, security, and privacy needs for both the transgender detainee and the general detention population when assessing the housing assignment. Discussion(s) may include guidance on appropriate staffing levels in the housing option assigned (e.g., single or shared cell, or dormitory housing).
- iii) Hygiene: Consistent with ICE detention standards, facility staff shall ensure that transgender detainees are able to maintain acceptable personal hygiene practices consistent with their gender identity and that ensure their safety. Transgender detainees shall be provided the opportunity to shower in a setting that ensures safety and privacy.
- iv) Clothing and Commissary: Transgender detainees will be provided undergarments consistent with their gender identity as assessed by the TCCC. Transgender detainees shall be issued standard detention attire consistent with their assigned housing unit. Transgender detainees shall also be allowed to possess or purchase through the commissary those hygiene and personal items that are consistent with their Detention Plan.
- v) Searches: As prescribed by standard 2.10 of ICE's 2011 *Performance-Based National Detention Standards (PBNS)*, the transgender detainee's preference as to the gender of the officer that will perform any necessary pat-down and strip searches will be considered by the TCCC when drafting the Detention Plan and followed by detention facility staff accordingly. Also with regards to strip searches only, and pursuant to standard 2.10 of ICE's 2011 *PBNS*, special care should be taken to ensure that transgender detainees are searched in private. Searches shall be conducted in a professional and respectful manner, and in the least restrictive manner possible, consistent with security needs. Pursuant to DHS PREA Standards, at no time shall any search be conducted solely for the purpose of determining a detainee's biological sex. Requests for transgender detainees to remove appearance related items such as prosthetics, clothing that conveys gender identity, wigs, and cosmetics shall be consistent with requirements for the removal of similar items for other non-transgender detainees. All strip searches shall be documented.
- vi) Staff Communication: Detention facility staff shall refer to transgender detainees by their preferred pronouns.
- vii) Medical Care: Pursuant to existing ICE detention standards, transgender detainees who were already receiving hormone therapy when taken into ICE custody shall have continued access to hormone therapy; those who have not yet begun treatment will be assessed and treated, if deemed medically necessary and safe in the context of their other medical conditions. All transgender detainees shall have access to continued mental health care and other transgender-related health care based on medical need. Medical care for transgender detainees shall be provided by qualified

and appropriate medical professionals and administered pursuant to the applicable ICE detention standards.

- f) **Decision:** The TCCC will attempt to reach consensus on all decisions.
- i) The TCCC shall retain summary notes of each meeting to document persons attending and conclusions reached. A copy of the notes shall be placed in the detainee's detention file.
  - ii) Absent extraordinary circumstances, a written Detention Plan by the TCCC for the detainee, including housing assignment, shall be forwarded to the facility classification supervisor within 72 hours (excluding weekends, holidays, and emergencies) of the detainee's arrival at the facility, and maintained in the detainee's detention file; a copy of the plan and housing assignment shall also be provided to the detainee.
- g) **Implementation of Detention Plan:** The classification supervisor shall notify line staff of the TCCC's Detention Plan and housing assignment decision.
- i) Detention facility staff shall follow the Detention Plan outlined by the TCCC. If a detention facility staff member identifies a safety or security risk posed by the TCCC's plan, the staff member must inform the TCCC directly, or must notify his/her supervisor as soon as practicable, and that supervisor must notify the TCCC. The TCCC shall review the case and make adjustments to the Detention Plan, if necessary, within 72 hours (excluding weekends, holidays, and emergencies) of receiving notification.
  - ii) In the case of an immediate threat to the safety or security of the transgender detainee or others, the detention facility staff may make a temporary change(s) to the TCCC's plan (to include housing assignment), but should notify the TCCC as soon as possible. Only the TCCC can approve permanent change(s) to the Detention Plan.
- h) **Reassessment:** The TCCC shall reassess a transgender detainee's Detention Plan and housing assignment after 30 days following the initial determination and then every 60 days thereafter or at any other time if additional relevant information becomes known, or following any incident of victimization or threats to safety experienced by the detainee. As part of its reassessment, the TCCC shall, at a minimum, consider:
- i) Changes in the transgender detainee's housing preferences;
  - ii) Variations in the detainee's medical and/or mental health status;
  - iii) Safety/security of the detainee, other detainees, and/or facility staff;

- iv) Any threats to safety experienced by the detainee;
- v) Continued availability of housing; and
- vi) The detention facility's documented concerns.

cited in *Avendano\_Hernandez v. Lynch*  
No. 13-73744 archived on September 30, 2015



### **TCCC Determination Questions Guide**

In preparation for the TCCC meeting, the designated facility medical representative(s), shall meet with the detainee no later than 72 hours (excluding weekends, holidays, and emergencies) after the detainee's arrival to the facility to gather information necessary to verify the transgender classification, and to solicit detainee's preferences and requests with regards to housing, searches, and other matters. The ERO LGBTI Field Liaison may also participate in any meeting with the detainee. The following questions are provided to assist in this initial meeting, but may be used in other settings as deemed appropriate.

1) Do you identify as transgender?

IF YES to #1, then proceed to ask the following questions:

#### Name

2) Do you go by or use any other name(s) or aliases?

3) What pronoun(s) do you prefer others use to refer to you?

#### Medical Issues

4) Prior to coming here, were you taking any hormonal medications?

a. If yes, what were they?

b. How often were you taking them?

c. Were these prescribed by a doctor?

#### Hygiene and Grooming

5) Do you prefer to wear male or female clothing?

6) Are there any specific clothing items (e.g., undergarments) that you need that have not been provided?

7) Are there any specific personal hygiene items that you need that have not been provided?

#### Housing

8) Do you feel you are at risk for your safety based on your gender identity?

a. Would you feel safer being housed with men or women?

b. Would you feel safer being housed with transgender women or men?

c. Would you feel safer being housed in a cell with someone else or by yourself?

#### Programming

9) Do you feel comfortable being around male and female detainees during recreation, organized programs, or other types of group activities?

a. If not, would you prefer to be separated from males or females?

b. Do you feel you require complete separation, or would specific types of safeguards (e.g., sight or sound separation, staff escort) address your concern(s)?

#### Searches

10) Do you have a preference for whether a male or female staff member searches you? If so, which would you prefer?

Other

- 11) Is there anything else we should know about you related to being transgender—any particular concerns?
- 12) Are there any other specific precautions and/or accommodations you think you would like to have to ensure your safety and welfare while at this facility?

cited in *Avendano\_Hernandez v. Lynch*  
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**ATTACHMENT 2:  
PREA and PBNDS Requirements Related To Transgender Detainees**

Pursuant to Section 3(e) of this memorandum, applicable requirements from ICE detention standards and the DHS PREA Standards include:

a) Classification and Housing

- i) At facilities governed by the DHS PREA Standards or PBNDS 2011, facility staff must consider the detainee's gender self-identification and an assessment of the effects of placement on the detainee's health and safety, when making classification and housing decisions for transgender or intersex detainees. A medical or mental health professional must be consulted as soon as practicable on this assessment. The facility may not base placement decisions solely on identity documents or the physical anatomy of the detainee; rather, a detainee's self-identification and self-assessment of safety needs must always be taken into consideration as well.
- ii) At facilities governed by PBNDS 2008 or NDS, and which use ICE's Detainee Classification System, facility staff must take into consideration and document whether a detainee requires protective custody to ensure his/her safety and well-being, such as because of perceived or actual sexual orientation or gender identity.

b) Showering and Privacy

- i) At facilities governed by the DHS PREA Standards, transgender and intersex detainees must be given the opportunity to shower separately from other detainees when operationally feasible.
- ii) At facilities governed by PBNDS 2011 or PBNDS 2008, transgender detainees must be provided with a reasonably private environment for bathing and toilet facilities, in accordance with safety and security needs.

c) Personal Hygiene and Grooming

- i) The detention standards do not restrict the provision of gender appropriate clothing. In general, brassieres should be provided to individuals who request them, as appropriate.
- ii) At facilities governed by PBNDS 2011 or PBNDS 2008, transgender detainees should be allowed freedom in personal grooming, and access to commissary items (including those appropriate for the detainee's identified gender) absent a valid safety, security, or medical concern that is fully justified and documented.

d) Medical Care

- i) At facilities governed by PBNDS 2011, initial medical screening must inquire into a transgender detainee's gender self-identification and history of transition-related care. Transgender detainees who were already receiving hormone therapy when taken into ICE custody shall be provided continued access, and all transgender detainees must have access to mental health care and other transgender-related health care and medication (such as hormone therapy) based on medical need. Treatment must follow accepted guidelines regarding medically necessary transition-related care.

*cited in Avendano\_Hernandez v. Lynch  
No. 13-73744 archived on September 30, 2015*



### ATTACHMENT 3: Definitions

The following definitions apply for purposes of this memorandum only:

1. **Biological Sex.** An individual's biological status as either male or female, typically assigned at birth, and associated primarily with physical attributes such as chromosomes, hormone prevalence, and external and internal anatomy.
2. **Detainee.** An individual detained in ERO custody.
3. **Detention Plan.** A plan for a transgender detainee, constructed by the Transgender Classification and Care Committee at an ICE detention facility with instructions for how to address issues including, but not limited to, housing, clothing, showering, grooming, name and pronoun use, recreation, programming, escort, transportation, searches, privacy, etc.
4. **Diagnostic and Statistical Manual of Mental Disorders (DSM).** The standard classification of mental disorders used by mental health professionals in the United States as published by the American Psychiatric Association. DSM-5 (Fifth Edition) is the most current edition of the drafting of this guidance.
5. **Gender Affirming Surgery.** Surgical alteration of male or female genitals, or the reshaping, by any surgical procedure, of a male body into a body with female appearance, or vice versa. Also referred to as "sex reassignment surgery (SRS)," "gender reassignment surgery (GRS)," or by other names. Note: gender affirming surgery is the preferred name.
6. **Gender Dysphoria.** Medical diagnosis in the American Psychiatric Association's DSM-5 that describes the distress that may accompany the incongruence between an individual's experienced or expressed gender and the individual's biological sex. This was previously known as Gender Identity Disorder.
7. **Gender Expression.** The ways in which an individual communicates/displays his/her gender identity to others; a combination of appearance, demeanor, and behavior.
8. **Gender Identity.** An individual's internal sense of being a man, woman, or another gender. It is not necessarily based on the individual's biological sex or on the individual's sexual orientation. Because gender identity is internal, it is not necessarily visible to others, but may be externally manifested in the individual's appearance, behavior, demeanor or other aspects of the individual's life.
9. **Gender Non-Conforming.** Having an appearance or manner that does not conform to traditional societal gender expectations.
10. **Intersex.** Having sexual or reproductive anatomy or chromosomal pattern that do not

seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

11. **LGBTI.** The acronym for Lesbian, Gay, Bisexual, Transgender, and Intersex.
12. **Sexual Orientation.** A pattern of romantic, emotional, physical, and/or sexual attraction towards members of the same, opposite, or both sexes. Includes homosexuality, heterosexuality, and bisexuality.
13. **Transgender.** A person whose gender identity (i.e., internal sense of feeling male or female) is different from the sex assigned to the person at birth.
14. **Transgender Classification and Care Committee (TCCC).** The detention facility committee that gathers information and assesses the gender identity of the detainee, and produces and regularly assesses a Detention Plan for a transgender detainee.
15. **Transgender man.** An individual who is a biological female and has a gender identity as a man.
16. **Transgender woman.** An individual who is a biological male and has a gender identity as a woman.
17. **Transition.** The process by which an individual changes his/her gender from that assigned at birth to one with which he/she now identifies. This may include making personal, legal, and medical changes to his/her gender, such as changing his/her name and/or gender on legal documents; undergoing hormone therapy; and/or undergoing one or more forms of surgery.