

A model immigration detention facility for LGBTI?

Christina Fialho

The US has taken some positive steps to improve the treatment of gay and transgender asylum seekers in immigration detention but could make improvements in four key areas.

In 2011, the first official multi-plaintiff complaint was lodged with the US Department of Homeland Security's Office of Civil Rights and Civil Liberties (CRCL) on behalf of 17 lesbian, gay, bisexual, transgender and/or intersex (LGBTI) asylum seekers and other migrants who were subject to abusive conditions in US civil immigration detention. Among the complaints were a pervasive denial of medical care for chronic conditions, sexual assault and physical abuse by both guards and other people in detention, and an over-reliance on solitary confinement.

In response, CRCL and US Immigration and Customs Enforcement (ICE) created the first dedicated protective custody unit for gay and transgender individuals in immigration detention at the Santa Ana City Jail in California.¹ The unit has the capacity to hold 64 gay and transgender individuals; although the beds are rarely filled to capacity, ICE pays the city for all 64 beds each day in order to ensure that these individuals can be kept segregated from the rest of the jail population.

In November 2012, visitor volunteers from Community Initiatives for Visiting Immigrants in Confinement (CIVIC) and I interviewed individuals being held in the protective custody unit. While the men and women at Santa Ana described a number of problems, overall the asylum seekers whom we interviewed felt that the dedicated unit was a significant improvement and that the quality of life was better than at other ICE-contracted facilities.

The protective custody unit itself has two-person cells, an indoor dayroom with natural lighting, and a small outdoor recreation space. The gay and transgender asylum seekers have use of the dayroom from approximately 7am to 12pm, 2pm to 5.30pm, and 7pm to 11pm.

The rest of the time, they are locked in their cells. The jail offers a number of programmes, such as English as a Second Language and computer classes. All the programmes, except the computer classes, are offered to the gay and transgender population in the protective custody unit to prevent mingling with the general jail population.

In many ways, ICE is living up to its goal of making the Santa Ana City Jail's protective custody unit a model for the nation. For example, visitation is offered seven days a week, even for individuals who are placed in 'administrative segregation' (commonly known as solitary confinement) for disciplinary purposes. This is one of the few detention facilities in the US that does not eliminate visitation privileges for migrants placed in solitary confinement. However, there is room for improvement in four key areas:

LGBTI training: ICE's contract with the Santa Ana City Jail requires an eight-hour 'specialised LGBT training' for staff in the facility to cover the following: 'familiarisation' with LGBT issues (gender identities and sexual orientations but not currently including intersex), interpersonal relations and communications skills (tone of voice, use of gender-specific words, avoiding homophobic and derogatory comments), vulnerability to sexual abuse/assault and intervention approaches, sensitivity in search methods, and use of preferred pronouns. However, it is not clear that this training has taken place or that guards are complying with the training policies. For instance, transgender asylum seekers who self-identify as females reported being told by guards to "use their male voice" and "act male" on an almost daily basis, and many guards use male pronouns to refer to transgender women. ICE should ensure that each officer working in the protective custody

unit receives all eight hours of specialised training and that the training incorporates familiarisation with intersex issues.

Health care: ICE should improve its medical and mental health care, particularly to ensure seamless transfer of communications and medical records when a person is transferred from another detention facility to the Santa Ana City Jail or when initially taken into ICE custody. According to the Santa Ana City Jail, they will not accept a person from ICE unless that person has five days of medicine available. However, asylum seekers interviewed said that when they were transferred from another facility, their medical records followed 35 to 45 days later, thereby delaying medication by anywhere between one and four months. Additionally, one transgender asylum seeker who had been subjected to police brutality in her home country had not been able to meet with a mental health-care provider since she was detained in the US six months previously.

Visitation: Gay and transgender asylum seekers and other migrants rarely receive visitors because either they do not know anyone in the US or their family and friends live hundreds of miles away. Although visitation is available seven days a week, visits at the Santa Ana City Jail take place behind

plastic screens, speaking through telephone handsets. All family and community visits should be permitted in a classroom-style setting where visitors and those in detention can make physical contact with one another. While I commend ICE and the Santa Ana City Jail for welcoming a CIVIC-affiliated community visitation programme, a classroom-style

visitation setting would help decrease the emotional hardship for isolated gay and transgender asylum seekers and other migrants in detention.

Transfers: As the Santa Ana City Jail remains the only immigration detention facility in the country with a dedicated protective custody unit, gay and transgender migrants are often transferred from other states to this facility. These transfers have far-reaching negative consequences on the individuals' right to fair immigration proceedings as well as on their family ties and general well-being. For example, transfers across state lines can render attorney-client relationships unworkable and separate migrants from the evidence they need to present to a judge in order to win asylum and prove good moral character. Moreover, transfers make family visits so prohibitively costly that they rarely – if ever – occur. Independent non-governmental advisers should investigate the successes and failures of the protective custody unit and consider whether this model can be exported to other immigration detention facilities to ensure that gay and transgender migrants remain close to their families and support systems.

Thousands of lesbian, gay, bisexual, transgender and intersex people around the world see the US as a place where they can live freely and openly, without fear of persecution. Yet, many LGBTI asylum seekers face months or even years of prolonged suffering and isolation in immigration detention before they are granted asylum. The Santa Ana City Jail's protective custody unit could be a model for the nation if it implemented the above recommendations. However, the US could be a model for the world if it completely ended the detention of asylum seekers, particularly those who are LGBTI.

Christina Fialho CFialho@endisolation.org is the Co-Founder/Executive Director of Community Initiatives for Visiting Immigrants in Confinement (CIVIC) www.endisolation.org and a licensed attorney in California.

1. Located 100 miles north of the US-Mexican border.

