

CHAPTER VI

Immigration Issues

Many transgender people immigrate to the United States to escape persecution or violence in their countries of birth only to experience similar problems in the U.S., in addition to the threat of being detained or deported.

Transgender immigrants in the U.S. often have trouble meeting basic needs because they face employment discrimination and are commonly denied or fired from jobs. Many immigrants do not have health insurance and even if they do, most public and private insurance companies exclude transition-related health care. Immigrants living with HIV may find access to medications difficult or impossible. Many transgender people also are unable to obtain identity documents that reflect their current gender, so immigration documents may or may not represent who they are.

According to the National Coalition of Anti-Violence Programs, 44% of reported hate murders in 2010 were committed against transgender women. (See “Fighting Anti-Trans Violence,” another fact sheet in this Transgender Toolkit

series, at lambdalegal.org/publications/toolkits). Transgender people in immigration detention are at especially high risk of being harassed or sexually assaulted (see “Sexual Assault in Detention: New U.S. Rules Fall Short” on page 25).

To be better informed about their rights and whether they are eligible for any immigration relief, transgender people should consult with a trustworthy attorney regarding immigration issues.

This fact sheet provides basic information for transgender immigrants in the U.S. regarding some of the most common problems. If you feel you have been discriminated against because of your gender identity, gender expression, sexual orientation or HIV status, contact Lambda Legal through our Help Desk (866-542-8336) or visit us online at lambdalegal.org/help.

MY STORY ASSAULT, ASYLUM AND CLOSE FAMILY TIES

ARIANNA LINT (WITH HER MOTHER, MARIA)

“In Peru, before my transition, I was the victim of a lot of bullying for being a queer guy and a very feminine person—and I was attacked by the police. Once, when I was getting off work at a nightclub, I was stopped by a police officer. He drove me to a parking lot at the beach, put a gun to my head and sexually assaulted me. And then he left me on the beach. There were other incidents too.

“That’s why the U.S. granted me asylum. But when I came here and did my transition, I saw more problems for transgender people. We don’t have protections.

“My mother is very supportive. People from high school tell me they see her and ask, ‘Oh, Mrs. Lint, how is your son Antonio?’ My mother has a picture of me in her purse, and she says, ‘No, Antonio is no more. Now it’s Arianna.’ She shows my pictures and talks about what I’m doing over here in the United States.

“I’m not allowed to visit her because of the kind of asylum I have—‘withholding of removal.’ So she comes here every year for Mother’s Day.”



FAQ

Answers to Common Questions from Transgender Immigrants

Q: Can I apply for asylum in the U.S. as a transgender immigrant?

A: Yes, if you are at a substantial risk of being persecuted in your home country by government officials—or being persecuted by others with the government’s approval—for your sexual orientation, gender identity or expression, or because you have HIV, you might be eligible to remain in the U.S. through political asylum. Talk to a trustworthy attorney about filing an asylum application with the United States Citizen and Immigration Services (USCIS). (Beware of *notario* fraud! Avoid taking advice about your immigration from a notary public or immigration consultant. A directory of legal service providers in your area is available at www.weownthedream.org/legalhelp/.) In the absence of extraordinary or changed circumstances, you must file your application within a year of entering the country. Ask an attorney about the specifics of your case, especially if you have a criminal background.

Q: If I have been the victim of a crime in the U.S., can I apply for a special visa?

A: A special visa called a U Visa may be granted to immigrants who have been the victim of certain crimes (including sexual assault and domestic violence), suffered injury because of the crime and then helped the police to resolve the crime.

Consult an attorney who is knowledgeable about immigration law to find out if you are eligible for a U visa.

Q: How do I change the gender marker on my U.S. passport—and other identity documents?

A: If you want to change the gender on your U.S. passport, you need a letter from a licensed physician that certifies that you have had “appropriate clinical treatment.” Treatment no longer needs to include gender-affirming surgery, because in 2010 the State Department dropped its policy of requiring proof of surgery—better reflecting the individualized nature of treatment for gender transition.

Immigrants in the U.S. follow the same rules as non-immigrants for changing their gender markers on domestic U.S. documents, such as driver’s licenses and birth certificates. Policies still vary widely from agency to agency—although it is increasingly recognized in the U.S. that surgery is not part of gender transition for some people and that a person’s own doctor is best situated to attest to appropriate clinical treatment.

Departments of Motor Vehicles in about half the states have removed the surgical requirement completely for people who want to apply to change their gender marker on their driver’s

licenses. In 2013, the Social Security Administration eliminated its surgery requirement. California, the District of Columbia, Oregon, Vermont and Washington have also eliminated it for changing gender status on birth certificates. In addition, several states offer access to driver’s licenses for undocumented immigrants.

(For more information, see the “Identity Documents” fact sheet, part of this Transgender Toolkit and available at lambdalegal.org/publications/toolkits and, in Spanish, at lambdalegal.org/es/publicaciones.)

Q: How do I change the gender on my non-U.S. passport?

A: Many countries still do not allow you to change the gender on your passport. In Canada and certain areas of Mexico, you may change the gender on your passport by getting a new birth certificate but still must submit written proof of surgery to do so. Many Latin American countries offer consular identification cards for their citizens in the U.S., but it is not clear whether you can get a consular identification card or a passport with your actual gender identity.

As of 2014, Argentina and Denmark are the only Latin American and European countries that allow you to change the gender marker on your passport simply by going to a consulate and filling out a form.

Q: What should I do if I am questioned or stopped by police or immigration or they come to my home?

A: If police or immigration officials come to your home or work, they must have a warrant to enter. (A warrant is a piece of paper signed by a judge giving permission to enter your home or workplace.) Ask the officials to slip the warrant underneath the door. If you open the door and allow them to come into your home or workplace, this may be considered giving them “consent” to enter. If they enter without a warrant, request their names and badge numbers and state that you did not “consent” to a search.

If police or immigration officials stop you on the street and do not have a warrant, they may not arrest you without evidence that you are a non-citizen. You do not have to consent to a search of yourself or your belongings. Do not lie about your citizenship status or provide fake documents. Do not carry with you any documents that are from your country of origin or are false.

You have the right to remain silent and to speak to a lawyer. Avoid questions about where you were born or how you got to

“When I came here [from Peru] and did my transition, I saw more problems for transgender people. We don't have protections.

—ARIANNA LINT

this country, and don't sign any documents before speaking with a lawyer, even if officials are pressuring you to do so. (See the “Behind Bars” sidebar on the next page for more information about your rights in detention.)

If you are arrested by police, do not resist, even if you believe the arrest is unfair. Say that you wish to remain silent and ask for a lawyer immediately. If you can't pay for a lawyer, you have the right to a free one. Don't say anything, sign anything or make any decisions without a lawyer. You have the right to make a local phone call and to be assigned an interpreter if you need one. Police must release you after 48 hours (not counting weekends and holidays) if they don't formally charge you with a crime in court. If you are accused of a crime, consult with an immigration attorney to make sure that the crime will not affect your immigration status.

If you are taken into immigration custody, you have the right to a lawyer, but the government does not have to provide one for you. Ask for a list of free or low-cost legal services. Avoid signing anything, such as a voluntary departure or stipulated removal, without talking to a lawyer. If you sign, you may be giving up your opportunity to try to stay in the U.S. You also have the right to have an officer contact your consulate.

Q: Can I marry a U.S. citizen or resident and apply for a green card if I am not a U.S. citizen or resident and one of us is transgender?

A: The answer to whether you can get married depends on where you live and where the marriage takes place. The answer to whether you can apply for a green card depends on the specifics of your case.

If you are not married yet and not yet in the U.S., the partner who is an American citizen can apply for a K-1 fiancé(e) visa to allow you to enter the U.S. with the specific goal of getting married and applying for a green card; this is at the federal level. It doesn't matter what gender either of you are; whether you are transgender or not; or whether you are a same-sex or opposite-sex couple.

If you are already in the U.S., however, your marriage will only be recognized under certain conditions:

Finally, assuming you can get legally married, whether you can apply for a green card depends on the specifics of your case—for example, how you entered the country and whether you married a U.S. citizen or resident. Consult a trustworthy attorney on how best to go about applying for these benefits once married.

For more information about marriage rights for transgender

THREE IMPORTANT FACTS ABOUT TRANSGENDER IMMIGRANTS

In the National Transgender Discrimination Survey (NTDS), undocumented transgender non-citizen respondents reported:

1. Three times more workplace **sexual assault** based on being transgender or gender-nonconforming, compared to U.S. citizens.
2. More **lost jobs** due to bias than U.S. citizens.
3. And non-citizen transgender respondents overall (whether documented or not) reported more than twice the rate of **HIV infection** of U.S. citizens.

(The 2011 NTDS is a survey of 6,450 transgender and gender-nonconforming people conducted by the National Gay and Lesbian Task Force and the National Center for Transgender Equality. A report on the findings is available at www.endtransdiscrimination.org.)

people, see Lambda Legal's “Transgender People and Marriage Laws” fact sheet (lambdalegal.org/publications/trt-transgender-marriage-laws).

Q: As a young immigrant who is transgender, do I have special rights to avoid deportation?

A: You may be eligible for Deferred Action for Childhood Arrivals (DACA) if you came to the U.S. before you were 16 and can meet other requirements. Visit this Immigration Equality webpage to find out if you're eligible: <http://bit.ly/1sPTAS5>

HEALTH CARE

AS A TRANSGENDER IMMIGRANT, WHAT SHOULD I DO IF....

...I HAVE A MEDICAL EMERGENCY?

Go to a hospital or emergency room; they are required by federal law to provide emergency health care to everybody. Keep in mind that the care provided might be very basic and that you may have to pay for it. Depending where you live, you might be able to go to an LGBT-specific clinic.

...I NEED HEALTH INSURANCE?

There is medical consensus that transition-related care can be medically necessary, but even if you have access to public or private insurance, you should know that most plans still have exclusions.

If you have documents that authorize you to live or work in the U.S., then you may have access to health insurance through the Affordable Care Act (ACA). Low-income individuals may be eligible for Medicaid, a publicly funded federal-state health program. "Qualifying" immigrants, such as legal permanent residents and asylees who have held this status for five years or longer, may be able to receive free or low-cost health coverage through Medicaid. Some states, such as California, provide full benefits under Medicaid, or Medi-Cal, for immigrants "permanently residing under color of law," which includes "lawfully present" immigrants. ("Permanently residing under color of law" means that immigration authorities are aware of a person's presence but have no plans to deport/remove him or her from the country. It is interpreted differently, depending on the benefit program and jurisdiction.)

If you are undocumented, your options are more limited. Undocumented people and Deferred Action for Childhood Arrivals (DACA) recipients may not use their own money to purchase health care under the ACA. Depending on the state, you might qualify for Emergency Medicaid if you are low-income, which will cover health care services for emergency care. In some states, such as California, you can get health care through local county health programs. You can also receive care from Federally Qualified Health Clinics and other community clinics.

...I'M A STUDENT?

If you are a transgender student attending a U.S. college or university, you may have the option of buying the school's health insurance (some cover transition-related health care; others do not). Immigration status is generally not a factor. High school-age immigrants often qualify for Emergency Medicaid or state-sponsored health insurance.

If you receive poor or degrading health care, or if you have problems accessing transition-related care or health insurance, call Lambda Legal's Help Desk toll-free at 866-542-8336 or go to www.lambdalegal.org/help. También hablamos español.

For more information about health care, see Lambda Legal's "Transition-Related Health Care" fact sheet at lambdalegal.org/publications/trt_transition-related-health-care.

BEHIND BARS

YOUR RIGHTS IN IMMIGRATION DETENTION

According to the U.S. government's Immigration and Customs Enforcement (ICE), you have the following rights in federal immigration detention—although the truth is that these rules often remain unenforced:

- 1. GENDER-APPROPRIATE CLOTHING:** You have the right to have access to clothing according to your gender identity, but underwear is generally assigned at the discretion of each particular detention center.
- 2. TRANSITION-RELATED CARE:** You have the right to have access to hormone treatment if you were taking it prior to detention—and to proper medical evaluation if you were not.
- 3. HIV MEDICATIONS:** You have the right to have access to HIV meds while in detention.
- 4. STRIP-SEARCH OPTIONS:** When a strip-search is required, transgender men and transgender women have the right to choose whether the searcher is a man or woman.
- 5. THE RIGHT NOT TO BE PLACED IN ISOLATION AND NOT TO BE SEXUALLY ASSAULTED OR HARASSED:** (See "Sexual Assault in Detention: New U.S. Rules Fall Short" on page 5.)

If you want to file an official complaint with the U.S. Office for Civil Rights and Civil Liberties, go to: www.dhs.gov/file-civil-rights-complaint. If you are a family member, attorney or advocate, keep in mind that you will need to include written permission from the person being detained to file a complaint on his or her behalf.

If you're denied clothing that is in line with your gender, transition-related care, HIV meds, a strip-search by staff of your same gender, or if you're put in isolation, or sexually harassed or assaulted while in detention, call Lambda Legal's Help Desk toll-free at 866-542-8336 or go to www.lambdalegal.org/help. También hablamos español.

SEXUAL ASSAULT IN DETENTION NEW U.S. RULES FALL SHORT

Some transgender advocates were disappointed in March 2014 when the U.S. Department of Homeland Security (DHS) issued new rules about dealing with sexual assault in immigration detention centers that failed to include key recommendations about transgender detainees. In 2012, the Department of Justice had issued rules for handling sexual assault in jails and prisons (outside of the immigration system) that are considered much stronger. Concerns about immigration detention from Lambda Legal, the National Center for Transgender Equality and the Transgender Law Center include these:

1. The continued use of **solitary confinement**, which in many cases has been used to separate transgender detainees from the general population “for their protection” and has been shown to cause psychological harm.
2. The failure of the new regulations to prohibit retaliatory **deportation of those who report abuse**.
3. Transgender detainees are given the opportunity to **shower separately** from other detainees only when “operationally feasible.”
4. The new regulations apply to DHS contract facilities only when substantive contract modifications are negotiated, which may mean a delay of years.

Resources

INFORMATION AND SUPPORT FOR TRANSGENDER IMMIGRANTS

Along with Lambda Legal, these organizations offer education and advocacy specific to transgender immigrants.

ACLU Immigrants’ Rights Project

Dedicated to expanding and enforcing the civil liberties and civil rights of non-citizens and to combating public and private discrimination against immigrants. (212-549-2500 or www.aclu.org)

*** Immigration Equality (New York, NY)**

Works to ensure immigration rights for lesbian, gay, bisexual and transgender people and those living with HIV. (212-714-2904 or www.immigrationequality.org)

Mariposas Sin Fronteras (Tucson, AZ)

Supporting LGBTQ people in immigration detention. (www.mariposassinfronteras.org)

National Center for Lesbian Rights Immigration Project (San Francisco, CA and Washington, DC)

Advocates in court for LGBT asylum seekers and immigrants. (1-800-528-6257 or www.nclrights.org)

National Center for Transgender Equality (Washington, DC)

Social justice organization devoted to ending discrimination and violence against transgender people. (202-903-0112 or www.transequality.org)

*** National Immigrant Justice Center (Chicago, IL)**

Fights for human rights protections and access to justice for all immigrants, refugees and asylum seekers. (312-660-1370 or www.immigrantjustice.org/programs/lgbt-immigrant-rights-initiative)

Queer Detainee Empowerment Project (New York, NY)

An alternative to detention programs for queer/trans/HIV-positive immigrant detainees, undocumented folks and asylum seekers and their families. (347.645.9339 or www.qdep.org)

Queer Undocumented Immigrant Project (Washington, DC)

Organizes and empowers LGBTQ-identified undocumented people, LGBTQ immigrant youth and allies. (www.unitedwedream.org/about/projects/quip)

Sylvia Rivera Law Project (New York, NY)

Advocates for self-determination of gender identity and expression. (212-337-8550 extension 308 or www.srlp.org)

*** Transgender Law Center (San Francisco, CA)**

Works to change discriminatory laws, policies and social attitudes. (415-865-0176 or www.transgenderlawcenter.org)

Transgender Legal Defense & Education Fund (New York, NY)

Committed to ending anti-transgender discrimination through impact litigation, public education and direct legal services. (646-862-9396 or www.transgenderlegal.org)

MORE IMMIGRATION HELP

Americans for Immigrant Justice (Miami, FL)

Protects and promotes the basic human rights of immigrants through free direct services, impact litigation, policy reform and public education at local, state and national levels. (305-573-1106 or www.aijustice.org)

Asian Americans Advancing Justice (Los Angeles, San Francisco, Chicago and Washington, DC)

Empowers Asian Americans, Pacific Islanders and other underserved communities. (415-848-7735, 213-977-7500 or www.advancingjustice.org)

Asian American Legal Defense and Education Fund (New York, NY)

Asian American civil rights organization that has an immigrants’ rights program. (212-966-5932 or www.aaldef.org)

Asian Pacific Island Legal Outreach (San Francisco Office)

A community-based, social justice organization serving the Asian and Pacific Islander and other communities

* Se habla español

of the Greater Bay Area. (415-567-6255 or www.apilegaloutreach.org)

*** California Rural Legal Assistance (Offices throughout CA)**

A nonprofit legal services program striving for economic justice and human rights on behalf of California's rural poor. (415-777-2752 or www.crla.org)

*** Casa Cornelia Law Center (San Diego, CA)**

A public interest law firm providing quality pro bono legal services to victims of human and civil rights violations. (619-231-7788 or www.casacornelia.org)

Catholic Charities (Alexandria, VA)

Advocates for social change and reduction of poverty. (703-549-1390 or www.catholiccharitiesusa.org)

*** Central American Resource Center (Los Angeles, CA)**

Works to empower Central Americans by defending human and civil rights. (213.385.7800 or www.carecen-la.org)

*** Centro Legal de La Raza (Oakland, CA)**

Provides free or low-cost, bilingual, culturally sensitive legal aid, community education and advocacy for low-income residents of the San Francisco Bay Area. (510-437-1554 or www.centrolegal.org)

Coalition for Humane Immigrant Rights of Los Angeles (Los Angeles, CA)

CHIRLA is an organization recognized by the Board of Immigration Appeals (BIA) to provide immigration legal services. (1-888-624-4752 or www.chirla.org)

Coalition to Abolish Slavery & Trafficking (Los Angeles, CA)

Assists people trafficked for the purpose of forced labor and slavery-like practices and works to end such human rights violations. (1-888-539-2373 or www.castla.org/homepage)

Community Initiatives for Visiting Immigrants in Confinement (CIVIC) (San Francisco, CA)

Works to end the isolation and abuse of men, women and children in U.S. immigration detention. (385-212-4842 or www.endisolation.org)

Detention Watch Network (Washington, DC)

Works to expose and challenge the injustices of the U.S. immigration detention and deportation system. (202-350-9055 or www.detentionwatchnetwork.org)

East Bay Community Law Center (Berkeley, CA)

Free legal services for the low-income community in the areas of housing, welfare, HIV and health, homelessness and economic development. (510-548-4040 or www.ebclc.org)

Georgia Asylum & Immigration Network (Atlanta, GA)

Provides pro bono legal representation through volunteer attorneys to asylum seekers, immigrant victims of human trafficking, domestic violence, sexual assault and other crimes. (404-572-2609 or www.georgiaasylum.org)

Hofstra Asylum Clinic (Hempstead, NY)

Law students who represent political asylum applicants in immigration proceedings. (www.law.hofstra.edu/clinics/politicalasylumclinic)

*** Kids in Need of Defense (Washington, DC)**

Finds pro bono lawyers to serve unaccompanied children who face the U.S. immigration system alone. (202-824-8680 or www.supportkind.org/en)

*** La Raza Centro Legal (San Francisco, CA)**

Provides legal services and advocacy to empower the Latino, immigrant and low-income communities of San Francisco to advocate for their civil and human rights. (415-575-3500 or www.lrcel.electrictembers.net)

Legal Aid Society (New York, NY)

Provides legal representation for low-income people throughout New York City. (212-577-3456 or www.legal-aid.org/en/home.aspx)

Political Asylum/Immigration Representation Project (Boston, MA)

Provides pro bono immigration legal services to asylum-seekers and immigrants unjustly detained in Massachusetts. (617.742.9296 or www.pairproject.org)

Pro Bono Asylum Representation Project (PROBAR, Harlingen, TX)

Provides pro bono legal services to asylum seekers detained in South Texas by the United States government. (956) 425-9231 or <http://bit.ly/1uUHcW>)

Public Counsel (Los Angeles, CA)

Strives to protect the legal rights of disadvantaged children and immigrants. (213-385-2977 or www.publiccounsel.org)

Public Law Center (Santa Ana, CA)

Pro bono law firm providing legal representation for low-income residents. (714-541-1010 or www.publiclawcenter.org)

Southern Poverty Law Center (Montgomery, AL)

Fights hate and bigotry and seeks justice for the most vulnerable members of our society. (888- 414-7752 or www.splcenter.org)

Texas RioGrande Legal Aid (several offices throughout Texas)

Provides free legal services to low-income residents in Southwest Texas, and represents migrant and seasonal farm workers throughout the state of Texas and six southern states: Kentucky, Tennessee, Alabama, Mississippi, Louisiana and Arkansas. (888-988-9996 or www.trla.org)

University of Miami School of Law Immigration Clinic (Coral Gables, FL)

Helps and advocates on behalf of immigrants in a wide variety of complex immigration proceedings. (305-284-6092 or www.law.miami.edu/clinics/immigration/?op=7)

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