



# Trump-Pence Administration policies undermine LGBTQ health equity

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 THE FENWAY INSTITUTE

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**By Sean Cahill and Matthew Pettus**

President Donald J. Trump has presided over a dramatic expansion in anti-LGBTQIA+<sup>1</sup> public policies, from health care nondiscrimination to military service. With a few exceptions such as Trump's Ending the HIV Epidemic (EHE) plan, the policies pursued by President Trump and Vice President Michael Pence have echoed the positions of the religious right organizations that developed them. These include religious refusal policies that allow health care and social service providers to refuse to serve individuals based on religious or moral objection, the repeal of Obama-Biden-era sexual orientation and gender identity nondiscrimination language in health care regulations, and anti-transgender policies in the nation's schools, homeless shelters, and prisons.

Trump has also dangerously stoked the flames of racial and social division, and undermined basic institutions of our democracy, from the free press to the right to peacefully petition one's government for the redress of grievances.

The Fenway Institute has published three annual reports on the Trump Administration's policies toward LGBTQ health equity and HIV prevention and care.<sup>2</sup> In this report we review the Trump Administration's record on LGBTQIA+ equality, HIV prevention and care policy, and racial justice issues from 2017-2020.

## **Sexual orientation and gender identity nondiscrimination policies: Trump opposes**

Sexual orientation and gender identity (SOGI) nondiscrimination policies are important because anti-LGBT discrimination is widespread and negatively affects

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<sup>1</sup> The acronym LGBTQIA+ refers to the broader community of lesbian, gay, bisexual, transgender, genderqueer, and intersex people. When referencing health care data for which individuals were asked to self-identify as lesbian, gay, bisexual, or transgender, the acronym LGBT will be used instead.

<sup>2</sup> Simonoff C, Wang T, Cahill S (2020, January). *In its third year in office, the Trump Administration dramatically expanded discriminatory anti-LGBT policies*. Boston: The Fenway Institute; Cahill S, Wang T, Jenkins B (2019, January). *Trump Administration continued to advance discriminatory policies and practices against LGBT people and people living with HIV in 2018*. Boston: The Fenway Institute; Cahill S, Geffen S, Wang T (2018, January 16). *One year in, Trump Administration amasses striking anti-LGBT record*. Boston: The Fenway Institute. These reports are all available at <https://fenwayhealth.org/the-fenway-institute/health-policy/>

people’s physical and mental health.<sup>3</sup> Experiencing discrimination in health care settings causes LGBT people to not seek subsequent care, both routine, preventive care and emergency care.<sup>4</sup>

*Obama-Biden implemented SOGI nondiscrimination in health care; Trump-Pence are trying to repeal it*

The Obama-Biden Administration implemented a number of SOGI nondiscrimination regulations governing health care that prohibit SOGI discrimination in health care services, public and private insurance, and the Program of All-inclusive Care for the Elderly (PACE). A 2016 final rule implemented Section 1557 of the Affordable Care Act (ACA), the law’s nondiscrimination provision. The Section 1557 rule explicitly prohibits gender identity discrimination in health care facilities and programs receiving federal funding. It prohibits discrimination against people with “intersex traits or atypical sex characteristics” as well as nonbinary people. The rule expands access to gender affirming care by prohibiting health insurance plans from refusing to cover medically necessary transgender health care needs. The rule also prohibits some forms of sexual orientation discrimination that take the form of sex stereotyping.<sup>5</sup>

In addition to the ACA nondiscrimination rule, the Obama-Biden Administration also implemented a number of other nondiscrimination rules that explicitly mention both sexual orientation and gender identity that govern:

- How states and health insurance exchanges carry out ACA requirements and market to individuals about enrollment;
- Marketing and benefit design practices of health insurance issuers covered by the ACA;
- Administration of qualified health plans, including marketing and enrollment of applicants;

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<sup>3</sup> Singh S, Durso LE. *Widespread discrimination continues to shape LGBT people’s lives in both subtle and significant ways*. Washington, DC: Center for American Progress, 2017.

<https://www.americanprogress.org/issues/lgbtq-rights/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways/>

<sup>4</sup> Mirza SA, Rooney C (2018, January 18) *Discrimination prevents LGBTQ people from accessing health care*. Washington, DC: Center for American Progress. <https://www.americanprogress.org/issues/lgbtq-rights/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/>

<sup>5</sup> Office for Civil Rights, Office of the Secretary, U.S. Department of Health and Human Services. Nondiscrimination in Health Programs and Activities. *Federal Register* 2016; Vol. 81: No. 96, pp 31387-31390. Available at <https://www.govinfo.gov/content/pkg/FR-2016-05-18/pdf/2016-11458.pdf>

- Organizations operating PACE programs and participants receiving PACE services;
- And Medicaid beneficiary enrollment, including promotion and delivery of services.<sup>6</sup>

In June 2020 the Trump Administration repealed all of these nondiscrimination regulations.<sup>7</sup> A number of LGBTQIA+ organizations sued, and a federal judge blocked the Trump Administration’s repeal of the nondiscrimination rules in August 2020.<sup>8</sup> The repeal of SOGI nondiscrimination regulations governing health care services, private insurance, Medicaid, and the PACE program could undermine the ability of LGBTQIA+ people<sup>9</sup> and people living with HIV<sup>10</sup> to access health care and elder services.

### *Trump opposes the Equality Act*

The Trump Administration opposes sexual orientation and gender identity nondiscrimination laws and policies. In June 2019 the U.S. House of Representatives passed the Equality Act, which would prohibit SOGI discrimination in employment, housing, public accommodations, credit, jury duty, and federal funding.<sup>11</sup> A senior White House official told NBC News that the Trump Administration opposed the Equality Act, stating that “this bill in its current form is filled with poison pills that threaten to undermine parental and conscience rights.”<sup>12</sup> Since the House passed the Equality Act, the Republican-led U.S. Senate has refused to allow a debate and vote on the bill. Congress first considered a

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<sup>6</sup> Laurila K (2019, July). *New Rule Proposes Removal of LGBT Nondiscrimination Provisions from Section 1557 and Other Health Care Regulations*. Boston: The Fenway Institute. [https://fenwayhealth.org/wp-content/uploads/TFIP\\_31\\_Section1557\\_brief\\_final\\_web.pdf](https://fenwayhealth.org/wp-content/uploads/TFIP_31_Section1557_brief_final_web.pdf)

<sup>7</sup> Diamond D (2020, June 12). Trump finalizes rollback of LGBTQ patient protections. Politico. <https://www.politico.com/news/2020/06/12/trump-lgbtq-patient-protections-315819>

<sup>8</sup> Gross EL (2020, August 17). Federal Judge Temporarily Blocks Trump Administration’s Rollback Of Obama-Era Transgender Health Care Protections. *Forbes*. <https://www.forbes.com/sites/elanagross/2020/08/17/federal-judge-temporarily-blocks-trump-administrations-rollback-of-obama-era-transgender-health-care-protections/#49f7262360d6>

<sup>9</sup> Baker K, McGovern A, Gruberg S, and Cray A. (2016). *The Medicaid Program and LGBT Communities: Overview and Policy Recommendations*. Center for American Progress. Available online at: <https://cdn.americanprogress.org/wp-content/uploads/2016/08/08125221/2LGBTMedicaidExpansion-brief.pdf>

<sup>10</sup> Belluz J (2017, February 15). Why Obamacare repeal would be devastating to people with HIV. *Vox*. <http://www.vox.com/2017/2/8/14532310/obamacare-aca-repeal-hiv-aids>

<sup>11</sup> H.R. 5 – Equality Act. 116<sup>th</sup> Congress (2019-2020). <https://www.congress.gov/bill/116th-congress/house-bill/5/text>

<sup>12</sup> Fitzsimons T. (2019, May 14). Trump Opposes Federal LGBTQ Nondiscrimination Bill, Citing ‘Poison Pills.’ *NBC News*. Available online at: <https://www.nbcnews.com/feature/nbc-out/trump-opposes-federal-lgbtq-nondiscrimination-bill-citing-poison-pills-n1005551>

sexual orientation nondiscrimination law in 1974, when New York Congresswoman Bella Abzug introduced the Equality Act.<sup>13</sup>

*The Obama-Biden Administration prohibited anti-LGBT discrimination by federal contractors, while President Trump gutted this executive order*

The Obama-Biden Administration prohibited discrimination on the basis of sexual orientation and gender identity by federal contractors in 2014.<sup>14</sup> President Trump weakened this executive order in March 2017 by removing the compliance requirement.<sup>15</sup> NBC News reported that Trump's executive order "revok[es] the requirement that companies seeking federal contracts prove they've complied with federal laws banning discrimination based on sexual identity or orientation...LGBTQ advocates say they were particularly rattled by Trump's Monday signing, since revoking the compliance requirement would appear to make existing protections against gender identity and sexual orientation discrimination meaningless."<sup>16</sup>

*Trump urged the U.S. Supreme Court to allow anti-LGBT discrimination in employment, arguing that sex discrimination laws do not protect LGBT people*

In August 2019, the Trump Administration encouraged the U.S. Supreme Court to rule against two gay men and a transgender woman who were discriminated against in employment, arguing that the Civil Rights Act's prohibition against sex discrimination in employment did not apply to anti-gay and anti-transgender discrimination.<sup>17</sup> Since 2017, the U.S. Department of Justice has argued that sex nondiscrimination laws do not apply to gender identity or sexual orientation discrimination.<sup>18</sup> However, for nearly two decades U.S. federal courts and the

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<sup>13</sup> Iovannone JJ (2018, January 14). "Battling Bella" Abzug and the Equality Act. *Medium*.

<https://medium.com/queer-history-for-the-people/battling-bella-abzug-and-the-equality-act-859663317f9f>

<sup>14</sup> Epstein J (2014, July 21). Obama signed LGBT executive order. *Politico*.

<https://www.politico.com/story/2014/07/obama-signs-lgbt-protection-federal-workers-contractors-109174>

<sup>15</sup> Ford Z (2017, March 29). Trump revokes executive order, weakens protections for LGBT workers. *Think Progress*. <https://archive.thinkprogress.org/trump-gutted-lgbt-executive-order-8dd0e3be69a/>

<sup>16</sup> O'Hara ME (2017, March 29). LGBTQ advocates say Trump's executive order makes them vulnerable to discrimination. *NBC News*. <https://www.nbcnews.com/feature/nbc-out/lgbtq-advocates-say-trump-s-news-executive-order-makes-them-n740301>

<sup>17</sup> Nagourney A, Kaplan T (2020, June 21). Behind Joe Biden's evolution on L.G.B.T.Q. rights. *New York Times*. <https://www.nytimes.com/2020/06/21/us/politics/biden-gay-rights-lgbt.html>

<sup>18</sup> Greenwood M. (2017, October 5). Sessions reverse DOJ policy on transgender employee protections. *The Hill*. <http://thehill.com/blogs/blog-briefing-room/news/354023-sessions-reverses-doj-policy-on-transgender-employee>

Equal Employment Opportunity Commission have interpreted sex nondiscrimination to prohibit anti-LGBT discrimination.<sup>19</sup>

This was the second time that the Trump Administration urged the U.S. Supreme Court to support anti-gay discrimination. The first time was in the *Masterpiece Cake Shop* case in 2017, when the Trump Administration argued that there is no compelling government interest in prohibiting anti-gay discrimination.<sup>20</sup>

The Trump Administration continues to argue that sex nondiscrimination laws do not prohibit anti-LGBT discrimination,<sup>21</sup> despite the landmark U.S. Supreme Court ruling in June 2020 that Title VII of the Civil Rights Act does prohibit anti-gay and anti-transgender discrimination in employment.<sup>22</sup>

*Trump seeks to repeal Obama-Biden nondiscrimination language prohibiting SOGI discrimination by organizations receiving federal Health and Human Services funding*

Another Obama-Biden Administration rule that the Trump-Pence Administration is in the process of repealing is a rule prohibiting discrimination on the basis of sexual orientation, gender identity, sex, and religion by social service and health care organizations funded by the U.S. Department of Health and Human Services.<sup>23</sup> Under this dangerous and exceptionally broad rule, LGBTQ people, women, people of minority faiths, and non-religious people could face discrimination by a wide range of health and social service agencies that receive funding from HHS. This would put the health and well-being of millions of Americans at risk. HHS awards more than \$500 billion in grant funding every year to provide critical services to millions of Americans. HHS grantees include

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<sup>19</sup> U.S. Equal Employment Opportunity Commission (updated 2017). Examples of court decisions supporting coverage of LGBT-related discrimination under Title VII.

[https://www.eeoc.gov/eeoc/newsroom/wysk/lgbt\\_examples\\_decisions.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/lgbt_examples_decisions.cfm)

<sup>20</sup> U.S. Department of Justice 2017. No. 16-111. In the Supreme Court of the United States. *Masterpiece Cake Shop, Ltd., et al., Petitioners, v. Colorado Civil Rights Commission, et al.* On writ of certiorari to the Colorado Court of Appeals. Brief for the United States as Amicus Curiae Supporting Petitioners.

<https://www.documentcloud.org/documents/3988525-16-111-United-States.html>

<sup>21</sup> Alonso-Zaldivar R (2020, June 19). What Supreme Court? Trump's HHS pushes LGBT health rollback. *ABC News*.

<https://abcnews.go.com/Health/wireStory/supreme-court-trumps-hhs-pushes-lgbt-health-rollback-71350736>

<sup>22</sup> Supreme Court of the United States. *Bostock v. Clayton County, Georgia*. Certiorari to the United States Court of Appeals for The Eleventh Circuit. No. 17-1618. June 15, 2020. Available at

[https://www.supremecourt.gov/opinions/19pdf/17-1618\\_hfci.pdf](https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf)

<sup>23</sup> Department of Health and Human Services, 45 CFR Part 75 RIN 0991-AC16 Office of the Assistant Secretary for Financial Resources; Health and Human Services Grants Regulation. *Federal Register* / Vol. 84, No. 223 / Tuesday, November 19, 2019 / Proposed Rules. Pages 63831-63836.

organizations that provide a wide array of health and social services, including health care at federally funded community health centers, HIV and STI testing and prevention, refugee resettlement, elder care programs, childcare and after-school programs, community meal programs, and adoption and foster care services. These programs are vital to millions of Americans, especially for marginalized communities, including LGBT people, who already experience pervasive discrimination that acts as a barrier to accessing care and services.<sup>24</sup>

Under this proposed rule, LGBTQIA+ people in need of medical care could be turned away from federally funded health centers and clinics. After-school programs like Head Start could refuse to serve LGBTQIA+ youth or youth with LGBTQIA+ parents. Senior service centers could refuse to serve LGBT elders. This rule, if enacted, would create a broad license to discriminate for agencies like Miracle Hill Ministries, a Christian nonprofit homeless and foster care agency in South Carolina. Miracle Hill Ministries received a special waiver from HHS to continue to receive federal grant funding despite only working with evangelical Christians and refusing to place children with a prospective parent who was Jewish<sup>25</sup> and another prospective family that was Catholic.<sup>26</sup>

### *Trump repealed Obama-Biden nondiscrimination regulation in education*

In 2016, the U.S. Department of Justice and Department of Education issued guidance stating that discrimination on the basis of gender identity in schools is prohibited under Title IX of the Education Amendments of 1972.<sup>27,28</sup> The guidance called on schools to allow transgender students to use facilities consistent with their gender identity.

In 2017, the Trump-Pence Administration rolled back this Obama-Biden Administration guidance that required school systems to protect transgender

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<sup>24</sup> Lambda Legal. 2010. *When Health Care Isn't Caring: Lambda Legal's Survey of Discrimination against LGBT People and People with HIV*. New York: Lambda Legal.

<sup>25</sup> Meckler L. (2019, January 23). Trump administration grants waiver to agency that works only with Christian families. *Washington Post*. Accessed online at: [https://www.washingtonpost.com/local/education/trump-administration-grants-waiver-to-agency-that-works-only-with-christian-families/2019/01/23/5beafed0-1f30-11e9-8b59-0a28f2191131\\_story.html](https://www.washingtonpost.com/local/education/trump-administration-grants-waiver-to-agency-that-works-only-with-christian-families/2019/01/23/5beafed0-1f30-11e9-8b59-0a28f2191131_story.html)

<sup>26</sup> Kinnard M. (2019, February 15). AP Exclusive: Lawsuit claims discrimination by foster agency. *Associated Press*. Accessed online at: <https://apnews.com/ed3ae578ebdb4218a2ed042a90b091c1>

<sup>27</sup> Somashekar S, Brown E, Vucci E. (2017). Trump Administration rolls back protections for transgender students. *Washington Post*. [https://www.washingtonpost.com/local/education/trump-administration-rolls-back-protections-for-transgender-students/2017/02/22/550a83b4-f913-11e6-bf01-d47f8cf9b643\\_story.html?utm\\_term=.11ef42f0311c](https://www.washingtonpost.com/local/education/trump-administration-rolls-back-protections-for-transgender-students/2017/02/22/550a83b4-f913-11e6-bf01-d47f8cf9b643_story.html?utm_term=.11ef42f0311c)

<sup>28</sup> Department of Justice press release (2016, May 13). U.S. Departments of Justice and Education release joint guidance to help schools ensure the civil rights of transgender students. <https://www.justice.gov/opa/pr/us-departments-justice-and-education-release-joint-guidance-help-schools-ensure-civil-rights>

students from discrimination.<sup>29</sup> In 2018, the Department of Education (DOE) refused to hear or issue rulings on complaints regarding transgender students' access to bathrooms in school.<sup>30</sup> In 2019, Education Secretary Betsy DeVos refused to verbally confirm that the DOE supports policies that prohibit discrimination based on sexual orientation or gender identity. Secretary DeVos instead insisted that "we follow the law as defined."<sup>31</sup> In a separate instance, DeVos admitted she was aware that the Trump-Pence Administration's 2017 decision to roll back the Obama-Biden Administration's Title IX interpretation that protected students from discrimination based on their gender identity had resulted in negative impacts on transgender students, including harassment, depression, and worse educational outcomes.<sup>32</sup>

*Trump Administration in the process of repealing homeless shelters nondiscrimination rule protecting transgender people*

In 2012, under the leadership of President Obama and Vice President Biden, the U.S. Department of Housing and Urban Development (HUD) issued the Equal Access Rule, stating that homeless shelters are open to all, regardless of sexual orientation, gender identity, or marital status. In 2016 HUD issued another rule, titled "Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs," that stated that women's and men's homeless shelters could not refuse to house people based on their gender identity. In other words, a transgender woman had the right to stay in a women's shelter.<sup>33</sup>

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<sup>29</sup> Somashekar S, Brown E, Vucci E. (2017, February 22). Trump Administration Rolls Back Protections for Transgender Students. *Washington Post*. [https://www.washingtonpost.com/local/education/trump-administration-rolls-back-protections-for-transgender-students/2017/02/22/550a83b4-f913-11e6-bf01d47f8cf9b643\\_story.html?utm\\_term=.11ef42f0311c](https://www.washingtonpost.com/local/education/trump-administration-rolls-back-protections-for-transgender-students/2017/02/22/550a83b4-f913-11e6-bf01d47f8cf9b643_story.html?utm_term=.11ef42f0311c)

<sup>30</sup> Turner C, Kamenetz A. (2018, February 12). The Education Department Says It Won't Act on Transgender Student Bathroom Access. *NPR*. Available online at: <https://www.npr.org/sections/ed/2018/02/12/585181704/the-education-department-says-it-wont-act-on-transgender-student-bathroom-access>

<sup>31</sup> Ring T. (2019, March 26). Betsy DeVos Won't Say if She Opposes Anti-LGBTQ Discrimination. *The Advocate*. <https://www.advocate.com/politics/2019/3/26/betsy-devos-wont-say-if-she-opposes-anti-lgbtq-discrimination>

<sup>32</sup> Anapol A. (2019, April 10). DeVos Defends Controversial Guidance on Transgender Students. *The Hill*. <https://thehill.com/homenews/administration/438257-dem-asks-devos-if-she-knew-of-potential-harm-to-transgender-students>

<sup>33</sup> Santos T, Mahowald L, Gruberg S (2020, September 3). *The Trump Administration's Latest Attack on Transgender People Facing Homelessness*. Washington, DC: Center for American Progress. <https://www.americanprogress.org/issues/lgbtq-rights/reports/2020/09/03/490004/trump-administrations-latest-attack-transgender-people-facing-homelessness/>

In 2020 the Trump-Pence Administration sought to repeal the Obama-Biden-era gender identity nondiscrimination regulations governing homeless shelters. According to a Center for American Progress report released in September 2020:

The proposed rule also eliminates self-identification from its definition of gender identity and puts forward a definition limited to “actual or perceived gender-related characteristics.” It also allows shelters to make determinations about biological sex if they have a “good faith belief” that a person seeking access is not of the sex the shelter serves; the preamble uses examples such as height, facial hair, an Adam’s apple, and other gender stereotypes as factors that might constitute a good faith belief, allowing shelters to demand evidence of biological sex. Not only will this encourage discrimination against transgender people, but it will also lead to discrimination against anyone who does not conform to the shelter operator’s stereotypes of what men and women look like.<sup>34</sup>

Homelessness is a major issue affecting transgender people, especially Black transgender women. About one in three transgender people have experienced discrimination in their lifetimes,<sup>35</sup> and 12% in the past year.<sup>36</sup>

Transgender people experience twice the poverty rate as the general U.S. population (29% versus 14%), and three times the unemployment rate (15% vs. 5%), according to the 2015 U.S. Transgender Survey.<sup>37</sup> A Williams Institute analysis of poverty data from state Behavioral Risk Factor Surveillance System surveys (2014-2017) found that 29.4% of transgender respondents were poor. Black transgender people had more than twice the rate of poverty than white transgender people (38.5% vs. 18.6%), while Hispanic transgender people were nearly three times as poor (48.4%).<sup>38</sup>

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<sup>34</sup> Ibid.

<sup>35</sup> Jan T. (2019, May 22). Proposed Rule HUD Would Strip Transgender Protections at Homeless Shelters. *The Washington Post*. <https://www.washingtonpost.com/business/2019/05/22/proposed-hud-rule-would-strip-transgender-protections-homeless-shelters/>

<sup>36</sup> James SE, Herman JL, Rankin S, et al. *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality, 2016.

<sup>37</sup> James SE, Herman JL, Rankin S, et al. *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality, 2016.

<sup>38</sup> Badgett MVL, Choi SK, Wilson BDM. *LGBT poverty in the United States: A study of differences between sexual orientation and gender identity groups*. Los Angeles: UCLA School of Law, Williams Institute, 2019.

## **Bureau of Prisons under Trump repeals Obama-era regulation on placement of transgender people in federal prisons**

In May 2018 the federal Bureau of Prisons under the Trump-Pence Administration rescinded a policy adopted under the Obama-Biden Administration to protect the safety and security of transgender prisoners. The Prison Rape Elimination Act (PREA) requires that decisions regarding where transgender and intersex inmates are housed be made on a case-by-case basis. Prison staff must conduct an individual assessment that considers the individual prisoner's views about their safety.<sup>39</sup> Department of Justice guidance issued in 2016, when Joe Biden was Vice President, made assigning a transgender prisoner to housing based solely on their sex assigned at birth a violation of federal law.<sup>40</sup>

The Federal Bureau of Prisons announced in May 2018 that while it will continue to make housing determinations on a case-by-case basis as required by PREA, it will use “biological sex” to make initial determinations in the type of housing transgender inmates are assigned, and will assign transgender prisoners to facilities conforming to their gender identity only “in rare cases.”<sup>41</sup>

Transgender prisoners, especially transgender women housed in men's prisons, experience high rates of sexual assault. A 2014 Bureau of Justice Statistics report found that transgender prisoners report sexual abuse at about 10 times the rate of heterosexual male prisoners, and at about 2.5 times the rate of heterosexual female prisoners.<sup>42</sup>

## **Marriage equality: Trump opposes**

The 2016 Republican Party Platform said that marriage is “the union of one man and one woman,”<sup>43</sup> even though the U.S. Supreme Court had legalized same-sex

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<sup>39</sup> 28 C.F.R. 115.42(c), (e).

<sup>40</sup> The text of the guidance is available at <https://www.prearesourcecenter.org/node/3927>

<sup>41</sup> The May 11, 2018 revisions to the Federal Bureau of Prisons Transgender Offender Manual are set forth in the Change Notice posted by the Bureau at <https://www.documentcloud.org/documents/4459297-BOP-Change-Order-Transgender-Offender-Manual-5.html>.

<sup>42</sup> Beck AJ, Berzofsky M and Krebs C (2013). *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12 National Inmate Survey, 2011–2012*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics <https://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>; Supplemental tables: Prevalence of sexual victimization among transgender adult inmates.

<sup>43</sup> Venkatraman S, Sopelsa B (2020, September 9). “Transgender Black Marxists” seek to overthrow U.S., Trump backer Michelle Bachmann says. *NBC News*. <https://www.nbcnews.com/feature/nbc-out/transgender-black-marxists-seek-overthrow-u-s-trump-backer-michele-n1239683>

marriage in all 50 states in its 2015 Obergefell case.<sup>44</sup> This section of the 2016 GOP Platform reads:

Traditional marriage and family, based on marriage between one man and one woman, is the foundation for free society and has for millennia been entrusted with rearing children and instilling cultural values. We condemn the Supreme Court’s ruling in *United States v. Windsor*, which wrongly removed the ability of Congress to define marriage policy in federal law. We also condemn the Supreme Court’s lawless ruling in *Obergefell v. Hodges*... which robbed 320 million Americans of their legitimate constitutional authority to define marriage as the union of one man and one woman.<sup>45</sup>

In 2020 the Republican National Committee reaffirmed its 2016 party platform.<sup>46</sup>

Prior to running for President in 2015, Donald Trump had expressed support for domestic partner benefits<sup>47</sup> and opposition to marriage equality.<sup>48</sup> When asked on Fox News Sunday in 2016 if he would appoint Supreme Court justices who would overturn marriage equality, Trump said, “I would strongly consider that, yes.”<sup>49</sup>

President Trump has followed through on his promise. Many of his nominees for federal judicial appointments have expressed anti-LGBTQIA+ sentiments and/or have histories of ruling against the interests of LGBTQIA+ Americans.<sup>50</sup> Twelve federal judges with anti-LGBTQIA+ records who were nominated by Trump in 2018 were confirmed by the Senate and began service in 2019; half of them have worked to oppose or undermine marriage equality.<sup>51</sup> Several of the justices appointed by Trump have spoken out publicly or filed amicus curiae (friend of the

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<sup>44</sup> *Obergefell v. Hodges*, 576 U.S. 644 (2015). [https://www.supremecourt.gov/opinions/14pdf/14-556\\_3204.pdf](https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf)

<sup>45</sup> 2016 Republican Party Platform. [https://prod-cdn-static.gop.com/media/documents/DRAFT\\_12\\_FINAL%5B1%5D-ben\\_1468872234.pdf](https://prod-cdn-static.gop.com/media/documents/DRAFT_12_FINAL%5B1%5D-ben_1468872234.pdf)

<sup>46</sup> Venkatraman & Sopelsa, 2020.

<sup>47</sup> Alexander, Paul. 2000. “Trump towers.” *Advocate*. <http://www.advocate.com/election/2015/9/28/read-donald-trumps-advocate-interview-where-hedefends-gays-mexicans>

<sup>48</sup> “Trump says he would play in Iowa, aides to visit Monday.” March 3, 2011. Des Moines Register. Available online at: <http://blogs.desmoinesregister.com/dmr/index.php/2011/03/03/register-exclusivetrump-says-he-would-play-in-iowa-aides-to-visit-monday>

<sup>49</sup> Fox News Sunday. January 31, 2016. “Ted Cruz attacks Donald Trump’s financial record; Trump responds.” Fox News. Transcript available at: <http://www.foxnews.com/transcript/2016/01/31/tedcruz-attacks-donald-trump-financial-record-trump-responds/>

<sup>50</sup> Lambda Legal. (2019, January 31). Stacking the courts: The Fight Against Trump’s Extremist Judicial Nominees. Lambda Legal. Available online at: <https://www.lambdalegal.org/judicial-nominees>

<sup>51</sup> Alliance for Justice. (n.d.) Trump’s judges: On the issues – LGBTQ Americans. Alliance for Justice. Available online at: <https://afj.org/our-work/judicial-selection/trumps-judges-on-the-issues#lgbtq>

court) briefs in support of bakers, florists, photographers, or other wedding vendors who have refused to serve same-sex couples.<sup>52,53,54,55</sup>

## **Transgender military service, allowed under Obama-Biden, banned by Trump-Pence**

The Obama-Biden Administration lifted the ban on transgender people serving in the military in 2016.<sup>56</sup> In July 2017, President Trump issued a series of tweets announcing a ban on transgender people serving in the U.S. military based on “tremendous medical costs and disruption” that he believed transgender troops would impose.<sup>57</sup> These tweets were later followed by a memorandum for the Secretary of Defense and the Secretary of Homeland Security, reversing the Obama-Biden-era policy that permits transgender people to serve openly in the U.S. military.<sup>58</sup> In response to public outcry and several legal challenges, the Trump Administration revised the policy to allow transgender people to serve so long as they did not undergo medical transition, were already actively serving in the military, and served in accordance with their biological sex rather than their gender identity.<sup>59</sup> In 2018, the proposed ban faced several legal battles and was blocked by lower courts.<sup>60</sup> In January 2019, the D.C. Court of Appeals as well as the U.S. Supreme Court ruled in favor of the ban, lifting injunctions imposed by

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<sup>52</sup> Alliance for Justice. (2018, June). AFJ Nominee Report: Chad Readler. Alliance for Justice. Available online at: <https://afj.org/wp-content/uploads/2018/06/Readler-Final.pdf>

<sup>53</sup> Alliance for Justice. (2018, May). AFJ Nominee Snapshot: John Campbell Barker. Alliance for Justice. Available online at: <https://afj.org/wp-content/uploads/2018/05/Barker-FINAL-Full-Report.pdf>

<sup>54</sup> Alliance for Justice. (2019, April 23). Truncale’s Inflammatory Statements Raise Questions. *Alliance for Justice: Justice Watch Blog*. Available online at: <https://www.afj.org/blog/truncales-inflammatory-statements-raise-questions>

<sup>55</sup> Alliance for Justice. (2019, July). AFJ Nominee Report: Lee Rudofsky. Alliance for Justice. Available online at: <https://www.afj.org/wp-content/uploads/2019/07/Rudofsky-Report-FINAL.pdf>

<sup>56</sup> Margolin E (2016, June 30). With transgender military ban lifted, Obama cements historic LGBT rights legacy. *NBC News*. <https://www.nbcnews.com/feature/nbc-out/transgender-military-ban-lifted-obama-cements-historic-lgbt-rights-legacy-n600541>

<sup>57</sup> Cahill S, Geffen S, Wang T. (2018). *One year in, Trump Administration amasses striking anti-LGBT record*. Boston, MA: The Fenway Institute. Available online at: <https://fenwayhealth.org/wp-content/uploads/The-Fenway-Institute-Trump-Pence-Administration-One-Year-Report.pdf>

<sup>58</sup> President Donald Trump. (2017, August 25). Memorandum for the Secretary of Defense, the Secretary of Homeland Security: Military service by transgender individuals. The White House. <https://www.documentcloud.org/documents/3964535-Trump-Transgender-Military-Memo.html>

<sup>59</sup> Cahill S, Wang T, Jenkins B. (2019). *Trump Administration continued to advance discriminatory policies and practices against LGBT people and people living with HIV in 2018*. Boston, MA: The Fenway Institute. Available online at: [https://fenwayhealth.org/wp-content/uploads/Trump-Administration-Impact-on-LGBTs-Year-Two-Brief\\_Web.pdf](https://fenwayhealth.org/wp-content/uploads/Trump-Administration-Impact-on-LGBTs-Year-Two-Brief_Web.pdf)

<sup>60</sup> *Ibid.*

lower courts.<sup>61,62</sup> On April 12, 2019, this ban formally went into effect, putting an estimated 13,600 transgender individuals at risk of being discharged.<sup>63</sup>

## **Trump expands anti-LGBTQ religious refusal policies**

### *The “Conscience Rule”*

Over the past four years the Trump Administration has enacted a number of religious refusal regulations and policies that could allow for discrimination against LGBTQIA+ people and other marginalized communities. In May 2019, the Department of Health and Human Services published a final “Conscience Rule” that allows healthcare providers to refuse to participate in medical procedures for religious reasons.<sup>64</sup> While LGBTQIA+ individuals are not mentioned specifically in this rule, several procedures such as gender affirmation surgery and fertility treatment for same-sex couples are sometimes contested on religious grounds. This overly broad rule allows healthcare providers and staff with any articulable connection to a procedure to refuse to serve LGBTQIA+ patients based on religion, even in cases of emergency. As of this writing, the rule has yet to be implemented as it was struck down by three federal judges in New York, Washington state, and California.<sup>65</sup> U.S. District Judge William Alsup of Northern California stated, “When a rule is so saturated with error, as here, there is no point in trying to sever the problematic provisions. The whole rule must go.”<sup>66</sup>

The Trump Administration’s conscience rule takes the concept of religious freedom and turns it on its head. True religious freedom protects an individual’s right to worship—or not—and harms no one. But the Trump Administration’s new rule is designed so that government employees and healthcare providers can deny

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<sup>61</sup> Liptak A. (2019, January 22). Supreme Court Revives Transgender Ban for Military Service. *The New York Times*. Available online at: <https://www.nytimes.com/2019/01/22/us/politics/transgender-ban-military-supreme-court.html>

<sup>62</sup> Associated Press. (2019, January 6). Appeals Court Sides with Trump in Transgender Military Case. *Associated Press*. Available online at: <https://www.wric.com/news/politics/appeals-court-sides-with-trump-in-transgender-military-case/>

<sup>63</sup> Palm Center. (2019, April 12). Palm Center Corrects Misleading NPR Story on Trump Transgender Ban. Palm Center. Available online at: <https://www.palmcenter.org/palm-center-corrects-misleading-npr-story-on-trump-transgender-ban/>

<sup>64</sup> Kodjak A. (2019, May 2). New Trump Rule Protects Health Care Workers Who Refuse Care For Religious Reasons. *NPR*. Available online at: <https://www.npr.org/sections/health-shots/2019/05/02/688260025/new-trump-rule-protects-health-care-workers-who-refuse-care-for-religious-reason>

<sup>65</sup> Ring T. (2019, November 19). Third Judge Voids Trump’s Rule Allowing Discrimination in Health Care. *The Advocate*. Available online at: <https://www.advocate.com/health/2019/11/19/third-judge-voids-trumps-rule-allowing-discrimination-health-care>

<sup>66</sup> *Ibid.*

service or treatment to LGBTQIA+ people as a group by claiming that providing such service or treatment would violate their religious beliefs or sincerely held principles.

In 2019 the U.S. Department of Health and Human Services Office of Civil Rights also changed its mission statement as follows, as reported by National Public Radio:

Until last week, the website said the office’s mission was to “improve the health and well-being of people across the nation” and to ensure people have equal access to health care services provided by HHS. But the new statement repositions the OCR as a law enforcement agency that enforces civil rights laws, and conscience and religious freedom laws, and “protects that exercise of religious beliefs and moral convictions by individuals and institutions.”<sup>67</sup>

### *Enabling religion- and morality-based discrimination by federal contractors*

In August 2019, the Department of Labor Office of Federal Contract Compliance Programs (OFCCP) released a proposed rule that, if finalized, would allow a wider range of federal contractors to discriminate against LGBTQIA+ people, as well as people of minority faiths and other marginalized groups, on the basis of discriminatory religious beliefs. The mission of the OFCCP is to ensure that federal contractors comply with Executive Order (EO) 11246, which prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. In 2014, President Obama added sexual orientation and gender identity as protected classes under EO 11246. EO 11246 includes a narrow religious exemption for religious organizations. The new proposed rule threatens to jeopardize the very mission of OFCCP and the original intent of EO 11246 by using overly broad and simplified definitions that would vastly expand what organizations can claim the religious exemption to the nondiscrimination provisions of EO 11246.

The rule proposes to create a new expanded definition for the term “religious corporation, association, educational institution or society.” Entities can meet this new definition and qualify for broadened religious exemptions even if they are not “engaged primarily” in a religious purpose and even if they are for-profit organizations. This is a vast expansion on both the cited legal precedent and the

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<sup>67</sup> Kodjak A. (2019, May 2). New Trump Rule Protects Health Care Workers Who Refuse Care For Religious Reasons. *National Public Radio*.

original religious exemption in EO 11246, which used much narrower definitions for entities qualified for religious exemptions. EO 11246's existing religious exemption also clearly states that contractors and subcontractors that claim a religious exemption are "not exempted or excused from complying with the other requirements contained in this Order." The proposed rule, on the other hand, explicitly states that federal contractors may condition employment on adherence to specific religious tenets, and the proposed rule fails to emphasize that discrimination on the basis of other protected classes under the pretext of religious tenets is still not permitted.<sup>68</sup> Given the proposed rule's broadened religious exemption and the current context of anti-LGBTQIA+ religious refusal guidance and legislation, a wider array of federal contractors and subcontractors could feel wrongly empowered to discriminate against LGBTQIA+ workers based on religious beliefs. If this sort of discrimination were to occur, the proposed rule would also make it harder for employees to challenge discrimination where religion is being used as a pretext for other prohibited discrimination.

## Judicial appointments

President Trump's first two U.S. Supreme Court appointees had records of anti-LGBTQIA+ rulings, and LGBTQIA+ legal advocacy groups opposed the nominations of both Neil Gorsuch<sup>69</sup> and Brett Kavanaugh.<sup>70</sup> While Kavanaugh voted against LGBTQIA+ rights in the landmark *Bostock v. Clayton County, Georgia* decision, conservative Justice Neil Gorsuch, writing for the 6-3 majority, said that "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."<sup>71</sup>

On September 26, 2020, just eight days after the death of Supreme Court Justice Ruth Bader Ginsburg, Trump announced his intention to nominate his third U.S. Supreme Court nominee, Amy Coney Barrett.<sup>72</sup> Unlike Kavanaugh and Gorsuch,

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<sup>68</sup> Department of Labor, Office of Federal Contract Compliance Programs 41 CFR Part 60-1 RIN 1250-AA09 Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption. *Federal Register* / Vol. 84, No. 158 / Thursday, August 15, 2019 / Proposed Rules. Pages 41677- 41691.

<sup>69</sup> Lambda Legal. (2017, January 31). Neil Gorsuch Has an Unacceptable, Hostile Record Towards LGBT People. [https://www.lambdalegal.org/blog/20170131\\_no-to-neil-gorsuch](https://www.lambdalegal.org/blog/20170131_no-to-neil-gorsuch)

<sup>70</sup> Lambda Legal, letter to Senate Judiciary Committee (2018, July 31). LGBTQ advocates oppose Brett Kavanaugh confirmation to US Supreme Court as a threat to queer lives. [https://www.lambdalegal.org/news/us\\_20180731\\_63-lgbtq-advocates-oppose-brett-kavanaugh](https://www.lambdalegal.org/news/us_20180731_63-lgbtq-advocates-oppose-brett-kavanaugh)

<sup>71</sup> Supreme Court of the United States. *Bostock v. Clayton County, Georgia*. Certiorari to the United States Court of Appeals for The Eleventh Circuit. No. 17-1618. June 15, 2020. [https://www.supremecourt.gov/opinions/19pdf/17-1618\\_hfci.pdf](https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf)

<sup>72</sup> "President Donald J. Trump Announces Intent to Nominate Judge Amy Coney Barrett to the Supreme Court of the United States," Statement by the White House, September 26, 2020. <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-judge-amy-coney-barrett-supreme-court-united-states/>

Barrett has little experience as a federal judge; she has served on the United States Court of Appeals for the Seventh Circuit for less than three years, after Trump nominated her to the post in May 2017. But her public remarks on LGBTQIA+ issues, including marriage equality and transgender rights, indicate that she is a staunch opponent of LGBTQIA+ equality.<sup>73</sup> In October 2015, following the U.S. Supreme Court’s ruling in *Obergefell v. Hodges* that established a constitutional right to marry and struck down state-level anti-same-sex marriage laws, Coney Barrett signed a “Letter to Synod Fathers from Catholic women” that said:

We give witness that the Church’s teachings—on the dignity of the human person and the value of human life from conception to natural death; on the meaning of human sexuality, the significance of sexual difference and the complementarity of men and women; on openness to life and the gift of motherhood; and on marriage and family founded on the indissoluble commitment of a man and a woman—provide a sure guide to the Christian life, promote women’s flourishing, and serve to protect the poor and most vulnerable among us.<sup>74</sup>

In 2016 Coney Barrett expressed opposition to interpreting Title IX’s prohibition of sex discrimination to include anti-transgender people. Discussing the 2015 North Carolina law that prohibited transgender people from using bathrooms consistent with their gender identity, Judge Coney Barrett told an audience at the Jacksonville University Public Policy Institute:

...people will feel passionately on either side about whether physiological males who identify as female should be permitted in bathrooms, especially where there are young girls present...It does seem to strain the text of the statute to say that Title IX demands it.<sup>75</sup>

Throughout the rest of the federal judiciary, the Trump-Pence Administration has nominated—and the Republican-controlled Senate have confirmed—a number of federal judges with records of opposition to LGBTQIA+ equality. Many of these judicial appointees have been outspoken about their belief that sexual and gender minorities should be excluded from non-discrimination protections. Judges Eric

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<sup>73</sup> Burns, Katelyn, (2020, September 26). How Amy Coney Barrett on the Supreme Court could affect LGBTQ rights. *Vox*. <https://www.vox.com/policy-and-politics/2020/9/26/21457343/amy-coney-barrett-supreme-court-lgbtq-rights>

<sup>74</sup> Ethics and Public Policy Center (2015, October 1). Letter to Synod Fathers from Catholic women. <https://eppc.org/synodletter/>

<sup>75</sup> Hesburgh Lecture 2016 – Jacksonville University Public Policy Institute. <https://www.youtube.com/watch?v=7yjTEdZ81II> at 41:00.

Murphy of the Sixth Circuit Court of Appeals,<sup>76</sup> Neomi Rao of the D.C. Circuit Court of Appeals<sup>77</sup>, Brantley Starr of the District court for the Northern District of Texas,<sup>78</sup> and Steven Menashi of the Second Circuit Court of Appeals<sup>79</sup> have all worked to weaken Title IX protections for transgender and other LGB students across the United States. Judge Eric Murphy, specifically, defended the Gloucester County School Board (Virginia), which refused to allow transgender student and plaintiff Gavin Grimm to use the bathroom that matched his gender identity.<sup>80</sup>

Similarly, Judge Brantley Starr has defended several Texas bills that discriminate against same-sex couples seeking to adopt a child.<sup>81</sup> Judge Rao, before her appointment to the D.C. Court of Appeals, worked at the Office of Information and Regulatory Affairs (OIRA) on a proposed Department of Health and Human Services (HHS) rule that would strengthen religious refusal policies for healthcare providers, all but legalizing discrimination in healthcare settings.<sup>82</sup> In June 2019, Judge Matthew Kacsmaryk began service at the District Court for the Northern District of Texas. Judge Kacsmaryk has demonstrated his opposition to LGBT equality. He has written that the Civil Rights Movement was on the “right side of history,” but LGBT rights movements are not. Kacsmaryk claims LGBT movements have “sought public affirmation of the lie that the human person is an autonomous blob of Silly Putty unconstrained by nature or biology, and that marriage, sexuality, gender identity, and even the unborn child must yield to the erotic desires of liberated adults.”<sup>83</sup>

In 2019, President Trump nominated Lawrence VanDyke to the United States Court of Appeals for the Ninth Circuit.<sup>84</sup> The Senate confirmed VanDyke in December 2019. VanDyke is at least the second appellate court judge to have

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<sup>76</sup> Alliance for Justice. (2019, June). AFJ Nominee Report: Eric Murphy. Alliance for Justice. Available online at: <https://www.afj.org/wp-content/uploads/2018/06/Murphy-Full-Report-FINAL.pdf>

<sup>77</sup> Alliance for Justice. (2019, January). AFJ Nominee Report: Neomi Rao. Alliance for Justice. Available online at: <https://www.afj.org/wp-content/uploads/2019/01/Rao-Report.pdf>

<sup>78</sup> Alliance for Justice. (2019, April). Brantley Starr Snapshot. Alliance for Justice. Available online at: <https://www.afj.org/wp-content/uploads/2019/04/Starr-Snapshot-Final.pdf>

<sup>79</sup> Alliance for Justice. (2019, September). AFJ Nominee Report: Steven Menashi. Alliance for Justice. Available online at: <https://www.afj.org/wp-content/uploads/2019/09/Menashi-Report-FINAL.pdf>

<sup>80</sup> Alliance for Justice. (2019, June). AFJ Nominee Report: Eric Murphy. Alliance for Justice. Available online at: <https://www.afj.org/wp-content/uploads/2018/06/Murphy-Full-Report-FINAL.pdf>

<sup>81</sup> Alliance for Justice. (2019, April). Brantley Starr Snapshot. Alliance for Justice. Available online at: <https://www.afj.org/wp-content/uploads/2019/04/Starr-Snapshot-Final.pdf>

<sup>82</sup> Alliance for Justice. (2019, January). AFJ Nominee Report: Neomi Rao. Alliance for Justice. Available online at: <https://www.afj.org/wp-content/uploads/2019/01/Rao-Report.pdf>

<sup>83</sup> Kacsmaryk M. (2015, September 4). The Inequality Act: Weaponizing Same-Sex Marriage. *Public Discourse: The Journal of the Witherspoon Institute*. Available online at: <https://www.thepublicdiscourse.com/2015/09/15612/>

<sup>84</sup> Alliance for Justice. (2019). AFJ Nominee Report: Lawrence Vandyke. Available online at: <https://afj.org/wp-content/uploads/2019/10/VanDyke-Final-Report.pdf>

worked at the Alliance Defending Freedom (ADF). The ADF has been classified by the Southern Poverty Law Center as a hate group and advocates for the sterilization of transgender individuals and the criminalization of homosexuality both in the U.S. and abroad.<sup>85</sup> VanDyke opposes marriage equality for same-sex couples.<sup>86</sup>

## **Sexual orientation and gender identity data collection**

Under President Barack Obama and Vice President Joe Biden the number of federal surveys collecting sexual orientation and gender identity (SOGI) data grew substantially.<sup>87</sup> Under the Obama-Biden Administration the number of federal surveys and studies measuring sexual orientation increased to at least 12; seven of these also measured gender identity or transgender status.<sup>88</sup> SOGI data are now included in many public health surveys, such as the National Survey on Drug Use and Health (SO only), as well as on other surveys examining social determinants of health, such as the National Crime Victimization Survey (SOGI), which collects data on intimate partner violence, and the National Inmate Survey (SOGI), which collects data on sexual assault in prison as mandated by the Prison Rape Elimination Act.<sup>89</sup>

### *Rolling back the collection of SOGI data*

Since 2017 the Trump-Pence Administration has attempted to roll back the collection of SOGI data on several surveys. In 2017 the Administration on Aging removed a sexual orientation and gender identity follow-up question from the National Survey of Older Americans Act Participants. The questions had been added to the survey in 2014.<sup>90</sup> In 2017 the Administration for Family Living was

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<sup>85</sup> Southern Poverty Law Center. (n.d.) Alliance Defending Freedom. Southern Poverty Law Center. Available online at: <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom>

<sup>86</sup> Alliance for Justice. (2019). Trump's Judges: On The Issues. Alliance Defending Freedom. Available online at: <https://afj.org/our-work/judicial-selection/trumps-judges-on-the-issues#lgbtq>

<sup>87</sup> Cahill S (2016). Expanding capacity for the measurement of sexual orientation and gender identity in federal surveys: Discussion. *Joint Statistical Meeting Proceedings, Social Statistics Section*. Alexandria, VA: American Statistical Association.

<sup>88</sup> Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys. (2016, August). Current measures of sexual orientation and gender identity in federal surveys. [https://s3.amazonaws.com/sitesusa/wp-content/uploads/sites/242/2014/04/WorkingGroupPaper1\\_CurrentMeasures\\_08-16.pdf](https://s3.amazonaws.com/sitesusa/wp-content/uploads/sites/242/2014/04/WorkingGroupPaper1_CurrentMeasures_08-16.pdf)

<sup>89</sup> Special Legislative Commission on Lesbian, Gay, Bisexual and Transgender Aging. (2015). Report to the Commonwealth of Massachusetts. Boston, MA: Joint Committee on Elder Affairs. [http://www.mcoaonline.com/sites/mcoa/files/file/file/lgbt\\_commission\\_report.pdf](http://www.mcoaonline.com/sites/mcoa/files/file/file/lgbt_commission_report.pdf)

<sup>90</sup> Singh S, Durso LE, Tax A. (2017). *The Trump Administration is rolling back data collection on LGBT older adults*. Center for American Progress.

planning to add SOGI questions to its Annual Program Performance Report for Centers for Independent Living in 2017. Collecting SOGI data in disability services would be important, as research has shown higher rates of disability among the LGBT population compared to the rest of the general population.<sup>91,92</sup> Unfortunately, the Department of Health and Human Services' proposed 2017 protocol eliminated the OAA survey's question about sexual orientation and transgender status, and reversed plans to add SOGI questions to the disability survey.<sup>93</sup>

In 2018, the Bureau of Justice Statistics released a proposal to remove SOGI questions from the National Crime Victimization Survey (NCVS) for 16- and 17-year old respondents. BJS said it was removing the questions because they are too "sensitive" for adolescents to consider.<sup>94</sup> The NCVS is one of the country's main sources of data on criminal victimization, including information on hate violence, sexual assault, intimate partner violence, and experience with the criminal justice system.

### *Lack of SOGI data in hate crimes reporting*

LGBTQ people—and especially Black gay and bisexual men and transgender women—are often the victims of bias-motivated hate violence. In fact, in 2016, on a per capita basis, LGBTQ people were more likely to be the targets of hate crimes than any other group in America.<sup>95</sup> In 2014, one fifth (20.4%) of reported hate crimes were perpetrated based on the victim's sexual orientation or gender

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<https://www.americanprogress.org/issues/lgbt/news/2017/03/20/428623/trump-administration-rolling-back-data-collection-lgbt-older-adults/>

<sup>91</sup> Fredriksen-Goldsen KI, Kim HJ, Barkan SE. (2012). Disability among lesbian, gay, and bisexual adults: Disparities in prevalence and risk. *Am J Public Health*: 102, e16-e21.

<sup>92</sup> Fredriksen-Goldsen KI, Kim HJ, Emler CA, et al. (2011). *The Aging and Health Report: Disparities and Resilience among Lesbian, Gay, Bisexual, and Transgender Older Adults*. Seattle, WA: Institute for Multigenerational Health.

<sup>93</sup> Singh S, Durso LE, Tax A, 2017.

<sup>94</sup> Bureau of Justice Statistics, Department of Justice. (April 11, 2018). "Agency Information Collection Activities: Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Comments Requested: National Crime Victimization Survey (NCVS)." Document Citation 83 FR 15634.

<https://www.federalregister.gov/documents/2018/04/11/2018-07448/agency-information-collection-activities-proposed-ecollection-ecomments-requested-revision-of-a>

<sup>95</sup> Park H, Mykhyalyshyn I. (2016, June 16). L.G.B.T. People Are More Likely to Be Targets of Hate Crimes Than Any Other Minority Group. *The New York Times*.

identity.<sup>96</sup> LGBTQ youth are overrepresented in the juvenile justice system.<sup>97</sup> Therefore, collecting data on their experiences is important.

### *Lack of SOGI data in foster care*

In April 2019, HHS announced a new proposed rule which would remove sexual orientation data collection for foster youth and foster and adoptive parents in the Adoption and Foster Care Analysis and Reporting System. Sexual and gender minority youth are overrepresented in the foster care system, with one Los Angeles area study finding that nearly 20% of foster youth identified as LGBTQ. The study also found that sexual and gender minority youth in foster care reported higher rates of poor treatment and worse outcomes, including multiple home placements, hospitalizations, homelessness, and criminal justice involvement.<sup>98</sup> Collecting sexual orientation data among foster youth is critical to ensuring the safety and well-being of sexual minority youth in foster care. Collecting these data among foster and adoptive parents is also necessary for ensuring that diverse and affirming families are identified to care for foster youth. The final rule removed sexual orientation from the data elements collected with foster youth and foster parents.<sup>99</sup>

### *Lack of SOGI data in COVID-19 reporting*

It is vital that governments and public health experts have a clear picture of the disparate risks and impacts of the novel coronavirus on LGBTQIA+ people to inform public health efforts. There are many reasons to believe that LGBTQIA+ people may be disproportionately vulnerable to infection by the novel coronavirus

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<sup>96</sup> Federal Bureau of Investigation. (2014). *Uniform Crime Reports: 2014 Hate Crime Statistics*. Available at <https://www.fbi.gov/about-us/cjis/ucr/hate-crime/2014>

<sup>97</sup> Irvine, A. & Canfield, A. (2016). The overrepresentation of lesbian, gay, bisexual, questioning, gender nonconforming and transgender youth within the child welfare to juvenile justice crossover population. *Journal on Gender, Social Policy, and the Law*, 24(2), 243-261. <https://static1.squarespace.com/static/58ba8c479f7456dff8fb4e29/t/58dda13c725e2510295678f4/1490919741698/irvine.canfield.jgspl.2016.pdf>

<sup>98</sup> Wilson B, Cooper K, Kastanis A, Nezhad S. (2014). *Sexual and Gender Minority Youth in Los Angeles Foster Care*. The Williams Institute, Los Angeles LGBT Center, Hierarchy Consulting, and Permanency Innovations Initiative. Funded by the Department of Health and Human Services. Available online at: [https://www.acf.hhs.gov/sites/default/files/cb/pii\\_rise\\_lafys\\_report.pdf?\\_ga=2.266159183.1386249068.1575568529-62561675.1575568529](https://www.acf.hhs.gov/sites/default/files/cb/pii_rise_lafys_report.pdf?_ga=2.266159183.1386249068.1575568529-62561675.1575568529)

<sup>99</sup> Department of Health and Human Services, Administration for Children and Families. 45 CFR Part 1355 RIN 0970-AC72 Adoption and Foster Care. *Federal Register* / Vol. 85, No. 92 / Tuesday, May 12, 2020 / Rules and Regulations. Pages 28410-28434.

and to complications should they develop COVID-19<sup>100</sup>. This is especially true of Black, Latinx and indigenous LGBTQIA+ people and LGBTQIA+ older adults.

For these reasons, our health system, including the Department of Health and Human Services and the Centers for Disease Control and Prevention, should systematically collect and report SOGI data in real time in relation to SARs-CoV-2 testing and COVID-19 disease outcomes. This would be consistent with the CDC's recommendations for seven of 10 essential public health services.<sup>101</sup> To date the Trump Administration has not taken any action to collect COVID-19-related SOGI data, despite repeated requests from the Fenway Institute and other organizations that HHS or CDC encourage the collection of SOGI data in the pandemic.

### **Affordable Care Act: Trump seeks to repeal**

President Barack Obama and Vice President Joseph Biden led the fight for the Patient Protection and Affordable Care Act (ACA), signed into law in 2010, which dramatically expanded health care access for at least 20 million Americans of all racial and ethnic backgrounds.<sup>102</sup> The ACA cut the uninsurance rate among LGBT people in half,<sup>103</sup> and banned discrimination in health insurance for people with preexisting conditions such as HIV. As a result of the ACA, thousands of low-income LGBT people and people living with HIV have been able to access Medicaid.<sup>104</sup>

Since 2017, the Trump Administration and Congressional Republicans have tried to repeal the ACA. In 2012, the U.S. Supreme Court ruled that the individual mandate was constitutional based on Congress's ability to legally impose a tax penalty on people who did not have health insurance. As part of President Trump's tax overhaul in December 2017, the tax penalty for not having health insurance was dropped to zero dollars. This prompted a group of Republican governors and

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<sup>100</sup> Whittington C, Hadfield K, Calderón C (2020, March). *The lives and livelihoods of many in the LGBTQ community are at risk amidst COVID-19 crisis*. Washington, DC: Human Rights Campaign Foundation.

<sup>101</sup> CDC (last updated May 21, 2020). The Public Health System & the 10 Essential Public Health Services. <https://www.cdc.gov/publichealthgateway/publichealthservices/essentialhealthservices.html>

<sup>102</sup> Artiga S (2016, August 12). *Disparities in Health and Health Care: Five Key Questions and Answers*. Washington, DC: Kaiser Family Foundation. <http://kff.org/disparities-policy/issue-brief/disparities-in-health-and-health-care-five-key-questions-and-answers/>

<sup>103</sup> Karpman M, Skopec L, Long S. (2015, April 5). QuickTake: Uninsurance Rate Nearly Halved for Lesbian, Gay, and Bisexual Adults since Mid-2013. Health Reform Monitoring Survey. <http://hrms.urban.org/quicktakes/Uninsurance-Rate-Nearly-Halved-for-Lesbian-Gay-and-Bisexual-Adults-sinceMid-2013.html>

<sup>104</sup> Belluz J (2017, February 15). Why Obamacare repeal would be devastating to people with HIV. *Vox*. <http://www.vox.com/2017/2/8/14532310/obamacare-aca-repeal-hiv-aids>

state attorneys general to file a lawsuit, arguing that since Congress was no longer exercising its legal taxing power with the penalty zeroed out, the individual mandate was now unconstitutional. On December 14, 2018 Judge Reed O'Connor, a United States District Judge of the United States District Court for the Northern District of Texas, ruled that the ACA's individual mandate was unconstitutional, and as a result, struck down the entire ACA, which he argued cannot stand without the individual mandate. Judge O'Connor ruled that the individual mandate "can no longer be sustained as an exercise of Congress's tax power."<sup>105</sup> President Trump tweeted his approval of Judge O'Connor's decision: "Great news for America!"<sup>106</sup> In 2018 President Trump took other steps to undermine the ACA, such as allowing inexpensive, short-term insurance plans to be sold that do not cover pre-existing conditions, such as HIV or cancer, and that do not offer most of the benefits and safeguards that the ACA requires.<sup>107</sup> President Trump and Republicans have also cut funds for outreach and enrollment assistance. Their anti-immigrant policies have also increased fears among immigrants of participating in Medicaid and the Children's Health Insurance Program (CHIP).<sup>108</sup>

Trump and Congressional Republicans have not passed an alternative to replace the ACA. Proposals made by the GOP would cut funding for Medicaid and undermine protections against discrimination on the basis of pre-existing conditions, such as cancer, diabetes, asthma, and HIV.<sup>109</sup>

### **Trump-Pence Administration's "Commission on Unalienable Rights" delegitimizes LGBTQ rights as human rights**

In July 2019, Secretary of State Mike Pompeo established a "Commission on Unalienable Rights," which aims to distinguish between "natural rights" and "ad

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<sup>105</sup> Goodnough A. and Pear R. (Dec. 14, 2018). "Texas Judge Strikes Down Obama's Affordable Care Act as Unconstitutional." *The New York Times*. <https://www.nytimes.com/2018/12/14/health/obamacare-unconstitutional-texas-judge.html>

<sup>106</sup> Yilek C (2018, December 14). Trump: 'Great news' that Obamacare ruled unconstitutional. *The Washington Examiner*. <https://www.washingtonexaminer.com/news/trump-great-news-that-obamacare-ruled-unconstitutional>

<sup>107</sup> Benen S (2018, August 1). To undermine the ACA, the Trump administration pushes 'short-term' plans. *MSNBC*. <http://www.msnbc.com/rachel-maddow-show/undermine-the-aca-the-trump-administration-pushes-short-term-plans>

<sup>108</sup> Artiga S, Orgera K, Damico A (2020, March). *Issue Brief: Changes in Health Coverage by Race and Ethnicity since the ACA, 2010-2018*. Washington, DC: Kaiser Family Foundation. <http://files.kff.org/attachment/Issue-Brief-Changes-in-Health-Coverage-by-Race-and-Ethnicity-since-the-ACA-2010-2018.pdf>

<sup>109</sup> Wang T, Cahill S (2017). *What the American Health Care Act means for LGBT people and people living with HIV*. Boston: The Fenway Institute. <https://fenwayhealth.org/wp-content/uploads/What-AHCA-means-for-LGBT-PLWH-citation-updates-1.pdf>

hoc rights” in the Universal Declaration of Human Rights.<sup>110</sup> Pompeo appointed Mary Ann Glendon, a Harvard Law professor and prominent opponent of marriage equality,<sup>111</sup> reproductive rights,<sup>112</sup> and the idea that women’s rights are human rights<sup>113</sup> to Chair the Commission. Over 400 human rights and health care organizations including Amnesty International, the American Civil Liberties Union, and the American Psychological Association signed a letter to Secretary of State Mike Pompeo expressing their “deep concern” about the lack of “ideological diversity” on the Commission and its “clear interest in limiting human rights, including the rights of women and LGBTQI individuals.”<sup>114</sup>

The Commission published its report in July 2020, and Secretary Pompeo ordered all State Department staff to read the report as a means to “guide every State Department employee” in the work of carrying out U.S. foreign policy. Human Rights First sent a letter to the Commission, which the Fenway Institute and more than 100 other organizations signed onto. The letter said that the Commission’s report “undermines decades of human rights progress.” At the report’s launch, Secretary Pompeo criticized Black Lives Matter protesters and the New York Times’s “1619” series about the centrality of slavery to American history, and said that property rights and religious liberty were paramount over any other human rights. The Human Rights Watch letter said:

Secretary Pompeo’s assertion that “foremost among [human] rights are property rights and religious liberty” makes clear his intention to use the report to create a hierarchy of rights—despite your assertions to the contrary—based on his personal political and religious beliefs, as opposed to decades of domestic and international human rights law. And the failure of the Secretary and the Commission to acknowledge the many Trump administration policies that have significantly undermined America’s

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<sup>110</sup> Marino K M. (2019, August 15). How Mike Pompeo’s New Commission on ‘Unalienable Rights’ Butchers History. *The Washington Post*. Available online at: <https://www.washingtonpost.com/outlook/2019/08/15/how-mike-pompeos-new-commission-unalienable-rights-butchers-history/>

<sup>111</sup> Lavers M. (2019, July 8). Marriage opponent to chair State Department human rights commission. *Washington Blade*. <https://www.washingtonblade.com/2019/07/08/marriage-opponent-to-chair-state-department-human-rights-commission/>

<sup>112</sup> Morello C. (2019, July 8). State Department launches panel focused on human rights and natural law. *Washington Post*. [https://www.washingtonpost.com/world/national-security/state-department-to-name-panel-focused-on-human-rights-and-natural-law/2019/07/06/3bfe001e-9f54-11e9-b27f-ed2942f73d70\\_story.html](https://www.washingtonpost.com/world/national-security/state-department-to-name-panel-focused-on-human-rights-and-natural-law/2019/07/06/3bfe001e-9f54-11e9-b27f-ed2942f73d70_story.html)

<sup>113</sup> Marino K M. (2019, August 15). How Mike Pompeo’s New Commission on ‘Unalienable Rights’ Butchers History. *The Washington Post*. Available online at: <https://www.washingtonpost.com/outlook/2019/08/15/how-mike-pompeos-new-commission-unalienable-rights-butchers-history/>

<sup>114</sup> Open Letter to Sec. of State Mike Pompeo. (2019, July 23). Available online: <https://www.humanrightsfirst.org/sites/default/files/Unalienable-Rights-Commission-NGO-Ltr.pdf>

leadership on human rights undercuts both the Commission’s standing and the report itself.

The Commission on Unalienable Rights report also attacks marriage equality for same-sex couples, reproductive rights, and affirmative action:

The report makes a deeply disturbing distinction between “unalienable rights” and what it describes as the “social and political controversies” of “abortion, affirmative action, [and] same-sex marriage.” To be clear, each of the aforementioned issues relate to human rights guaranteed by international and domestic law, including by the U.S. Supreme Court. To suggest otherwise is to seek to substitute the ideology of the Administration and opinion of 11 individuals for the weight of both domestic and international human rights law that clearly establishes and recognizes the protection of LGBTQI+ rights and sexual and reproductive rights, including abortion, as human rights imperatives.

### **HIV/AIDS Policy: Trump launched Ending the HIV Epidemic Initiative, but other Trump policies undercut these efforts**

In the first two years of the Trump Administration, the President failed to act aggressively to fight HIV. He did not appoint a Director of the White House Office of National AIDS Policy (ONAP). At the end of 2017, President Trump summarily dismissed the Presidential Advisory Council on HIV/AIDS (PACHA), exacerbating a vacuum of leadership on HIV/AIDS at the federal level.<sup>115</sup> PACHA did not meet at all in 2018.

In February 2019, at the State of the Union address, President Trump announced his plan to end the HIV epidemic by 2030. Phase I of “Ending the HIV Epidemic: A Plan for America” began soon thereafter, with targeted outreach and resources into specific geographic areas hardest hit by the HIV epidemic.<sup>116</sup> This phase will last through 2025, with a goal of reducing new HIV infection rates by 75%.<sup>117</sup> Phases II and III will continue these efforts by committing resources more broadly

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<sup>115</sup> Guaino, B. (2017, December 29). Trump administration fires all members of HIV/AIDS advisory council. Washington Post. [https://www.washingtonpost.com/news/to-your-health/wp/2017/12/29/trump-administration-fires-all-members-of-hiv-aids-advisory-council/?utm\\_term=.2c6b3d12ee0d](https://www.washingtonpost.com/news/to-your-health/wp/2017/12/29/trump-administration-fires-all-members-of-hiv-aids-advisory-council/?utm_term=.2c6b3d12ee0d)

<sup>116</sup> HIV.gov. (2019, September 3). What is ‘Ending the HIV Epidemic: A Plan for America’? *HIV.gov*. Available online at: <https://www.hiv.gov/federal-response/ending-the-hiv-epidemic/overview>

<sup>117</sup> *Ibid.*

across America and implementing an intensive case management system, respectively. Phases II and III aim to reduce the infection rate by 90% by 2030.<sup>118</sup>

In addition, President Trump reconvened the Presidential Advisory Council on HIV/AIDS (PACHA); the Council met in March 2019 for the first time since December 2017.<sup>119</sup> The Department of Health and Human Services (HHS) has additionally launched the Ready, Set, PrEP campaign, a vital piece of the Ending the Epidemic Initiative that strives to get as many at-risk individuals onto Pre-Exposure Prophylaxis (PrEP) as possible in an effort to reduce new HIV infections.<sup>120</sup> HHS has also partnered with Gilead to secure donations of PrEP for up to 200,000 people per year for the next five to eleven years.<sup>121</sup>

Ending the HIV Epidemic: A Plan for America is a promising new initiative from an Administration that had done little in its first two years in office to make a meaningful change in the fight against HIV/AIDS. However, the campaign does little to address anti-LGBT discrimination and stigma, which are the underlying drivers behind the HIV epidemic among the most disproportionately affected populations in this country.<sup>122,123</sup> Black gay and bisexual men and transgender women are at a significantly higher risk of contracting HIV and are much less likely to have health insurance, seek out and engage with HIV services, or even to receive adequate medical care at all.<sup>124</sup> This is in part because half of Black Americans live in Southern states that have refused to expand Medicaid eligibility.<sup>125</sup> The Trump-Pence Administration's work to uphold religious refusal protections, repeal nondiscrimination protections for LGBT Americans, and other such actions may actually increase discrimination against LGBT people, creating additional barriers to success for the Ending the HIV Epidemic Initiative.

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<sup>118</sup> *Ibid.*

<sup>119</sup> HIV.gov. (2019, November 15). About PACHA. HIV.gov. Available online at: <https://www.hiv.gov/federal-response/pacha/about-pacha>

<sup>120</sup> HIV.gov. (2019, December 3). Ready, Set, PrEP. HIV.gov. Available online at: <https://www.hiv.gov/federal-response/ending-the-hiv-epidemic/prep-program>

<sup>121</sup> Department of Health and Human Services. (2019, May 9). Trump Administration Secures Historic Donation of Billions of Dollars in HIV Prevention Drugs. Department of Health and Human Services Press Office. Available online at: <https://www.hiv.gov/blog/news-release-trump-administration-secures-historic-donation-billions-dollars-hiv-prevention>

<sup>122</sup> McNeil Jr. D G. (2019, March 18). Trump Plans to End AIDS Epidemic: In Places like Mississippi Obstacles are Everywhere. *The New York Times*. Available online at: <https://www.nytimes.com/2019/03/18/health/trump-hiv-aids-blacks.html>

<sup>123</sup> El-Sadr W, Mayer K, Rabkin M, Hodder S. (2019). AIDS in America – Back in the Headlines at Long Last. *The New England Journal of Medicine*.

<sup>124</sup> *Ibid.*

<sup>125</sup> Wiltz T (2015, January 26). Many African-Americans Fall Into a Health “Coverage Gap”. The Pew Charitable Trusts. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline>

## *Other problematic HIV policies of the Trump-Pence Administration*

In February 2019, a federal judge blocked the United States Air Force from discharging service members who are living with HIV.<sup>126</sup> The case, which began in 2018, concerned two Airmen who are HIV-positive but virally-suppressed with an undetectable viral load, and demonstrates a concerning attitude among the Department of Defense (DOD) under President Trump's leadership that is discriminatory and not reflective of modern science.<sup>127</sup> In June 2019, President Trump cut federal funding to government researchers using fetal tissue to test and approve new HIV therapies.<sup>128</sup> These troubling moves by the current Administration could further contribute to anti-HIV stigma, undermining the Ending the HIV Epidemic Initiative and signaling potential conflicting priorities in regards to HIV/AIDS policy.

## **Foreign Policy: LGBTQ equality no longer a key goal of U.S. foreign policy; Trump-Pence seek to end criminalization of homosexuality around globe**

Global LGBT rights became a foreign policy priority for the first time in U.S. history under the Obama-Biden Administration.<sup>129,130</sup> The United States Department of State promoted LGBT equality as a major goal of U.S. foreign policy, including web content devoted to the topic that was removed by the Trump-Pence Administration.<sup>131</sup> The Obama-Biden Administration prioritized LGBT rights in foreign policy through support and funding for advocacy groups globally.<sup>132</sup> Early in his Administration, President Obama condemned a proposed anti-gay bill in Uganda, describing it as "odious."<sup>133</sup> He later warned that passage of the bill would

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<sup>126</sup> The Associated Press. (2019, February 15). Judge Halts Air Force's Efforts to Discharge Airmen with HIV. *Air Force Times*. Available online at: <https://www.airforcetimes.com/news/your-air-force/2019/02/15/judge-halts-air-forces-efforts-to-discharge-airmen-with-hiv/>

<sup>127</sup> *Ibid.*

<sup>128</sup> Goldstein A. (2019, June 5). New Restriction on Fetal Tissue Research 'Was the President's Decision.' *The New York Times*. Available online at: [https://www.washingtonpost.com/health/trump-administration-imposes-new-restrictions-on-fetal-tissue-research/2019/06/05/b13433c0-8709-11e9-a491-25df61c78dc4\\_story.html](https://www.washingtonpost.com/health/trump-administration-imposes-new-restrictions-on-fetal-tissue-research/2019/06/05/b13433c0-8709-11e9-a491-25df61c78dc4_story.html)

<sup>129</sup> Nossel, S. (2013, June 5). How Samantha Power Could Change U.S. Diplomacy: Meet Richard Holbrooke, 2.0. *Foreign Policy*.

<sup>130</sup> Encarnación O. (2016, June 16). Clinton's Legacy on Gay Rights: From Skeptic to Supporter. *Foreign Policy*.

<sup>131</sup> U.S. State Department fact sheet. (2013). Advancing the human rights of lesbian, gay, bisexual and transgender persons worldwide: A State Department priority. U.S. Department of State.

<http://www.state.gov/documents/organization/211690.pdf>

<sup>132</sup> Maza, Christina. (2017, October 26). Trump Administration says it's in solidarity with intersex people. But is it? *Newsweek*. <http://www.newsweek.com/trump-state-department-intersex-solidarity-693811>

<sup>133</sup> Spetalnick M. (2010, February 4). Obama condemns Uganda anti-gay bill as "odious." Reuters. <https://www.reuters.com/article/us-uganda-gays-obama/obama-condemns-uganda-anti-gay-bill-as-odious-idUSTRE6134EZ20100204?irpc=932>

complicate the United States' relationship with Uganda.<sup>134</sup> In 2011, then-Secretary of State Hillary Clinton delivered a speech before the United Nations on International Human Rights Day declaring that “[g]ay rights are human rights and human rights are gay rights.”<sup>135</sup> In 2015, Obama visited Kenya, stood next to Kenyan president Uhuru Kenyatta, and declared that it was wrong to punish gay people for “who they love.”<sup>136</sup> (There has been a rise in anti-gay activism and policies in east Africa in recent years.) The Obama-Biden Administration also advocated globally for LGBT rights by having its foreign embassies fly rainbow flags during Pride month and supporting local LGBT advocacy efforts.<sup>137</sup> In 2012, for example, the US embassy in Kenya hosted the country's first-ever LGBT Pride event.<sup>138</sup>

The Trump-Pence Administration has enacted conflicting, inconsistent policies regarding LGBT rights abroad that mark a significant break with past U.S. efforts to promote LGBT equality around the globe. During President Trump's first year in office, foreign embassies were permitted to continue the practice of flying rainbow flags during Pride month.<sup>139</sup> But in 2019 that guidance was reversed after the U.S. Embassy in Brazil requested to fly the rainbow pride flag in June, citing an increasingly hostile anti-LGBT environment in Brazil after the 2018 election of President Jair Bolsonaro.<sup>140</sup> The State Department refused the request and also stated that the rainbow flag could not be displayed on any public-facing flagpole at embassies across the globe.<sup>141</sup>

Also during Trump's first year in office, the Trump-Biden Administration reassigned the first-ever Special Envoy for the Human Rights of LGBTI Persons, Randall Berry, to the State Department's Bureau of Democracy, Human Rights and

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<sup>134</sup> Holland S. (2014, February 16). Obama warns Uganda over anti-gay law. Available online at: <https://www.reuters.com/article/us-uganda-usa-obama/obama-warns-uganda-over-anti-gay-law-idUSBREA1F0QL20140217>

<sup>135</sup> Capehart J. (2011, December 7). Clinton's Geneva accord: “Gay rights are human rights.” *Washington Post*. [https://www.washingtonpost.com/blogs/post-partisan/post/clintons-geneva-accord-gay-rights-are-human-rights/2011/03/04/gIQAPUipcO\\_blog.html](https://www.washingtonpost.com/blogs/post-partisan/post/clintons-geneva-accord-gay-rights-are-human-rights/2011/03/04/gIQAPUipcO_blog.html)

<sup>136</sup> Smith D. (2015, July 25). Barack Obama tells African states to abandon anti-gay discrimination. *The Guardian*. <https://www.theguardian.com/us-news/2015/jul/25/barack-obama-african-states-abandon-anti-gay-discrimination>

<sup>137</sup> Associated Press in Warsaw. (2014, June 28). Obama uses embassies to push for LGBT rights abroad. *The Guardian*. <https://www.theguardian.com/world/2014/jun/28/obama-gay-rights-abroad-embassies-activism>

<sup>138</sup> Ring T. (2012, June 27). U.S. Embassy Holds Kenya's First LGBT Pride Event. *The Advocate*. Available online at: <https://www.advocate.com/politics/2012/06/27/us-embassy-gives-kenya-its-first-lgbt-pride-event>

<sup>139</sup> Lavers M. (2017, June 2). State Dept. allows embassies, consulates to acknowledge Pride month. *Washington Blade*. Available online at: <https://www.washingtonblade.com/2017/06/02/state-department-allow-embassies-consulates-acknowledge-pride-month/>

<sup>140</sup> Londono E. (2019, June 9). Pride Flags and Foreign Policy: U.S. Diplomats See Shift on Gay Rights. *The New York Times*.

<sup>141</sup> *Ibid.*

Labor.<sup>142</sup> Berry was appointed to the Special Envoy position by President Obama in 2015 and since Berry's reassignment, the position has remained unfilled.<sup>143</sup>

During Trump's second year in office, presidential advisor Mick Mulvaney, who was then the Director of the Office of Management and Budget as well as the Consumer Financial Protection Bureau, defended anti-LGBT actions by other nations at the Ministerial to Advance Religious Freedom conference.<sup>144</sup> The religious freedom initiative was created in 2018 by Secretary of State Mike Pompeo to promote religious freedoms worldwide.<sup>145</sup> During his remarks, Mulvaney described efforts to support LGBT advocacy in African nations as a form of "religious persecution."

In June 2019, dozens of global LGBT rights activists sent a letter to Secretary of State Mike Pompeo asserting that "the State department, under your leadership and that of President Trump, has abandoned full support of LGBTQI people within its global human rights policy."<sup>146</sup> The letter cited the refusal to fly the rainbow pride flags at U.S. embassies, as well as the State Department's refusal to issue a statement on the International Day Against Homophobia, Transphobia, and Biphobia.<sup>147</sup>

In November 2019, the U.S Ambassador to Zambia criticized the Zambian government for sentencing a gay male couple to 15 years in prison for violating a British colonial-era criminalization law. U.S. Ambassador Daniel Foote said he was "horrified" by the sentence. In response, Zambia President Edgar Lungu ordered Foote to leave Zambia and demanded that President Trump reprimand Foote.<sup>148</sup> The Trump-Pence Administration was silent, despite Foote's having received threats to his life from Zambians over his pro-LGBT remarks considered

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<sup>142</sup> Lavers MK (2017, November 30). Randy Berry is no longer US LGBTI envoy. *Washington Blade*.

<https://www.washingtonblade.com/2017/11/30/randy-berry-no-longer-us-lgbti-envoy/>

<sup>143</sup> Spinelli D. (2019, October 9). "There's nothing": Trump's global LGBTQ campaign is a whole lot of smoke and mirrors. *Mother Jones*. <https://www.motherjones.com/politics/2019/10/trump-decriminalization-homosexuality-lgbtq-richard-grenell-state-department/>

<sup>144</sup> Vogt B. (2018, July 30). *Trump administration will not "press" African nations to repeal anti-gay laws*. Metro Weekly. <https://www.metroweekly.com/2018/07/trump-administration-will-not-press-african-nations-to-repeal-anti-gay-laws/>

<sup>145</sup> Online notice. United States Commission on International Religious Freedom. Ministerial to Advance Religious Freedom. <https://www.uscirf.gov/ministerial-advance-religious-freedom>

<sup>146</sup> Bromley M, Mitchum P, Bank R, et al. (2019, June 20). To The Honorable Mike Pompeo, Secretary of State. Public Letter. <https://www.washingtonblade.com/content/files/2019/06/SecPompeoJune2019-1.pdf>

<sup>147</sup> *Ibid*.

<sup>148</sup> Riley J. (2019, December 3). Zambia demands Trump reprimand ambassador who criticized jailing gay men. Metro Weekly. <https://www.metroweekly.com/2019/12/zambian-authorities-demand-trump-reprimand-ambassador-who-criticized-jailing-gay-men/>

credible enough that Foote was forced to cancel public appearances for World AIDS Day.<sup>149</sup> Just before Christmas 2019, the U.S. State Department recalled Ambassador Daniel Foote from Zambia following his criticism of the Zambian government for sentencing a gay couple to 15 years in prison.<sup>150</sup>

The May 2019 final “Conscience Rule” described in the Religious Refusal Policy section of this report also threatens HIV prevention efforts for gay and bisexual men and transgender women in Africa and elsewhere across the globe that have been supported by the US President’s Emergency Plan for AIDS Relief over the past decade. The final rule states that funding recipients cannot be required to “endorse, utilize, make a referral to, become integrated with, or otherwise participate in any program or activity to which the organization has a religious or moral objection.”<sup>151</sup> This could mean that organizations working in the global south could refuse to work with LGBTQ people, sex workers, people who use drugs, prisoners, migrant workers, and others who are at elevated risk of HIV infection and already extremely marginalized and vulnerable.

### *Trump’s global campaign to end the criminalization of homosexuality*

In February 2019, the Trump-Pence Administration launched a global campaign to end the criminalization of homosexuality.<sup>152</sup> Homosexuality is still a crime in 70 countries around the world,<sup>153</sup> where the pervasive anti-gay stigma can lead to worse health outcomes and increased violence and persecution. Many of the exact details of this campaign remain unclear, but it is being led by former acting Director of National Intelligence Richard Grenell, the highest profile openly gay person in the Trump Administration.<sup>154</sup> Citing this initiative and other actions, Grenell stated in an August 2020 Log Cabin Republican video that, “President

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<sup>149</sup> Press Statement from U.S. Ambassador Daniel L. Foote available online at: <https://zm.usembassy.gov/press-statement-from-u-s-ambassador-daniel-l-foote/>

<sup>150</sup> Conte M and Atwood K. (2019, December 25). US ambassador recalled after dispute with Zambian government over gay rights and corruption. CNN. Available online at: <https://www.cnn.com/2019/12/25/politics/daniel-foote-zambia-ambassador/index.html>

<sup>151</sup> Department of Health and Human Services. (2019, May 21). Protecting Statutory Conscience Rights in Health Care, Delegations of Authority. Final Rule. Available online at: <https://www.federalregister.gov/documents/2019/05/21/2019-09667/protecting-statutory-conscience-rights-in-health-care-delegations-of-authority>

<sup>152</sup> Lederman J. (2019, February 19). Trump Administration Launches Global Effort to End Criminalization of Homosexuality. *NBC News*. <https://www.nbcnews.com/politics/national-security/trump-administration-launches-global-effort-end-criminalization-homosexuality-n973081>

<sup>153</sup> The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA). (2019). Sexual Orientation Laws in the World – 2019. *ILGA*. Available online at: <https://ilga.org/maps-sexual-orientation-laws>

<sup>154</sup> Kirby J. (2019, February 19). The Trump Administration Reportedly Wants to Push Countries to Decriminalize Homosexuality. *Vox*. <https://www.vox.com/world/2019/2/19/18232163/trump-administration-grenell-decriminalize-lgbt>

Trump is the most pro-gay president in American history.” *Washington Post* fact checker Glenn Kessler gave Grenell’s claim “Four Pinocchios,” its highest rating, which means that his claim is a “whopper.” The article called Grenell’s statement “absurd,” and said, “Trump is pro-Grenell, but that doesn’t mean his administration is pro-gay.”<sup>155</sup>

President Trump spoke of the effort before the United Nations in September 2019:

As we defend American values, we affirm the right of all people to live in dignity. For this reason, my Administration is working with other nations to stop criminalizing of homosexuality, and we stand in solidarity with LGBTQ people who live in countries that punish, jail, or execute individuals based on sexual orientation.<sup>156</sup>

Reporter Michelangelo Signorile looked into this initiative, and wrote in the *Washington Post* that:

Ultimately, the State Department confirmed that there was no new initiative. Rather, in a rare exception, the Trump Administration was actually continuing a pro-LGBTQ effort from the Obama era.<sup>157</sup>

Some political analysts have speculated that the Trump-Pence Administration’s anti-criminalization campaign may be at least in part motivated by attempts to pressure European allies to join the U.S in its campaign against Iran, where the public hanging of a gay man was one of Grenell’s motivations for championing this new initiative.<sup>158</sup>

Several global LGBTQ activists questioned whether there was any substance to the campaign:

“There’s nothing,” says David Pressman, a partner at the Boies Schiller Flexner law firm who worked on international LGBTQ policy under Obama.

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<sup>155</sup> Kessler G (2020, August 24). The absurd claim that Trump is the “most pro-gay president in American history”. *The Washington Post*. <https://www.washingtonpost.com/politics/2020/08/24/absurb-claim-that-trump-is-most-pro-gay-president-american-history/>

<sup>156</sup> Spinelli, 2019.

<sup>157</sup> Signorile M. (2019, August 20). Trump has a devastating record on LGBTQ rights. Don’t deny the truth. *Washington Post*. Available online at: [https://www.washingtonpost.com/opinions/trump-may-want-you-to-think-hes-lgbtq-friendly-dont-be-fooled/2019/08/20/c2b7a7be-c36b-11e9-b72f-b31d0a77212\\_story.html](https://www.washingtonpost.com/opinions/trump-may-want-you-to-think-hes-lgbtq-friendly-dont-be-fooled/2019/08/20/c2b7a7be-c36b-11e9-b72f-b31d0a77212_story.html)

<sup>158</sup> Signorile, 2019.

Grenell's events, he says, have “not translated into any meaningful, coordinated, strategic effort.”<sup>159</sup>

“President Trump really fancies himself an LGBT ally,” says Ryan Thoreson, a Yale Law school lecturer and researcher with Human Rights Watch. “He thinks that he’s really good for LGBT rights and seems disconnected from the reality that his Administration has consistently attacked LGBT people domestically, and hasn’t offered anything more than rhetoric for LGBT abroad.”<sup>160</sup>

Sources told *Mother Jones* that the U.S. State Department’s Bureau of Democracy, Human Rights, and Labor, which played a key role in the Obama-Biden Administration’s promotion of LGBTQ equality as a key goal of U.S. foreign policy,<sup>161</sup> was not involved in the current criminalization repeal effort:

“No one in DRL has any idea what’s going on,” a former State Department official said. “There is no process.”

The Trump-Pence Administration has been inconsistent in speaking out against anti-LGBT actions by other governments. In March 2019, the Southeast Asian country of Brunei enacted a new law punishing adultery and homosexual sex with death by stoning. The U.S. State Department joined other countries in condemning the law.<sup>162</sup> The department also issued a statement in 2019 saying that the United States was “deeply disturbed” by anti-LGBT actions by the government of Chechnya that resulted in at least two deaths.<sup>163</sup> That statement built on sanctions the U.S. imposed in 2017 on two Chechen leaders involved with an earlier episode of anti-LGBTQ persecution that affected hundreds of gay men.<sup>164</sup> However, the Trump Administration has been silent on similar anti-LGBTQ actions taken by the governments of Saudi Arabia, Qatar, and Kenya.

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<sup>159</sup> Spinelli, 2019.

<sup>160</sup> Signorile, 2019.

<sup>161</sup> U.S. State Department fact sheet. (2013). Advancing the human rights of lesbian, gay, bisexual and transgender persons worldwide: A State Department priority. U.S. Department of State. <http://www.state.gov/documents/organization/211690.pdf>.

<sup>162</sup> Stapleton A. (2019, March 31). *Brunei's new anti-gay law goes into effect this week. Here's how the world is reacting*. CNN. Available online at: <https://www.cnn.com/2019/03/30/asia/brunei-lgbt-death-penalty-intl/index.html>

<sup>163</sup> Laver M. (2019, January 17). State Department ‘deeply disturbed’ by latest Chechnya anti-LGBTI crackdown. Washington Blade. <https://www.washingtonblade.com/2019/01/17/state-department-deeply-disturbed-by-latest-chechnya-anti-lgbti-crackdown/>

<sup>164</sup> Associated Press and Sopelsa B (2017, December 20). U.S slaps Chechen leaders with sanctions over human rights abuses. *NBC News*. <https://www.nbcnews.com/feature/nbc-out/u-s-slaps-chechen-leaders-sanctions-over-human-rights-abuses-n831546>

## Black Lives Matter and Police Brutality

Throughout his career as a businessman and a public figure, Donald Trump has made problematic comments about race. His unfounded claims that President Obama was born in Kenya and was unqualified to attend Columbia or Harvard contributed to Trump's rise to national political prominence in 2011.<sup>165</sup> Trump launched his 2015 Presidential campaign by calling Mexican immigrants rapists and murderers, called Black football players who kneeled during the national anthem to protest police brutality “sons of bitches,” and refers to COVID-19 as “Kung Flu.”<sup>166</sup>

In the wake of the police killing of George Floyd May 25, 2020 and the massive, nationwide Black Lives Matter protests in response, Trump has sought to delegitimize the legitimate grievances of protesters. On May 29 Trump called those engaging in violence “thugs” and warned that “When the looting starts, the shooting starts.”<sup>167</sup> On June 1, 2020 Trump denounced “the angry mob” and then loosed federalized riot police on peaceful protesters in Lafayette Square, across from the White House, to enable a photo op in front of a church in which Trump held up a bible.<sup>168</sup> Over the summer of 2020 Trump denounced efforts to ban confederate flags from NASCAR races and remove confederate war statues,<sup>169</sup> called Black Lives Matter a “symbol of hate”—something he has refused to call confederate symbols—and portrayed fair housing laws as an attempt to destroy the suburbs.<sup>170</sup>

*Washington Post* columnist Eugene Robinson wrote that:

President Trump is running the most openly racist national campaign since that of George Wallace in 1968 — a repellent ploy that will do great damage to the nation even if Trump loses.

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<sup>165</sup> PBS NewsHour. (Updated July 6, 2020). What exactly Trump has said about race.

<https://www.pbs.org/newshour/politics/every-moment-donald-trumps-long-complicated-history-race>

<sup>166</sup> Beason T (2020, July 28). “Something’s got to give”: Trump stirs old racial hatred, but this time feels different. *The Los Angeles Times*. <https://www.latimes.com/politics/story/2020-07-28/trumps-racist-behavior-presidential-politics-history>

<sup>167</sup> PBS News Hour.

<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*

<sup>170</sup> Liptak K, Holmes K (2020, July 1). Trump calls Black Lives Matter a “symbol of hate” as he digs in on race. *CNN*. <https://www.cnn.com/2020/07/01/politics/donald-trump-black-lives-matter-confederate-race/index.html>

## Immigration Policy

The Trump-Pence Administration has enacted a number of immigration policies that violate human rights and disproportionately hurt LGBT people.

### *Trump-Pence Administration repeals DACA, an Obama-Biden initiative*

In September 2017, the Trump-Pence Administration announced that it would end protections for some 800,000 undocumented immigrants under the Deferred Action for Childhood Arrivals (DACA) program.<sup>171</sup> DACA, a policy enacted by President Obama, provided temporary protections for those who would have been protected by the DREAM (Development, Relief, and Education for Alien Minors) Act, which was never passed by Congress.

The Williams Institute estimates there are over 75,000 LGBT people who are eligible for DACA, with around 36,000 already enrolled.<sup>172</sup> According to a 2017 study of 3,063 DACA recipients, 10% of respondents identified as LGBT.<sup>173</sup> DACA has eliminated barriers to economic security and education for undocumented LGBT youth. It has also allowed recipients to live their daily lives without fear of deportation. Living without fear of deportation is particularly significant for LGBT DACA recipients, who may be forced to return to countries with particularly high rates of violence and discrimination against LGBT people. For example, 60% LGBT Mexicans reporting knowing an LGBT person who was murdered in the past 3 years.<sup>174</sup> (About 80% of DACA recipients are from Mexico).<sup>175</sup>

LGBTQ DACA recipients held in detention centers experience disproportionate rates of sexual violence. Twenty percent of sexual assault cases in ICE detention

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<sup>171</sup> Gruberg S. (2017, October 11). What ending DACA means for LGBTQ dreamers. Center for American Progress. <https://www.americanprogress.org/issues/lgbt/news/2017/10/11/440450/ending-daca-means-lgbtq-dreamers/>

<sup>172</sup> Conron K and Brown TNT. (2017, February). LGBT DREAMers and deferred action for childhood arrivals (DACA). The Williams Institute, UCLA School of Law. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-DREAMers-and-DACA-February-2017.pdf>

<sup>173</sup> Wong et al. (2017, August 28). DACA recipients' economic and educational gains continue to grow. Center for American Progress. <https://www.americanprogress.org/issues/immigration/news/2017/08/28/437956/daca-recipients-economic-educational-gains-continue-grow/>

<sup>174</sup> Bureau of Democracy, Human Rights, and Labor. (2016). Country reports on Human Rights Practices for 2016, Mexico. U.S. Department of State. <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265600#wrapper>

<sup>175</sup> Pew Research Center. (2017, September 25). Top countries of origin for DACA recipients. Pew Research Center. [http://www.pewresearch.org/fact-tank/2017/09/25/key-facts-about-unauthorized-immigrants-enrolled-in-daca/ft\\_17-09-25\\_daca\\_topcountries/](http://www.pewresearch.org/fact-tank/2017/09/25/key-facts-about-unauthorized-immigrants-enrolled-in-daca/ft_17-09-25_daca_topcountries/)

facilities between 2009 and 2013 involved a transgender victim.<sup>176</sup> In June 2020 the U.S. Supreme Court ruled that the Trump Administration’s repeal of DACA was “arbitrary and capricious,” because it had not “complied with the procedural requirements in the law that insist on ‘a reasoned explanation for its action.’”<sup>177</sup>

President Trump criticized the Supreme Court ruling, which came just days after the pro-LGBT *Bostock v. Clayton County, Georgia* ruling, as one of the “horrible & politically charged decisions coming out of the Supreme Court.”<sup>178</sup>

### *Trump’s public charge rule closes the door on poor immigrants*

In 2019 the Department of Homeland Security finalized a proposed rule regarding the public charge definitions used to determine whether an immigrant is inadmissible to the United States.<sup>179</sup> As written, the rule radically lowers the historical standard for determining whether someone is “likely to become a public charge.” Previously only cash welfare assistance and government funded long-term care could be taken into consideration in the public charge test. The new rule would alter this test such that any person who seeks or uses a wide range of life-saving health and human services programs—from housing assistance to health care (including treatment for HIV/AIDS) to anti-hunger and anti-poverty services—could be deemed a public charge, which could create barriers to maintaining or improving their immigration status.

The rule could result in individuals being deterred from using vital services such as WIC, Medicaid or CHIP to address their basic health needs, ultimately leading to worse health and developmental outcomes for them, their children, and their communities. The new rule also stated that earning under 125% of the federal poverty level (\$31,375 annually for a family of 4) would be considered a negative factor in deciding whether an immigrant could be granted a green card or permanent residency.

Penalizing immigrants for actual or predicted usage of a wide-range of supplementary assistance in their lifetimes will likely disproportionately impact

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<sup>176</sup> United States Government Accountability Office. (2013, November). Immigration, Detention, additional actions could strengthen DHS efforts to address sexual abuse. GAO. <https://www.gao.gov/assets/660/659145.pdf>

<sup>177</sup> Totenberg N (2020, June 18). Supreme Court Rules For DREAMers, Against Trump. *National Public Radio*. <https://www.npr.org/2020/06/18/829858289/supreme-court-upholds-daca-in-blow-to-trump-administration>

<sup>178</sup> Reuters (2020, June 18). Trump: U.S. Supreme Court Decisions “Horrible.” *U.S. News and World Report*. <https://www.usnews.com/news/top-news/articles/2020-06-18/trump-us-supreme-court-decisions-horrible>

<sup>179</sup> Department of Homeland Security. (Oct 10, 2018). *Inadmissibility on Public Charge Grounds*. Proposed Rule. DHS Docket No. USCIS-2010-0012. <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>

LGBTQ immigrants and their families. LGBTQ people are also more likely to depend on programs that could lead to a public charge determination under the proposed rule. Research has shown that LGBT people are more likely than non-LGBT people to report experiencing food insecurity,<sup>180</sup> and LGBT people and their families are more than twice as likely to report receiving SNAP benefits.<sup>181</sup> LGBT people and their families are also more likely to receive Medicaid benefits and more likely to rely on housing assistance programs than non-LGBT people.<sup>182</sup>

LGBT people, including those who are immigrants, experience widespread workplace discrimination which hurts their ability to attain and maintain economic security. A 2017 survey found that one in five LGBT people experienced discrimination due to their sexual orientation or gender identity when applying for a job, and 22% reported experiencing this discrimination in pay or promotions.<sup>183</sup> In effect, this proposed rule would punish LGBTQ immigrants for systemic workplace discrimination.

The new rule could also disproportionately affect the health and well-being of immigrants living with HIV. Under the new rule, an immigrant's health, including HIV status, would be considered when determining whether the applicant is likely to be able to work, attend school, care for themselves, or require expensive care or institutionalization. For many people, HIV/AIDS treatment is prohibitively expensive without assistance. Under this rule, immigrants living with HIV might forego using support services and payment assistance for HIV treatment due to fear of a public charge determination. This would be devastating to the health of the individual, and could also have negative health consequences for the community at large, as disruptions in HIV care and treatment—especially resulting in reduced adherence or medication rationing—can lead to drug resistant strains of HIV and increased transmission of HIV.

The Department of Homeland Security published the final rule in August 2019. Soon thereafter, a number of federal courts enjoined its implementation. DHS

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<sup>180</sup> Taylor N.T. Brown, Adam P. Romero, and Gary J. Gates, “Food Insecurity and SNAP Participation in the LGBT Community,” (The Williams Institute, 2016) <https://williamsinstitute.law.ucla.edu/research/lgbt-food-insecurity-2016/>

<sup>181</sup> Rooney C (2018). Protecting Basic Living Standards for LGBTQ People. Washington, DC: Center for American Progress. <https://www.americanprogress.org/issues/lgbt/reports/2018/08/13/454592/protecting-basic-living-standards-lgbtq-people/>

<sup>182</sup> *Ibid.*

<sup>183</sup> Sejal Singh and Laura E. Durso, “Widespread Discrimination Continues to Shape LGBT People’s Lives in Both Subtle and Significant Ways,” (Center for American Progress, 2017) <https://www.americanprogress.org/issues/lgbt/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways/>

challenged these rulings successfully and started enforcing the new policy in February 2020, but it was enjoined again by a federal court in July 2020.<sup>184</sup>

### *Trump-Pence asylum policies undermine human rights*

In June 2019, a transgender woman from El Salvador seeking asylum in the United States died just days after being released from a detention center in New Mexico that had been sued in March 2019 for creating “unconscionable conditions” for LGBT immigrants.<sup>185</sup> Her death came one year nearly to the day on the anniversary of the death of another transgender woman from Honduras seeking asylum. An autopsy report found that the woman died of complications from AIDS while in the custody of ICE agents.<sup>186</sup> The Honduran woman had been denied medical care despite her requests for assistance and additional requests for assistance on her behalf by other migrants.<sup>187</sup> ICE destroyed video footage from the woman’s time in custody despite orders to preserve it.<sup>188</sup>

The March 2019 lawsuit alleging frequent verbal, physical, and sexual abuse at the Otero County Processing Center, an ICE detention center in New Mexico, was filed by a group of transgender and gay immigrants working with the ACLU.<sup>189</sup> Transgender detainees reported being denied hormone treatment, and one gay detainee reported being sent to solitary confinement for reporting sexual abuse to ICE officials.<sup>190</sup>

In November 2018, the Trump Administration announced that it would deny asylum to those who enter the US illegally. According to the ACLU, this violates U.S. and international law.

“Congress very specifically said you can apply for asylum if you arrive in the United States regardless of whether you’re at a port of entry,” said Omar

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<sup>184</sup> U.S. Citizenship and Immigration Service (No date, accessed September 14, 2020). Public Charge Fact Sheet. <https://www.uscis.gov/archive/public-charge-fact-sheet>

<sup>185</sup> Kessler B. (2019, June 3). Transgender asylum-seeker dies after six weeks in ICE custody. *NBC News*. <https://www.nbcnews.com/news/us-news/transgender-asylum-seeker-dies-after-six-weeks-ice-custody-n1012956>

<sup>186</sup> Sanchez A. (2019, April 9). *UPDATED: Statement Regarding the Death of Roxsana Hernandez*. The University of New Mexico Health Sciences. <http://hscnews.unm.edu/news/statement-regarding-the-death-of-roxsana-hernandez>

<sup>187</sup> Flores A. (2019, March 25). ICE Destroyed Footage Of A Trans Asylum-Seeker Who Died In Custody Despite A Request To Save It. *BuzzFeed*. <https://www.buzzfeednews.com/article/adolfoflores/ice-destroyed-footage-of-a-trans-asylum-seeker-who-died-in>

<sup>188</sup> *Ibid.*

<sup>189</sup> Moore R. (March 25, 2019). Gay, Transgender Detainees Allege Abuse at ICE Facility in New Mexico. *The Washington Post*.

<sup>190</sup> *Ibid.*

Jadwat, director of the American Civil Liberties Union's Immigrants' Rights Project. "They clearly and explicitly meant to make asylum available to anyone who reaches the United States."<sup>191</sup>

In July 2019, the Departments of Justice and Homeland Security announced a new rule that restricts asylum hearings in the United States only to people who have been denied asylum in another country or who have been victims of human trafficking.<sup>192</sup> The ACLU and other rights groups challenged the new rule, asserting that it creates unprecedented barriers to entry to the United States for asylum seekers. In September, the U.S. Supreme Court issued an order stating that the Trump Administration may enforce the new rule. Justices Sonia Sotomayor and Ruth Bader Ginsburg dissented from the decision, with Sotomayor writing, "The rule the government promulgated topples decades of settled asylum practices and affects some of the most vulnerable people in the Western Hemisphere."

In June 2020, the Department of Homeland Security proposed a new rule that would allow immigration officials to dismiss asylum seekers' applications as "frivolous" without a hearing.<sup>193</sup>

## **Prescription drug pricing**

In mid- to late 2020 President Trump issued executive orders aimed at reducing the cost of some prescription medications. A series of drug pricing executive orders in July centered on forcing community health centers to provide insulin and epinephrine at the discounted cost that they pay for the medications. The orders also eliminated rebates and encouraged drug imports. The July executive orders were criticized by the National Association of Community Health Centers for targeting health centers that already provide low or no cost access to medications.<sup>194</sup> The 340B pricing program that Trump singled out in his executive order is essential to supporting the health center and HIV care safety net that provides care and services to 30 million Americans.

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<sup>191</sup> Miroff N (2018, November 8). Trump administration tightens immigration asylum rules as caravans continue to push for U.S. border. *Washington Post*. [https://www.washingtonpost.com/world/national-security/trump-administration-to-tighten-asylum-rules-as-caravans-approach/2018/11/08/69a06a08-e2a7-11e8-a1c9-6afe99ddd92\\_story.html](https://www.washingtonpost.com/world/national-security/trump-administration-to-tighten-asylum-rules-as-caravans-approach/2018/11/08/69a06a08-e2a7-11e8-a1c9-6afe99ddd92_story.html)

<sup>192</sup> Liptak A. (2019, September 11). Supreme Court Says Trump Can Bar Asylum Seekers While Legal Fight Continues. *The New York Times*.

<sup>193</sup> Narea N (2020, June 12). Trump is quietly gutting the asylum system amid the pandemic. *Vox*. <https://www.vox.com/2020/6/12/21288063/trump-immigration-asylum-border-regulation>

<sup>194</sup> <https://www.nachc.org/nachc-statement-the-white-house-executive-order-regarding-health-centers-and-the-340b-drug-pricing-program/>

In mid-September, President Trump signed four executive orders aiming to decrease the premium prices that Americans enrolled in Medicare pay for medications. Trump's move ties Medicare Part B and Part D drug prices to the lower costs in other developed countries.<sup>195</sup>

While some health policy groups praised the moves, they garnered significant backlash from the pharmaceutical industry. PhRMA called Trump's executive orders "a reckless attack" and "irresponsible and unworkable."<sup>196</sup> Congressman Richard Neal, chair of the House Ways and Means Committee, faulted Republicans for granting tax breaks to pharmaceutical companies and said, "This empty executive order is just another smoke and mirrors charade from the White House, not a real solution to make medicines affordable."<sup>197</sup>

## Conclusion

Despite claims from Richard Grenell and the Log Cabin Republicans, the Trump Administration has enacted more anti-LGBT policies than any previous administration. Many of these reverse advances accomplished under the Obama-Biden Administration. The Trump-Pence Administration has tried to repeal critically important sexual orientation and gender identity nondiscrimination regulations governing health care, public and private health insurance, and elder care. It has undercut the ability of lesbian, gay, bisexual, transgender, nonbinary and intersex patients to access affirming and nondiscriminatory care. It has opposed mainstream interpretations of sex nondiscrimination laws, recently embraced by a 6 to 3 majority of the U.S. Supreme Court, that protect LGBT people against workplace discrimination. The Trump Administration has promoted religious refusal policies which threaten the ability of LGBT Americans to access health care and at least half a trillion a year in social services.

The Trump Administration has undermined efforts to collect data on LGBT older adults, people with disabilities, and youth in juvenile justice and foster care

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<sup>195</sup> Keith T (2020, September 13) Trump signs new executive order on prescription drug prices. Washington, DC: National Public Radio, 2020. <https://www.npr.org/2020/09/13/912545090/trump-signs-new-executive-order-on-prescription-drug-prices>

<sup>196</sup> Sagonowsky E (2020, September 14) Trump unveils favored-nation drug pricing executive order, and pharma hits back. Framingham, MA: FiercePharmaPolitics, 2020. <https://www.fiercepharma.com/pharma/fiercepharmapolitics-trump-unveils-favored-nation-drug-pricing-executive-order-and-pharma>

<sup>197</sup> Lagasse J (2020, September 14). Trump signs executive order on drug pricing, prompting pushback from stakeholders. *Healthcare Finance*. <https://www.healthcarefinancenews.com/news/trump-signs-executive-order-drug-pricing-prompting-pushback-stakeholders>

settings. While purporting to promote the repeal of laws criminalizing homosexuality around the world, it has undermined the Obama-Biden Administration’s policy of promoting LGBT equality as a key goal of U.S. foreign policy, and has remained silent in the face of anti-LGBT statements and actions by leaders in Brazil, Zambia, Saudi Arabia, and elsewhere.

The Trump-Pence Administration has appointed dozens of federal judges who oppose LGBTQ equality, and created a Commission on Unalienable Rights that denigrates LGBT equality as “ad hoc rights.” Trump’s Ending the HIV Epidemic Plan seeks to dramatically cut new HIV infections by 2025, but his repeated attempts to repeal the Affordable Care Act would throw thousands of people living with HIV off of health insurance. In the face of the most important national reckoning on racial inequality in generations, President Trump has acted as a Divider-In-Chief, stoking the flames of division instead of trying to unite and heal the country and move us forward as a people. He continues to attack and undermine institutions essential to the functioning of our democracy—an independent Department of Justice, Congressional and government oversight, and a free press.

We hope that this history of the Trump-Pence Administration’s record on LGBTQ health equity and human rights issues is helpful to community members and researchers. As noted in the introduction, this is the fourth report we have published on the Trump-Pence Administration’s policies toward LGBTQ and HIV issues since 2017. The other three reports are available here.<sup>198</sup>

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<sup>198</sup> Simonoff C, Wang T, Cahill S (2020, January). *In its third year in office, the Trump Administration dramatically expanded discriminatory anti-LGBT policies*. Boston: The Fenway Institute; Cahill S, Wang T, Jenkins B (2019, January). *Trump Administration continued to advance discriminatory policies and practices against LGBT people and people living with HIV in 2018*. Boston: The Fenway Institute; Cahill S, Geffen S, Wang T (2018, January 16). *One year in, Trump Administration amasses striking anti-LGBT record*. Boston: The Fenway Institute. These reports are all available at <https://fenwayhealth.org/the-fenway-institute/health-policy/>

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Cahill S, Geffen S, Wang T (2018, January 16). *One year in, Trump Administration amasses striking anti-LGBT record*. Boston: The Fenway Institute.

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