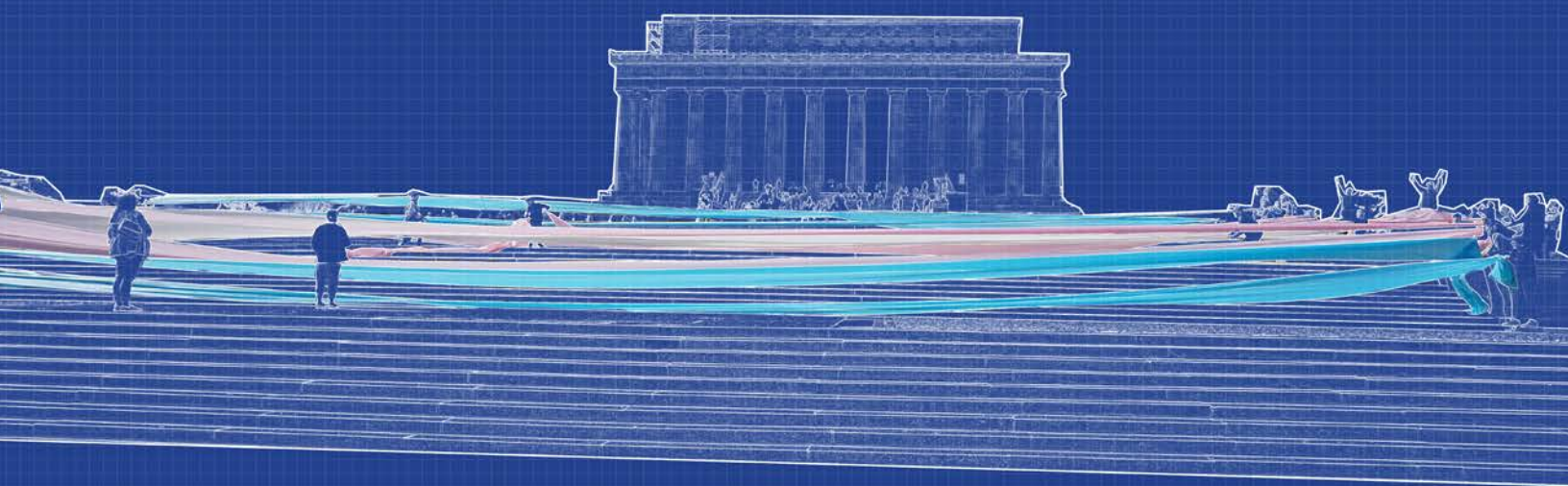


BLUEPRINT

FOR TRANSGENDER EQUALITY

**A Transgender Federal Agenda for
the Biden-Harris Administration
and the 117th Congress**





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A Transgender Federal Agenda for the Biden-Harris Administration and the 117st Congress

This agenda outlines actions the federal government should take to improve the lives of transgender people. Although not an exhaustive list, it captures the initial priorities that would, taken together, dramatically advance equality and dignity under the law, increasing opportunity, safety, and well-being for all.

Making these policy changes is especially urgent given the widespread violence and discrimination faced by transgender people, especially Black and Latina transgender women. 2020 was a record-breaking year for attacks against transgender people. The problem of violence is deep and far-reaching. The efforts to end it must be equally sweeping. These policy changes, which help combat the marginalization of transgender people, are part of the solution.

NCTE staff are available to discuss these policy recommendations in further detail and provide any support that may be helpful.

Recommended actions for each topic are generally divided into the following categories: Legislation, Executive Orders or Presidential Actions, Regulations, and (Sub-regulatory) Policy.

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GOVERNMENT-WIDE CIVIL RIGHTS ENFORCEMENT

Legislation

Pass the Equality Act to clarify and strengthen nondiscrimination protections in employment, housing, education, public spaces and services, federally funded programs, credit, and jury service, and include retail and other businesses under Title II of the Civil Rights Act.

Executive Orders or Other Presidential Actions

Direct every agency to take actions to implement the *Bostock* ruling, including by:

- Directing all agencies to review and revise current regulations, guidance, funding notices, and other policies to define sex discrimination to include discrimination on the basis of sexual orientation, gender identity, transgender status, or sex characteristics.
- Directing all agencies to review and revise current regulations, guidance, program manuals, and other policies relating to federal program eligibility or benefits to ensure nondiscrimination on these bases.
- Directing all agencies to immediately review all relevant pending complaints and litigation, and to review the extent to which appeal deadlines should be waived for any recently dismissed complaints.
- Directing all agencies to review their civil rights enforcement priorities, procedures, and forms in light of the *Bostock* ruling.
- Directing the Attorney General to issue guidance to agencies on fundamental principles for implementing the *Bostock* decision.
- Directing the Departments of Justice and Education to reinstate on an interim basis the May 13, 2016 Title IX Dear Colleague letter pending development of comprehensive new guidance and regulatory updates.

Establish a White House Council on Gender Equity for All to promote and coordinate equity efforts for all women and girls and LGBTQ people.

Restore protections for safety-net program beneficiaries which were stripped by Executive Order 13831 of May 3, 2018, “Establishment of a White House Faith and Opportunity Initiative.”

Rescind and replace Executive Order 13950 of September 22, 2020 (Combating Race and Sex Stereotyping), which seeks to dismantle equal opportunity, diversity, and inclusion training with respect to race, sex, and LGBTQ+ communities in federal workplaces and by federal contractors with an order that supports such training, including training on implicit bias.

Issue proclamations recognizing Transgender Day of Visibility (March 31) and Transgender Day of Remembrance (November 20).

Regulations

Every federal agency should adopt rules explicitly prohibiting discrimination on the basis of sex, including on the basis of sexual orientation and gender identity, in all programs they fund or administer.

Restore and strengthen rules protecting individuals receiving federally-funded services from discrimination by religious organizations.



Policy and Enforcement

The Department of Justice should reinstate, strengthen, and advance in the courts the litigating position that all forms of discrimination on the basis of gender identity, gender transition, or transgender status constitutes sex-based discrimination. This position was maintained by the Department from 2014 to 2017, then reversed by an October 4, 2017 Attorney General memo, and finally adopted by the Supreme Court in *Bostock*.

The Department of Justice and other agencies should enforce the Americans with Disabilities Act and the Rehabilitation Act of 1972 to prohibit discrimination against transgender people based on gender dysphoria, related accommodation requests, or a perception of disability.

The Department of Justice should adopt and advance the litigating position that discrimination on the basis of gender identity, gender transition, or transgender status is subject to heightened constitutional scrutiny.

The Departments of Justice, Education, HHS, and other civil rights agencies should work to vigorously advance the civil rights of transgender people in the courts and through individual and systemic investigations. Particular emphasis should be placed on the following types of cases:

- Protecting transgender students from bullying, harassment, and school policies and practices that segregate or single them out from other students.
- Protecting the safety and rights of transgender people in prisons, jails, and confinement settings, including in the federal Bureau of Prisons.
- Protecting the safety and rights of transgender people in interactions with law enforcement.
- Protecting the safety and rights of transgender people experiencing homelessness or seeking access to safety-net services.
- Challenging institutional policies, patterns, and practices that single out or exclude transgender people from benefits or opportunities, including those that:
 - ◊ Exclude individuals from public facilities or programs because of their transgender status;
 - ◊ Deny medically appropriate health coverage or services solely because of a person's gender identity, gender assigned at birth or listed in insurance or other records, gender transition, or transgender status, or because a service is intended to treat gender dysphoria;
 - ◊ Disclose information about an individual's transgender status or gender transition without their consent.
- Challenging any state statute that explicitly discriminates against transgender people.

Ensure every federal agency has an inclusive Equal Employment Opportunity policy that explicitly prohibits discrimination on the basis of gender identity.

Ensure all single-user restrooms in existing federal facilities are designated for use by anyone, without regard to gender, and ensure all restrooms in newly constructed or remodeled federal facilities are designed to maximize visual privacy in stalls and be used by anyone, without regard to gender. The General Services Administration and other agencies could consider any of a variety of design concepts, such as open sink areas with fully enclosed toilet stalls like those proposed by the 2018 American Institute for Architecture Innovation Award-winning “Stalled” project.

Withdraw and replace the October 6, 2017 Attorney General memo on “Federal Law Protections for Religious Liberty” to make clear that (1) the Religious Freedom Restoration Act and other religious exemption laws generally do not require exemptions to federal civil rights laws, and (2) prohibiting discrimination on the basis of sex, including on the basis of sexual orientation or gender identity, is a compelling governmental interest.

Withdraw the June 29, 2007 Office of Legal Counsel “World Vision” opinion, which concluded that the Religious Freedom Restoration Act (RFRA) requires exempting certain organizations receiving federal funds from employment nondiscrimination requirements.

Funding

Increase funding for key civil rights agencies to enable them to address backlogs, improve systems, expand outreach and technical assistance, and pursue new systemic investigations, including:

- Department of Justice, Civil Rights Division
- Equal Employment Opportunity Commission
- Department of Health and Human Services, Office for Civil Rights
- Department of Education, Office for Civil Rights
- Department of Labor, Office of Federal Contract Compliance Programs
- Department of Labor, Civil Rights Center
- Department of Homeland Security, Office for Civil Rights and Civil Liberties

Personnel

Prioritize recruiting highly qualified transgender, and especially transgender people of color, candidates for appointments in all agencies.

Prioritize appointing personnel with a strong record of commitment to protecting civil rights for all communities to lead the following agencies:

- Office of Management and Budget, especially Office of Information & Regulatory Affairs
- Department of Justice, especially Civil Rights Division
- Equal Employment Opportunity Commission
- Department of Health and Human Services, especially Office for Civil Rights
- Department of Education, especially Office for Civil Rights
- Department of Labor, especially Office of Federal Contract Compliance Programs and Civil Rights Center
- Department of Homeland Security, especially Office for Civil Rights and Civil Liberties





IDENTITY DOCUMENTS & PRIVACY PROTECTION

Legislation

Repeal the REAL ID Act provision that requires states and tribal governments to include gender markers on all REAL ID-compliant IDs, including state and tribal IDs and driver's licenses. NCTE also supports repeal or reform of the entire REAL ID Act.

Pass the TSA Screening with Dignity Act to reform airline passenger screening to minimize physical pat-downs and prohibit procedures or technology that single out travelers based on race, religion, gender, or disability

Pass strong digital privacy and data protection legislation, such as the Data Accountability and Transparency Act, that would ban most online collection of personal data, facial recognition surveillance, and discrimination based on personal data, curb algorithmic discrimination, and enable federal regulators and consumers to hold companies accountable.

Repeal unnecessary statutory requirements to list gender on certificates of naturalization or citizenship and visas (8 U.S.C. §§ 1202(a), 1449).

Executive Orders or Other Presidential Actions

Establish a moratorium on the use of facial recognition technology for federal law enforcement, immigration, or security purposes until Congress establishes strong privacy and due process safeguards. In addition to privacy concerns for everyone, facial recognition technology is less accurate for people of color and transgender people and enables discriminatory “automated gender recognition.”

Regulations

Update rules for military identification documents to permit individuals to attest to their own gender when applying for or amending documents as either M, F, or X.

Eliminate unnecessary gender markers on identification documents. To protect privacy and eliminate administrative burdens and confusion, agencies should eliminate gender markers from these and other identification documents where they are not required by statute or programmatically necessary:

- DOS Form FS-240, Consular Report of Birth Abroad of a Citizen of the United States of America (sex information could still be collected on Form DS-2029, Application for Consular Report of Birth Abroad of a Citizen of the United States of America, for statistical purposes)
- USCIS Employment Authorization Documents (a.k.a. work permits)
- USCIS Permanent Resident Cards (a.k.a. green cards) (Form I-551)
- USCIS Refugee Travel Documents (Form I-571)
- OPM Official Personnel Files (gender could be treated like data on race, national origin, and disability, which are collected voluntarily and separately from the OPF)
- DHS “Trusted Traveler” Cards (Global Entry, NEXUS, SENTRI, FAST)
- US Coast Guard Merchant Mariner Credential
- US Department of State Border Crossing Card (Form DSP-150)
- US Department of State Driver’s Licenses (issued to foreign diplomats)

Streamline gender designation procedures and provide a gender-neutral option for every identification document or records system in which individuals are required to provide gender information due to compelling policy reasons, statutory requirements, or international standards. Individuals should be able to attest to their own gender when applying for or amending documents as either M, F, or X. This includes:

- US passports and US passport cards
- US Certificate of Naturalization or Certificate of Citizenship, including:
 - ◊ N-550, issued to an individual who obtains US citizenship through the naturalization process;
 - ◊ N-578, issued to a naturalized US citizen to obtain recognition as a United States citizen by a foreign state;
 - ◊ N-570, issued when the original Certificate of Naturalization is lost, mutilated, or contains errors;
 - ◊ N-560A, issued to an applicant who derived citizenship after birth; N-560AB, issued to an applicant who acquired citizenship at birth;
 - ◊ N-645 and N-645A, issued to the family of an individual who served honorably in the US armed forces during a designated period of hostility and died as a result of injury or disease incurred in or aggravated by that service. *These two forms should also be merged into a single, gender-neutral form. Currently, Form N-645 is issued if the decedent was a male, and the N-645A if the decedent was a female.*
 - ◊ Form N-561, issued to replace a Certificate of Citizenship when the original certificate is lost, mutilated, or contains errors.
- Social Security Administration (Numident) records
- DOD DEERS records/ID cards for service members, retirees, dependents
- Veterans Health Administration patient records

The Department of Health and Human Services should update the Model Vital Statistics Act and Regulations, last updated in 2011, to eliminate gender designations from short-form birth certificates while maintaining confidential birth statistics.

Urge the International Civil Aviation Organization (ICAO) to remove the requirement for gender markers on passports. ICAO added this requirement in 1976 and initially considered removing it in 2012, concluding: “the tangible benefits of not requiring travel documents to display the holder’s gender mean there is still a significant opportunity for ICAO in changing the mandatory requirement in the future.” Though the ICAO is not a federal government entity, it is an international entity to which the US has a permanent mission because its decisions impact US civil aviation.

Dramatically reform TSA airport passenger screening to be less invasive, gender-neutral, minimize pat-downs, and eliminate techniques and procedures that single travelers out based on race, religion, gender, or disability, consistent with the requirements set forth in the Screening with Dignity Act.

Eliminate gender data matching in Social Security Administration data matching programs.

Across all agencies, identify, assess, and take actions to limit the mandatory collection and use of Personal Identifying Information (PII) regarding gender. Agencies should assess:

- every instance in which individuals are required to provide gender information;
- whether the request for a person to indicate their gender is required by statute, regulation, or agency practice;
- the scope of uses or dissemination of gender PII, including whether it is included on a document that individuals must present to show eligibility for any service, benefit, or opportunity;
- the costs, benefits, and alternatives to collecting gender information;
- which mandatory collections or uses of gender PII should be eliminated; and,
- the utility of the gender PII mandate in section 202(b)(3) of the REAL ID Act and whether it should be repealed.





EMPLOYMENT AND ECONOMIC OPPORTUNITY

Legislation

Congress should fund targeted efforts to increase economic opportunities for transgender people.

This may include establishing a new grant program, or new incentives in existing grant programs, for community-based programs focused on transgender workers (including, but not limited to, grants for demonstration projects and program evaluation) or transgender people in existing job readiness, workforce development, re-entry, and small business programs.

Pass the BE HEARD in the Workplace Act to prevent and uncover sex-based harassment, including anti-LGBTQ harassment, and ensure access to justice.

Executive Orders or Other Presidential Actions

Direct the Departments of Labor, Commerce, and the Small Business Administration (SBA) to promote economic opportunities for transgender workers by reviewing their programs, regulations, policies, manuals, strategic plans, and funding notices, and issuing a report, including:

- Establishing an interagency task force and conducting cross-training across DOL, SBA, and Commerce on supporting transgender workers and entrepreneurs.
- Conducting an equity audit and setting equity goals for One-Stop Career Centers and other key programs.
- Reviewing the eligibility of transgender workers for current programs for disadvantaged workers and entrepreneurs.
- Identifying opportunities to develop or fund the implementation, evaluation, and replication of tailored programs to promote opportunities to disadvantaged transgender workers and entrepreneurs, including through collaborations with community-based organizations.
- Identifying any appropriate regulatory or policy changes or other agency actions to advance these goals.
- Identifying legislative recommendations for Congress and the states.

Regulations

Recognize transgender workers as eligible socially or economically disadvantaged persons for Minority Business Development Agency (MBDA) programs. While not explicitly required under Executive Order 11625, current MBDA procedures may first require that the agency receive a request from a transgender business owner or a trade association before making this determination.

Recognize transgender workers as eligible socially disadvantaged persons for Small Business Administration (SBA) programs. While not explicitly required under the Small Business Act, current SBA procedures may first require that the agency receive a request from a transgender business owner or a trade association before making this determination.

Clarify Occupational Safety and Health Administration (OSHA) sanitation standards at 29 C.F.R. § 1910.141, by rulemaking or an OSHA Standards Interpretation, to (1) require all single-occupancy toilet facilities be available without regard to sex, consistent with the 2021 International Plumbing Code, and (2) permit employers to provide multi-user toilet facilities without regard to sex, provided that employees have access to toilet stalls with full visual and sound privacy or that separate facilities are also available.

Policy

Replace Office of Personnel Management (OPM) guidance on supporting transgender federal employees, which was first adopted in 2011 and was rescinded and replaced with harmful guidance in 2018, with updated, comprehensive guidance.

Issue an OPM Carrier Letter directing Federal Employee Health Benefits plans to eliminate remaining exclusions that single out medical or surgical services for transgender people, building and expanding on carrier letters from 2015, 2014, and 2011.

The Equal Employment Opportunity Commission should issue enforcement guidance on equal employment opportunity for transgender people under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act.

Conduct an equity audit and set equity goals for serving transgender workers in One-Stop Career Centers and other key Department of Labor programs.

Department of Labor should issue guidance or funding notices to ensure inclusion of transgender workers in Women's Bureau grants, including the Women in Apprenticeship and Nontraditional Occupations (WANTO) Technical Assistance Grant Program and the Re-Employment, Support, and Training for the Opioid Related Epidemic (RESTORE) program.

The Small Business Administration should issue guidance or funding notices to ensure inclusion of transgender workers in SBA women's business programs, including Women's Business Centers and the Women Veteran Entrepreneurship Training Program.

Issue an Occupational Safety and Health Administration (OSHA) standards interpretation of 29 C.F.R. §1910.141 to (1) ensure all employees have access to toilet facilities consistent with their gender identity, and (2) permit employers to provide multi-user toilet facilities available without regard to sex, provided that the employee also provides the required number of number of sex-specific toilets.

The Department of Labor should identify, promote, and fund best practices for increasing employment opportunities for transgender people, whether through new funding streams or new emphases in existing funding streams. This could include funding demonstration projects or program evaluation for transgender-specific programs, as well as funding technical assistance, training, and outreach serving transgender workers in existing programs.

Encourage states and localities to use workforce development funds for specialized centers or programs for transgender workers, including under the Workforce Innovation and Opportunity Act.





EDUCATION

Legislation

Pass the Safe Schools Improvement Act to require schools to adopt comprehensive policies to prevent and address bullying and harassment.

Pass the Counseling Not Criminalization in Schools Act to divert federal funding away from supporting the presence of police in schools and toward evidence-based and trauma informed services for students.

Pass the Real Education for Healthy Youth Act to replace abstinence-based education programs with comprehensive, trans-inclusive, evidence-based sex education.

Regulations

Restore and strengthen Title IX regulations, including:

- Restoring protections for student survivors of sexual violence and harassment.
- Recognizing that Title IX prohibits discrimination based on pregnancy, sex stereotypes, sexual orientation, gender identity, transgender status, and sex characteristics.
- Limiting Title IX religious exemptions only to schools actually controlled by a religious entity.
- Encouraging schools to provide notice of their intent to rely on the Title IX religious exemption

Codify LGBTQ equality in the Title IX common rule applicable to 20 other agencies by stating that Title IX prohibits discrimination based on pregnancy, sex stereotypes, sexual orientation, gender identity, transgender status, and sex characteristics.

Provide education leaders with new, comprehensive guidance to ensure equal opportunity for LGBTQ students, including clarifying that:

- Transgender students have the right to be treated in accord with their gender identity in all aspects of school, including facilities use, dress and appearance, names and pronouns, and school activities, including sports.
- When only binary options are available, schools should defer to a non-binary student's determination of which option is most appropriate for them.
- Schools may not discriminate against LGBTQ students in applying school rules on dating, e.g., by treating same-sex dating or affection differently.
- Schools may not discriminate against LGBTQ students or employees in any benefit or service, including medical coverage.
- Title IX and the Family Educational Rights and Privacy Act protect students' privacy with regard to sexual orientation, gender identity, transgender status, or sex characteristics.
- Some students with gender dysphoria may have additional rights under the Individuals with Disabilities in Education Act and Rehabilitation Act.
- The Equal Access Act requires equal treatment for LGBTQ-affirming student groups.

Issue a series of new resources for school administrators and educators on creating safe and supportive schools for LGBTQ students, including examples of inclusive policies and resources for professional development and curricular development (building on the 2016 [“Examples of Policies and Emerging Practices for Supporting Transgender Students”](#) resource).

Department of Education should coordinate with the Bureau of Indian Education, Department of State, Department of Defense Education Activity unit (DoDEA) and other federal agencies to provide appropriate guidance to schools they fund or administer.

Issue new, comprehensive school discipline guidance that addresses discriminatory discipline toward LGBTQ students.

Vigorously advance the civil rights of transgender students in the courts and through individual and systemic investigations by Department of Education's Office for Civil Rights and the Department of Justice's Civil Rights Division Educational Opportunities Section, including initiating enforcement actions against anti-transgender state laws (such as Idaho HB 500).

Revise and strengthen Department of Education's Office for Civil Rights Case Processing Manual, including the standards for opening an investigation.

Strengthen equity measures and resources for states and schools under the Every Student Succeeds Act (ESSA) to include measures on ensuring equity for LGBTQ students.



HOUSING AND HOMELESSNESS

Legislation

Reauthorize and strengthen the Runaway and Homeless Youth Act, including adding a nondiscrimination provision, and fully funding a prevalence and incidence study of runaway and homeless youth, which should include LGBTQ demographic questions.

Regulations

Strengthen HUD's Equal Access Rule by encouraging shelters to serve people of all genders, to provide access to all medically necessary care while at the shelter, and to afford all residents increased personal privacy.

Revise and strengthen HUD's Fair Housing Act regulations, including:

- Codifying that the Fair Housing Act prohibits discrimination based on pregnancy, sex stereotyping, sexual orientation, gender identity, transgender status, or sex characteristics.
- Restoring and strengthening rules on Affirmatively Furthering Fair Housing.
- Restoring and strengthening disparate impact provisions.

Policy

Require housing and shelter programs to maintain and post notices of nondiscrimination policies that explicitly include gender identity and sexual orientation.

Provide up-to-date best practice guidelines, training, and technical assistance to housing and shelter programs for serving transgender people.

Centralize and integrate enforcement of the HUD Equal Access Rule within the Office of Fair Housing and Equal Opportunity.

Complete and publish an evaluation of HUD's LGBTQ Youth Homelessness Prevention Initiative.

Fund community-based, transgender-focused housing programs, including demonstration projects and program evaluations, through new discretionary grants or incentives in existing grants.

HEALTH AND HIV

Legislation

Pass the Health Equity and Accountability Act or other comprehensive legislation to promote health equity, including for transgender populations.

Congress should make bold investments to end the HIV/AIDS epidemic, including:

- Strengthening public health efforts to address syndemics, including sexually transmitted infections, viral hepatitis, tuberculosis, and substance use.
- Strengthening efforts focusing on key populations, including transgender people, Black and Latino men who have sex with men, sex workers, and older adults.
- Expanding funding for sexual and reproductive health services and comprehensive sexuality education.
- Eliminating restrictions on health and housing programs related to drug use, arrest or conviction history, or immigration status.
- Completely lifting federal restrictions and increasing funding for HIV harm reduction programs, including programs for syringe services and overdose prevention.

Pass the Do No Harm Act to prohibit health care providers from discriminating based on gender identity in the name of religious freedom.

Pass the Access to Infertility Treatment and Care Act to ensure coverage of fertility preservation for all patients at risk for infertility caused by medical treatments.

Executive Orders or Other Presidential Actions

Direct the Departments of Justice, Defense, and Health and Human Services (HHS) to conduct a review of federal and state laws and policies regarding criminal or civil sanctions based on HIV/AIDS status, including in regard to the Uniform Code of Military Justice, and issue recommendations, goals, and performance measures for implementing best practices. (This could also be done legislatively by the **REPEAL HIV Discrimination Act**.)



Regulations

Restore and further strengthen implementing regulations for the Affordable Care Act's (ACA) nondiscrimination provisions, including:

- Codifying that the ACA prohibits discrimination on the basis of pregnancy, sex stereotypes, sexual orientation, gender identity, transgender status, and sex characteristics.
- Clarifying that these provisions apply to all health-related activities—including by employers and health insurers—that receive federal funds and can be enforced by HHS or in court.
- Clarifying that the ACA prohibits both intentional and disparate-impact discrimination.
- Expressly prohibiting insurance exclusions that single out transgender people or treatment related to gender transition or gender dysphoria, as well as categorical age limits.
- Require a clinical or other strong justification for sex-separated programs or facilities.
- Prohibiting all forms of discriminatory treatment of transgender patients, including misgendering and other harassment, or denial of care or coverage based on gender as recorded in insurance records or official documents.
- Guaranteeing patients notice of their rights to nondiscrimination and language assistance.
- Prohibit anti-LGBTQ conversion therapy using federal funds.
- Eliminating exemptions not listed in the ACA.

Adopt an Affordable Care Act nondiscrimination common rule across federal agencies, similar to the Title IX common rule adopted by 20 agencies.

Restore regulations prohibiting discrimination based on all non-merit factors in HHS grant programs, including sex, gender identity, sexual orientation, and religion.

Prohibit discrimination in Medicaid and Medicare Conditions of Participation, including on the basis of sexual orientation, gender identity, transgender status, and sex characteristics.

Rescind 2019 HHS Office for Civil Rights “Denial of Care” rules that sought to improperly expand refusals of health care.

Rescind the HHS Title X “Domestic Gag Rule” that requires coercive counseling standards, prohibits abortion referrals, and has cut the Title X provider network in half.

Eliminate the HHS grants regulation (86 FR 2257) that deleted prohibitions against discrimination on the basis of age, sex, disability, race, ethnicity, religion, gender identity, and sexual orientation for organizations receiving taxpayer dollars to serve the American people.



Policy

Issue guidance to state Medicaid programs clarifying that the Medicaid Act forbids categorical exclusions of medical treatment for gender dysphoria.

Update Centers for Medicare and Medicaid Services' qualified health plan (QHP) review and certification tools to include additional examples of discrimination, including transgender exclusions and discriminatory treatment of HIV medications.

Issue guidance on coverage of HIV pre-exposure prophylaxis (PrEP) and ancillary services in private insurance, Medicaid, and Children's Health Insurance Program plans, including prohibiting unreasonable medical management techniques such as step therapy and blanket prior authorization requirements.

Prioritize investigating, litigating, and resolving civil rights and privacy violations targeting LGBTQ patients, and publicize positive resolutions.

Strengthen support for, and LGBTQ and Two-Spirit equity in, the Indian Health Service in consultation with community leaders, including comprehensive guidance for providers, including strengthening training and consultation resources.

Eliminate the HHS Office for Civil Rights Conscience and Religious Freedom Division and restore the Office's traditional focus on protecting patients' privacy and civil rights.

Lift the ban on blood donation by men who have sex with men, which has also been used to exclude transgender donors regardless of their gender or sexual orientation.

Increase funding for HIV/AIDS prevention, treatment, and research, including:

- President's Emergency Plan for AIDS Relief (PEPFAR)
- Health Resources and Services Administration (HRSA)'s Ryan White HIV/AIDS Care Program
- CDC's Division of HIV/AIDS Prevention-Intervention & Support (DHAP)
- Department of Housing and Urban Development's Housing Opportunities for Persons with AIDS (HOPWA)
- Department of Veterans Affairs, HIV, Hepatitis, and Related Conditions Programs (HHRC)
- U.S. Agency for International Development's (USAID) Office of HIV/AIDS
- National Institutes of Health's (NIH) Centers for AIDS Research program
- National Institute of Mental Health's (NIMH) AIDS Research Centers program

Expand peer-led prevention and treatment programs for transgender populations through the Substance Abuse and Mental Health Services Administration (SAMHSA), the Health Resources and Services Administration (HRSA), and the CDC.

The Departments of HHS and Education should develop policies for trans-sensitive comprehensive education, training, and policies for suicide prevention in all schools and health care settings, including through federal funding requirements and incentives.

Defund ineffective abstinence-only-until-marriage programs, instead supporting comprehensive, transgender-inclusive sexuality education.

IMMIGRATION

Legislation

Create fair and achievable paths to citizenship for undocumented Americans, including Dreamers.

Repeal unnecessary and draconian immigration laws, including:

- The one-year deadline for filing asylum claims.
- Overbroad criminal history bars to asylum.
- The costly and unnecessary mandatory detention statute.
- Criminalizing unauthorized border crossing.
- The admissibility bar for current or former sex workers.
- Limits on humanitarian discretion for immigration judges.
- Sweeping immigrant exclusions for basic health coverage and safety net programs.

Mandate legal counsel for children in immigration proceedings.

Executive Orders or Other Presidential Actions

Maintain and expand the DACA (Deferred Action for Childhood Arrivals) program until there is a legislative solution.

Regulations

Reverse every anti-humanitarian immigration rule adopted in recent years, including rules designed to ban travel from predominately Muslim countries, ban on asylum-seekers, ban on pregnant travelers, expansion of the “public charge” statute, expediting deportations without due process, and increases in immigration fees.

Policy

Dramatically shrink the immigration detention system and end the detention of vulnerable persons, including those who are pregnant, elderly, transgender or LGBQ, and people with disabilities, using the maximum available discretion under existing law, including a broad interpretation of “custody” for purposes of the Immigration and Nationality Act’s mandatory custody provision.

Issue guidance on transgender and LGBQ asylum and related protection claims, including expressly recognizing that LGBTQ, transgender, and intersex populations are “particular social groups” under the Immigration and Nationality Act and international treaties.

Ensure streamlined processing for transgender and LGBQ individuals fleeing persecution.

Require training for all individuals involved in asylum or refugee interviews on applicable standards and cultural competence for interviewing LGBTQ individuals.



LAW ENFORCEMENT AND VIOLENCE RESPONSE

Legislation

Pass the Justice in Policing Act to ensure basic reform and accountability for police departments, including the **End Racial and Religious Profiling Act** and the **Khalid Jabara-Heather Heyer NO HATE Act**.

Reauthorize and strengthen the Violence Against Women Act and the Family Violence Prevention and Services Act (FVPSA), including increasing investments in violence prevention, reaching survivors in underserved populations, prioritizing community-based responses over criminal justice responses, and expressly prohibiting discrimination on the basis of sexual orientation and gender identity.

Pass the SAFE SEX Workers Study Act which would initiate a National Institute of Health or National Academy of Medicine study on the health impacts of the 2018 laws relating to the closing of websites that host information related to consensual sexual exchange (known as SESTA or FOSTA).

Executive Orders or Other Presidential Actions

The President and his Administration should speak out against violent attacks targeting transgender people.

Rescind and replace National Security Presidential Directive 22 (2002) — which hampers anti-trafficking efforts by conflating all commercial sex work with human trafficking—with a directive to proactively engage sex workers and their advocates in combating trafficking, violence, and HIV.

Regulations

Issue strong regulations explicitly prohibiting discrimination based on gender identity and sexual orientation in law enforcement and public safety programs that receive federal funds.

Policy

Vigorously use pattern and practice investigations, consent decrees, and other enforcement and policy tools to address discriminatory policing and police violence and abuse, including addressing civil rights abuses toward LGBTQ people and sex workers as a standard practice in federal pattern and practice investigations and consent decrees.

Conduct a comprehensive review of all federal violence prevention, intervention, and victim services programs, including those run by the Departments of Justice and Health and Human Services, to better serve LGBTQ communities and prevent violence against LGBTQ people, especially transgender women of color, including:

- Use the Department of Justice (DOJ), Health and Human Services (HHS), and the White House’s convening and collaborating functions, funding incentives, and civil rights enforcement to prevent and address violence against transgender and LGBTQ people.
- Establish new grants for LGBTQ and trans-specific community-based anti-violence programs and for program evaluation.
- Revise rules, guidance, and funding notices to ensure nondiscrimination, cultural competence, targeted outreach, and appropriate data collection and evaluation in all grant programs.

Revise federal anti-violence and anti-trafficking grants to decouple victim support and services from police and courts, wherever possible within existing statutes.





Policy *(continued)*

Ensure that efforts to combat human trafficking prioritize harm-reduction-based services and other needs identified by affected individuals over counterproductive “end demand” and law enforcement-based responses, including by:

- Issuing DOJ guidance to state and local agencies on civil rights concerns in the context of anti-trafficking efforts and in the enforcement of anti-prostitution laws.
- Clarifying that labor and civil rights enforcement agencies may serve as “law enforcement officials” for purposes of victim certification under the Trafficking Victims Protection Act.
- Ending Operation Cross Country and similar initiatives or, at a minimum, squarely focusing them on force, fraud, and coercion and reporting full arrest, charging, and demographic data.
- Eliminating prosecution arrest and prosecution performance measures in DOJ anti-trafficking grants and increasing focus on prevention measures.
- Comprehensively reviewing the efficacy of current DOJ and HHS anti-trafficking grants and activities in reducing vulnerability, incidence, and victim well-being outcomes for both labor and sex trafficking.
- Relocating victim certification, the Blue Campaign, and other anti-trafficking efforts from the Department of Homeland Security to the Department of Labor.

Initiate a National Institute of Health or National Academy of Medicine study on the health impacts of the 2018 laws related to the closing of websites that host information related to consensual sexual exchange (known as SESTA or FOSTA).

Publish and disseminate strong civil rights guidance for law enforcement agencies on:

- interactions with transgender people
- police sexual misconduct
- civil rights concerns in the context of anti-trafficking efforts and in the enforcement of anti-prostitution laws (including the confiscation and use of condoms as evidence)

Increase funding for community-based anti-violence programs that serve transgender and LGBTQ communities.

Renew and increase funding for the National LGBTQ Institute on Intimate Partner Violence.



CRIMINAL JUSTICE AND INCARCERATION

Legislation

Pass robust prison reform legislation to end solitary confinement, increase good conduct credit, reform compassionate and elderly release programs, and improve/increase rehabilitative programming in prisons without the use of potentially discriminatory risk assessment instruments.

Pass legislation to end cash bail.

Fix the Prison Litigation Reform Act by repealing or reforming the requirements that a person have a physical injury and must exhaust all internal complaint processes at the prison before suing, and removing the law's application to minors.

Regulations

Prohibit solitary confinement in the Bureau of Prisons (BOP) for periods of more than fourteen days, and for any period for minors, pregnant or elderly persons, or those with mental illness.

Policy

Every federal agency should review program eligibility guidelines and eliminate unnecessary restrictions related to arrests or criminal history where not required by statute, including the Departments of Education, Health and Human Services, Housing and Urban Development, Labor, Justice, and the Small Business Administration.

Vigorously use pattern and practice investigations, consent decrees, and other enforcement and policy tools to address discrimination, abuse and medical neglect in prisons and other confinement settings, including addressing civil rights abuses toward LGBTQ people and sex workers as a standard practice in federal pattern and practice investigations and consent decrees. This includes resolving the historic investigation opened in 2016 into treatment of LGBTQ people in Georgia state prisons.

Update the Bureau of Prisons (BOP) Transgender Offender Manual to:

- Establish a presumption that prisoners should be housed in facilities consistent with their gender identity absent an objection by the inmate or an extraordinary, individualized concern.
- Establish a standard form for transgender or intersex individuals to request at intake whether non-emergency pat and visual searches should be conducted by male or female staff, and whether they should be referred to by male, female, or gender-neutral terms, and provide that facilities will honor these requests absent a compelling justification.
- Explicitly state that BOP will provide all necessary treatment for gender dysphoria, which may include psychological, hormonal, surgical, or other treatment based on individual medical need.

Swiftly end federal contracts with private prisons by DOJ and Department of Homeland Security and discourage their use by state and local governments.

Vigorously enforce the Prison Rape Elimination Act (PREA) by:

- Strictly enforcing PREA audit, certification, accreditation, and penalty procedures.
- Decertifying problem auditors.
- Increasing technical assistance.
- Issuing guidance clarifying that PREA standards apply to police cars and other sites of temporary police detention.
- Issuing guidance clarifying that agencies may adopt vulnerable person housing units dedicated to housing LGBTQ individuals so long as assignment to them is voluntary.





SUPPORTING CHILDREN, YOUTH, AND OLDER ADULTS

Legislation

Pass the Every Child Deserves a Family Act to prohibit child welfare agencies receiving federal funding from discriminating against potential parents and family placements based on gender identity, sexual orientation, sex, religion, or marital status.

Regulations

Adopt rules explicitly prohibiting anti-LGBTQ conversion therapy for minors as a discriminatory, harmful, and fraudulent practice.

Policy

Issue nondiscrimination and best practice guidelines for child welfare, aging, and other human service programs for serving LGBTQ people.

Issue guidance to state and area agencies on aging on LGBTQ inclusion in Older Americans Act programs, pursuant to the data, outreach, and reporting provisions of the Supporting Older Americans Act of 2020.

Establish and fund a National Resource Center for LGBTQ Youth to promote well-being, safety, permanency, stability, and family placement for LGBTQ children and youth involved with child welfare services by providing training, technical assistance, actions, and guidance that promotes best practices for improving outcomes for LGBTQ children and youth involved with child welfare services. (This can also be accomplished by passing the Every Child Deserves a Family Act).

Renew and increase funding for the National Resource Center on LGBT Aging.

DATA COLLECTION AND RESEARCH

Legislation

Pass the LGBTQ Data Inclusion Act to require agencies to review and expand collection of gender identity and sexual orientation data and to report that data.

Regulations

Restore and expand gender identity and sexual orientation measures in the Adoption and Foster Care Analysis and Reporting System.

Policy

The Office of Management and Budget (OMB) should issue updated standards for the collection of gender identity and sexual orientation demographic information.

OMB should revive the Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys to identify and promote current best practices for gender identity and sexual orientation measures on an ongoing basis.

Department of Health and Human Services should issue updated standards for the collection of gender identity and sexual orientation demographic information in health programs.

Collect and report disaggregated data on gender (including gender identity and gender assigned at birth) and sexual orientation in all major federal surveys, with oversampling of transgender or LGBTQ populations when needed. Specifically:

- The **Department of Health and Human Services** should issue department-wide standards and guidance on the incorporation of voluntary demographic measures on gender identity and sexual orientation into existing surveys, including the National Health Interview Survey, the National Survey on Drug Use and Health, the Current Medicare Beneficiary Survey, and the Youth Risk Behavior Survey. The Department should reinstate the gender identity demographic question in the National Survey of Older Americans Act Participants (NSOAAP).
- The **Department of Labor** should include gender identity and sexual orientation measures in economic surveys including the Current Population Survey and the Survey on Income and Program Participation.
- The **Census Bureau** should include gender identity and sexual orientation measures in the American Community Surveys and other surveys.
- The **Bureau of Justice Statistics** should include gender identity and sexual orientation measures in justice and corrections surveys including the National Survey of Youth in Custody, and restore these measures for all participants in the National Crime Victimization Survey.
- The **Bureau of Justice Statistics** should conduct long-overdue justice surveys and data collections, such as the Annual Probation Survey and Annual Parole Survey, and include gender identity and sexual orientation measures.

Collect and report disaggregated data on gender identity and sexual orientation in major public health surveillance systems, including the CDC National Violent Death Reporting System and National Notifiable Diseases Surveillance System.

Policy *(continued)*

Collect and report demographic data on gender identity and sexual orientation in electronic health records, by:

- Incorporating these demographic data fields in Medicare patient records
- Strengthening the Office of National Coordinator for Health Information Technology's US Core Data for Interoperability (USCDI) to ensure adoption and use of these fields (not just ensuring systems have the technical ability to include them)
- Use CMS's Merit-based Incentive Payment System (MIPS) to ensure adoption and use of these demographic fields
- Provide incentives for provider implementation of gender identity and sexual orientation demographic data in electronic health records

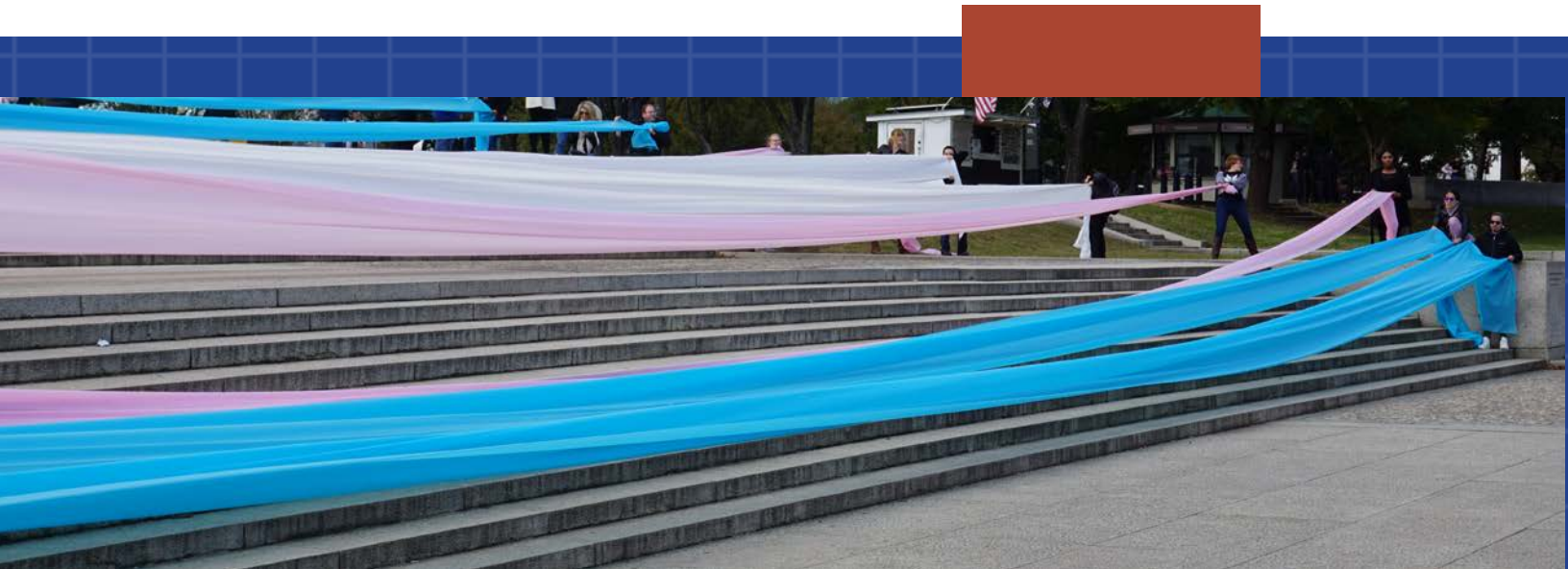
Collect and report disaggregated data on gender (including gender identity) and sexual orientation in major federal programs, including:

- The **Department of Health and Human Services** should include gender identity and sexual orientation measures in the federal Health Insurance Marketplace application, as it originally planned to do prior to the Trump Administration.
- The **Department of Health and Human Services** should report disaggregated gender identity and sexual orientation data from the HRSA Uniform Data System, which has been collected since 2016.
- The **Federal Bureau of Investigation** should include gender identity-related measures in the National Incident-Based Reporting System.
- **US Citizenship and Immigration Services** should collect voluntary sexual orientation and gender identity information for asylum applicants and disaggregate "particular social group" asylum claims into discrete categories, including sexual orientation or gender identity-based persecution.

National Institutes of Health (NIH) should establish a robust LGBTQ health research agenda with a specific focus on transgender people.

Increase support for the National Institutes of Health's Sexual & Gender Minority Research Office.

Increase health and HIV research on transgender and intersex populations, including understudied populations such as non-binary people and transgender men who have sex with men (MSM) and understudied topics such as cancer, sexual and reproductive health, substance use, and violence prevention.





MILITARY AND VETERANS

Legislation

Eliminate the gender-based Selective Service System by either phasing out the program or (as the National Commission on Military, National, and Public Service recommended) by making it gender-neutral.

Pass legislation to permanently ensure that transgender people can serve in the U.S. military, preventing future presidents from reinstating a ban on service.

Executive Orders or Other Presidential Actions

Immediately halt the transgender service ban by directing the Department of Defense (DOD) to eliminate the Trump service ban regulations within 30 days.

Direct DOD and the Department of Veterans Affairs (VA) to strengthen efforts to ensure equal opportunities, benefits, and care for LGBTQ service members, families, and veterans.

Regulations

Repeal regulations that needlessly bar capable and qualified individuals from service based solely on HIV status.

Eliminate outdated TRICARE regulations that bar medically necessary procedures to treat gender dysphoria for military spouses and dependents (32 C.F.R. § 199.4).

Eliminate outdated Veterans Health Administration regulations that bar medically necessary procedures to treat gender dysphoria for veterans receiving VHA care (38 C.F.R. § 17.38).

Revise service regulations for the Exceptional Family Member Program to make clear that families of transgender children and youth are eligible for the program.

Regulations *(continued)*

Review and strengthen transgender service and accessions rules and policies, including:

- Reducing the previous 18-month waiting period for enlistment of transgender individuals following gender transition or related diagnosis or treatment.
- Simplifying procedures for gender transition while serving by accepting health care provider certification of gender identity and for living consistent with their gender identity, and eliminating requirements for documentation from other government agencies or courts.
- Permitting qualified transgender services members who are not male or female to serve in a manner consistent with their gender identity. This should include the following options that do not require changing overall approaches to dress rules and facilities:
 - ◊ Having a gender-neutral marker in DEERS.
 - ◊ Using gender-neutral pronouns and titles.
 - ◊ Specifying, as part of their transition plan, whether male or female dress or facility options are most appropriate for them.
- Reviewing and updating medical regulations regarding intersex conditions to reflect current medical science and military needs.

Policy

Revise TRICARE Manuals to reflect regulatory changes and ensure access to all medically necessary care for transgender youth and adults.

Issue updated Title IX guidance to Department of Defense Education Activity (DoDEA) schools on the rights of transgender and LGBTQ students.

Reestablish the Pentagon Task Force on Military Dependents, previously established by the 2016 DoDEA transgender guidance, to engage with LGBTQ dependents, their families, and health care providers, and identify additional policy and program recommendations.

Update and strengthen Veterans Health Administration (VHA) Directive 1341, Providing Health Care for Transgender and Intersex Veterans (last updated 2018).

Implement pronoun and preferred name fields in VHA electronic health records as the new Cerner EHR system is implemented.

Adopt a simple, uniform procedure for transgender veterans and retirees to obtain documentation of military service that does not disclose a former name.

Add LGBTQ veterans to the VA Advisory Committee on Minority Veterans.

Establish a VHA Office (or Advisor) for LGBTQ Patient Care Services.



FAIR COURTS AND DEMOCRACY

Legislation

Pass the For the People Act and the Voting Rights Advancement Act to increase access to the ballot, protect voting rights, ensure fair and nonpartisan redistricting, and strengthen election integrity and security.

Pass legislation to permanently ensure that transgender people can serve in the U.S. military, preventing future presidents from re-instituting a ban on service.

Executive Orders or Other Presidential Actions

Make nominating and confirming highly qualified, fair-minded constitutionalists to the federal courts a top priority, including identifying highly qualified transgender candidates. The Administration has a historic opportunity to appoint the first openly-transgender federal judge.

Nominate highly qualified individuals for any Supreme Court vacancies who are committed to protecting the rights of all who live in America, including protecting the constitutional liberties of all people to make personal decisions about their own bodies and personal relationships.

Policy

Vigorously defend voting rights and promote increased access to the ballot, including by challenging voter ID requirements and other unlawful voting restrictions and issuing guidance to state and local officials on issues such as removing gender from voter registration forms and cards.

GLOBAL HUMAN RIGHTS

Legislation

Pass the Greater Leadership Overseas for the Benefit of Equality (GLOBE) Act to secure a long-term roadmap for US leadership on the human rights of LGBTQI and other vulnerable minorities, and fully repeal the “anti-prostitution pledge” that currently denies global HIV/AIDS and anti-trafficking funds to groups that serve and advocate for sex workers.

Fully and permanently repeal the “Global Gag Rule” for global health funding by passing the Global Health, Empowerment and Rights Act (HER) Act, which denies global health funding to groups that provide, refer, counsel, or advocate for access to safe abortion services.

Urge Senate ratification of long-pending core human rights treaties, including the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

Executive Orders or Other Presidential Actions

Issue an Executive Order to comprehensively strengthen international efforts to promote human rights and inclusive development for LGBTQ people.

Issue an Executive Order immediately repeal the Global Gag Rule, that places dangerous limitations on global health funds.

Nominate the first openly transgender Ambassador.

Regulations

Revise regulations across all agencies engaged in foreign aid to prohibit discrimination in service delivery, including on the basis of sex, sexual orientation, gender identity, transgender status, and sex characteristics. This includes Departments of State, Health and Human Services, Commerce, Defense, Justice, the U.S. Agency for International Development, the Millennium Challenge Corporation, and the Trade and Development Agency.

Policy

Revive the practice of sending an annual cable to U.S. embassies on Pride Month celebrations.

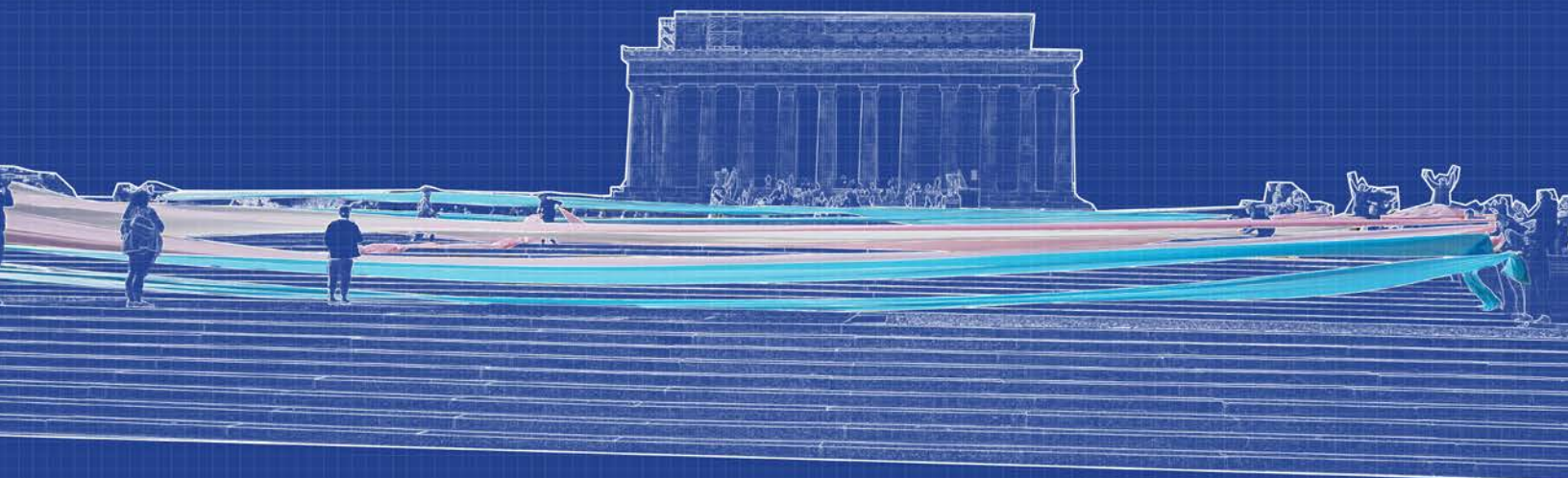
Resume using and promoting the terms “gender,” “gender equality,” “gender-based violence,” and “sexual rights” in U.S., multilateral, and international organization statements.

Reintegrate the State Department’s international religious freedom work into the Bureau of Democracy of Human Rights and Labor to ensure a more holistic approach to human rights, and ensure this work includes engagement of LGBTQ faith communities and leaders.





National Center for
**TRANSGENDER
EQUALITY**



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