



1 September 2019

United Nations
Office of the High Commissioner for Human Rights
Working Group on Discrimination Against Women and Girls (Working Group)
CH-1211 Geneva 10
SWITZERLAND
wgdiscriminationwomen@ohchr.org

Re: **Reporting on the Human Rights of Lesbian, Gay, Bisexual, Transgender, and Queer Individuals in the Changing World of Work**

Dear Working Group Members,

We, the undersigned, write to share the experiences of lesbian, gay, bisexual, transgender, and queer (LGBTQ) people in workplaces in the United States for consideration in the Working Group's study and report on *Women's Human Rights In The Changing World Of Work*. This submission draws upon our collective expertise to highlight a group that faces significant obstacles to obtain employment, but whose experiences are frequently overlooked.

Consistent with the Working Group's prompt, this submission devotes considerable focus to the experiences of LGBTQ *women*. However, our reporting also highlights the ways that transgender and gender non-conforming people of all genders—including transgender men and non-binary individuals¹—face bias, discrimination, and even violence in the workplace for reasons including (but not limited to) their gender identity and gender expression. Biases such as these are

¹ A person of transgender experience does not identify with the sex they were assumed to be at birth. As such, a transgender man is a male who was thought to be female when he was born. A transgender woman is a female who was thought to be male when she was born. Non-binary is a term used to refer to transgender people whose gender identity is neither male nor female.

not isolated issues: they are derivative and reflective of systemic gender-based inequity and deprive already marginalized communities of enjoyment of even basic human rights—too often to life-threatening ends.²

We made the conscious choice to broaden the scope of our reporting because we wanted to highlight the ways in which the gender-based injustices that inhibit and harm women—misogyny, sex stereotypes, and patriarchal policing of gender—are intrinsically linked to mechanisms that cause analogous harm to LGBTQ people including non-binary and genderqueer individuals, and transgender men. Rooting out the systems of discrimination that serve to deny LGBTQ people of all genders basic economic and social rights will also remove key barriers to the advancement of all women in American workplaces.

Our sincere hope is that learning about the experiences of LGBTQ women and transgender and gender non-conforming people of all genders will assist the Working Group with its current study and inform the scope of future projects to come.³

I. Background on LGBTQ People in the United States

In the United States, about 1.4 million adults—0.6% of the adult population—and 150,000 youth are transgender.⁴ This figure includes transgender men and women, as well as non-binary transgender individuals. Additionally, there are an estimated 5.1 million LGBTQ adult women in

² See, e.g., Human Rights Campaign, *A National Epidemic: Fatal Anti-Transgender Violence in America in 2018* (2018), www.hrc.org/resources/a-national-epidemic-fatal-anti-transgender-violence-in-america-in-2018. See also Section IV, *infra*.

³ We do not focus on the experiences of intersex individuals or gay men in this submission. However, Interact Advocates for Intersex Youth (<https://interactadvocates.org>) and the Williams Institute of the UCLA School of Law (<http://williamsinstitute.law.ucla.edu>) are repositories of relevant information, respectively, for these group.

⁴ See Andrew R. Flores, *et al.*, *How Many Adults Identify as Transgender in the United States?*, WILLIAMS INST., at 2–3 (June 2016), <https://williamsinstitute.law.ucla.edu/research/how-many-adults-identify-as-transgender-in-the-united-states/>; Andrew R. Flores, *et al.*, *Age of Individuals Who Identify as Transgender in the United States*, WILLIAMS INST., at 2–3 (Jan. 2017), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/TransAgeReport.pdf>.

the United States. A 2014 Gallup survey estimated that 4.1% of U.S. adult women identify as LGBTQ (compared to 3.9% of adult men).⁵ Of adults ages 18-44, 6.7% of women identify as LGBTQ compared to 4.5% of men.⁶ Of all women who identify as lesbian, gay, or bisexual (LGB), more than half identify as bisexual.⁷

II. LGBTQ People Face Rampant Discrimination & Harassment in the Workplace

A. LGBTQ Job Applicants Are Frequently Denied Employment Opportunities

LGBTQ people in the United States face pervasive discrimination when seeking employment to support themselves and their families, and thus, are far more likely to experience poverty than the general population.⁸ In 2015, the National Center for Transgender Equality, a non-governmental organization based in the United States, completed a survey of approximately 28,000 transgender adults in the United States.⁹ The survey revealed approximately one in seven (13%) respondents had lost a job because of anti-transgender bias, while nearly one-third (30%) of respondents faced employment discrimination within the previous year.¹⁰ Rates of workplace discrimination were even higher for transgender people of color and transgender people with disabilities.¹¹ Similarly, a 2018 study of transgender residents of New York City revealed clear patterns of discrimination during the job search process, harassment while in the workforce, higher

⁵ CTR. FOR AM. PROGRESS, MOVEMENT ADVANCEMENT PROJECT, *Paying an Unfair Price: The Financial Penalty for LGBT Women in America*, 1 (2015), <http://www.lgbtmap.org/file/paying-an-unfair-price-lgbt-women.pdf>

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*; see also Sandy E. James, *et al.*, *The Report of the 2015 U.S. Transgender Survey*, NAT'L CTR. FOR TRANSGENDER EQUALITY at 6, 147 (Dec. 2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf> (hereinafter "2015 U.S. Transgender Survey").

⁹ *Id.* at 6.

¹⁰ *Id.* at 4, 149.

¹¹ *Id.* at 150.

than average unemployment and poverty, and a disconnect between income and educational attainment.¹²

Indeed, transgender people are routinely denied employment opportunities even where they possess all necessary job qualifications. For instance, Diane Schroer, a transgender woman from Virginia and a highly decorated military veteran, received a coveted position at the Library of Congress, only to have it revoked once she revealed she was transgender.¹³ Jessie Dye, a transgender woman from Alabama, was hired to work at a local nursing home, but was terminated in the middle of orientation because she “looked one way” and was “another way” on paper, according to the employer.¹⁴ Candi, a transgender woman from Illinois, applied for a job as a flight attendant, only to be told that the company does not hire “those kinds of people.”¹⁵ Hana, a non-binary person from Illinois, was denied a receptionist position because they did not have the “right look.”¹⁶

In another instance, Tristan Broussard, a transgender man from Louisiana, impressed hiring officials while interviewing for a manager-trainee position at a local bank and received a job offer the very same day.¹⁷ Mr. Broussard was excited about the position and saw it as an opportunity to

¹² See Audacia Ray et al., *Individual Struggles, Widespread Injustice: Trans and Gender Non-Conforming Peoples’ Experiences of Systemic Employment Discrimination in New York City*, ANTI-VIOLENCE PROJECT (Dec. 2018), <https://avp.org/employment-discrimination/>.

¹³ Am. Civil Liberties Union, *Federal Court Sides With ACLU, Ruling That Refusing To Hire Transgender People Is Discriminatory* (Sept. 19, 2008), www.aclu.org/press-releases/transgender-veteran-wins-sex-discrimination-lawsuit-against-library-congress?redirect=news/transgender-veteran-wins-sex-discrimination-lawsuit-against-library-congress

¹⁴ Jeremy Gray, *Transgender Alabama Woman Fired From Nursing Home Receives Settlement*, AL.COM (Sept. 10, 2015), www.al.com/news/2015/09/alabama-transgender-woman-wins.html.

¹⁵ Except where otherwise indicated, the stories of discrimination that appear in this brief were submitted directly to counsel at the Center for Constitutional Rights and the Transgender Law Center in response to a June 2019 call for stories and reporting. All supporting materials are on file with counsel.

¹⁶ Materials on file with counsel.

¹⁷ *Broussard v. Tower Loan, et al.*, No. 2:15-cv-01161 (E.D. La.), at ECF No. 1 (Complaint), available at www.splcenter.org/sites/default/files/d6_legacy_files/downloads/case/complaint_3.pdf (last visited June 20, 2019).

advance his career. However, when his employer learned he was transgender from paperwork that described him as female, Mr. Broussard's employment prospects suddenly dried up. Management presented Mr. Broussard with a typewritten statement that would have forced him to acknowledge that his "preference to act and dress as male, despite having been born a female, is not something that will be in compliance with [...] personnel policies."¹⁸ When Mr. Broussard refused to sign the acknowledgment, his employment was terminated.¹⁹

Jayson, a transgender man from Wisconsin who has also been turned away from jobs at least five times, said of employers: "I was always told that I would be making people uncomfortable and they didn't want to hire me because they would lose business. I was given the same reason for being fired."²⁰ Likewise, Kylar, a transgender man from Ohio, and Vin, a nonbinary person from Washington, each have had job interviews end abruptly as soon as they disclosed they were transgender, and have lost employment opportunities multiple times because of who they are.²¹

Employers also exhibit bias against people who are lesbian, gay, or bisexual: in a nationally representative survey of lesbian and gay people in 2008, 12% had lost a job because of their sexual orientation.²² State actors, including state and local governments, and courts, have acknowledged

¹⁸ Andy Grimm, *Lake Charles transgender man sues Tower Loan after boss insists he dress as a woman*, NOLA.com (Apr. 13, 2015), www.nola.com/crime/2015/04/lake-charles-transgender-man-s.html.

¹⁹ *Id.*

²⁰ Materials on file with counsel.

²¹ Materials on file with counsel. Where asterisks appear, pseudonyms have been used to safeguard the individual's privacy.

²² Jennifer C. Pizer et al., *Evidence of Persistent and Pervasive Workplace Discrimination Against LGBT People: The Need for Federal Legislation Prohibiting Discrimination and Providing for Equal Employment Benefits*, 45 Loy. L.A. L. Rev. 715, 721 (2012); Brad Sears & Christy Mallory, *Documented Evidence Of Employment Discrimination & Its Effects on LGBT People*, WILLIAMS INST. 2 (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July20111.pdf>.

that LGBTQ people have faced widespread discrimination in employment.²³ Kimberly Hively, a lesbian woman in Indiana was an adjunct professor for 14 years at Ivy Tech Community College and saw this firsthand. She was denied fulltime employment, promotions, and eventually terminated because she is a lesbian. *Hively v. Ivy Tech Cmty. Coll. of Indiana*, 853 F.3d 339 (7th Cir. 2017).

A recent study has demonstrated that employers continue to exhibit bias against LGBTQ people in hiring. In an audit study to measure hiring discrimination against queer women in the U.S. workforce, a researcher created two fictitious women’s resumes similar in quality and experience, with one including an LGBTQ indicator—a leadership position at an LGBTQ student organization.²⁴ The experiment confirmed that LGBTQ applicants face systematic bias: employers called the applicant with an LGBTQ indicator for an interview 30% fewer times.²⁵

Employment discrimination against LGBTQ people also results in lower wages, increasing their economic precarity. In a 2017 state-wide study of LGBTQ employees in Nebraska, researchers found that women in same-sex couples earn less than men married to different-sex partners as well as men in same-sex couples.²⁶ This is consistent with other studies showing that lesbians earn less than heterosexual or gay men.²⁷ This economic precarity is exacerbated for LGBTQ people of color. For example, 32% of children raised by gay male black couples live in poverty compared to 13% of children raised by married heterosexual black parents and 7% of

²³ Pizer, *supra* note 22 at 721.

²⁴ See Emma Mishel, *Discrimination against Queer Women in the U.S. Workforce : A Résumé Audit Study*, SOCIUS: SOCIOLOGICAL RESEARCH FOR A DYNAMIC WORLD (2016).

²⁵ *Id.*

²⁶ Christy Mallory & Brad Sears, *Employment Discrimination Based on Sexual Orientation and Gender Identity in Nebraska*, WILLIAMS INST. at 6(2017), https://williamsinstitute.law.ucla.edu/wp-content/uploads/NE_discrimination_Aug_2017.pdf

²⁷ Pizer, *supra* note 22 at 737.

children raised by married heterosexual white parents.²⁸ African American same-sex couples have poverty rates more than twice the rate of different-sex married African Americans.²⁹

1. Transgender Employees Frequently Experience Job Loss After They Transition

The discrimination that transgender employees face is not limited to the hiring process: many transgender employees experience job loss after coming out as transgender to their long-time employers. For instance, Aimee Stephens, a transgender woman from Michigan whose case is currently before the U.S. Supreme Court awaiting decision, was fired from her job as a funeral home director when she disclosed that she was transgender.³⁰ Ms. Stephens was a well-respected employee who had worked at her company for nearly 6 years; her gender transition was the sole basis for her termination.³¹

Similarly De, a transgender woman from Virginia, saw her career as an international business consultant come to an end after she disclosed she was transgender.³² Prior to coming out, De worked as a consultant for nearly a decade at a Boston-based investment firm, earning \$50,000 a year in bonuses alone. Yet, when she notified the company's Vice President of Human Resources that she identified as a transgender woman, she was promptly terminated. Afterwards De was repeatedly turned away from jobs she applied to because of anti-transgender bias. For years, De struggled to survive financially and eventually she became homeless.

²⁸ Movement Advancement Project et al., *LGBT Families of Color: Facts at a Glance*, (2012) at 3, <http://www.nbjc.org/sites/default/files/lgbt-families-of-color-facts-at-a-glance.pdf>.

²⁹ M.V. Lee Badgett et al., *New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community* at 3 (2013), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>.

³⁰ James Esseks, *Aimee Stephens Was Fired Because She Is Transgender. That's Sex Discrimination*, A. CIV. LIBERTY UNION (Oct. 24, 2018), <https://www.aclu.org/blog/lgbt-rights/transgender-rights/aimee-stephens-was-fired-because-she-transgender-thats-sex>

³¹ *Id.*

³² Materials on file with counsel.

Transgender people like De and Ms. Stephens are not terminated due to their job performance or their qualifications as an employee; instead, they are excluded from the job market because of discrimination and bias, and a denial of equal treatment under the law.

B. LGBTQ Employees Are Frequently Subjected to Harassment and Other Forms of Discrimination

1. Transgender Employees Frequently Endure Discriminatory Workplace Treatment

In addition to losing out on employment opportunities, LGBTQ people who obtain jobs face discriminatory treatment in the workplace that makes it difficult to maintain employment.³³ For instance, when Nick, a transgender man who works in Kentucky, began a new job in law enforcement, his supervisor repeatedly called him “ma’am” instead of “sir,” interrogated him about his body and asked whether he “had any surgeries to get male parts,” and referring to his driver’s license, told him “just because it says you’re male on a little piece of plastic doesn’t mean you’re a male.”³⁴

Other examples of discriminatory treatment include being passed up for promotions, despite being qualified; being removed from client-facing positions; being disciplined or terminated for their gender expression; being barred from gender-appropriate restrooms, rendering the workplace inaccessible and unsafe; being referred to using incorrect gender pronouns and called bigoted names and slurs; and having personal information such as their history of medical

³³ James , *supra* note 8, at 153; *see also* MAKE THE ROAD N.Y., *Transgender Need Not Apply: A Report on Gender Identity Discrimination* (May 2010), www.maketheroadny.org/pix_reports/TransNeedNotApplyReport_05.10.pdf; HUMAN RIGHTS CAMPAIGN FOUND., *U.S. LGBTQ Paid Leave Survey: Report on the Experiences of Transgender and Non-binary Respondents* (2018), www.hrc.org/resources/2018-us-lgbtq-paid-leave-survey-report-on-the-experiences-of-transgender.

³⁴ Materials on file with counsel.

treatment shared without consent.³⁵

Jasmine, a transgender woman from Georgia, experienced these forms of discrimination first hand while working at a call center. Jasmine’s coworkers and supervisor socially ostracized her, constantly referred to her as though she were male, and even refused to use the restroom after her—making their disdain for transgender people like Jasmine palpable. Similarly, Jackson, a non-binary person from New York City, has been excluded from work projects and ostracized by colleagues, while Vin, the non-binary person from Washington previously mentioned has been denied promotions and job opportunities that would aid the progress of their career.³⁶

Carter, a transgender man from Texas, endured similar mistreatment while working in real estate: after two years of exemplary performance at his job, Carter became the target of mistreatment when his transgender status was disclosed to coworkers without his permission.³⁷ Carter’s colleagues subjected him to invasive interrogations about his genitalia, tried to bar him from the men’s restroom, and excluded him from networking lunches. Carter was also accosted by coworkers who insisted that he was “really a woman” and demanded his personal medical information. Despite his professional achievements, Carter was fired: an action that jeopardized the well-being of his family, including his child.

Transgender people also experience high levels of workplace harassment, assault, and abuse.³⁸ In the 2015 U.S. Transgender Survey, 15% of respondents employed in 2014 or 2015 reported being verbally harassed, physically attacked, or sexually assaulted at work because of their sex or gender expression.³⁹

³⁵ James, *supra* note 8, at 153 (highlighting that nearly one-quarter of respondents reported experiencing one or more of those actions in the prior year because of their transgender status).

³⁶ Materials on file with counsel.

³⁷ Materials on file with counsel.

³⁸ James, *supra* note 8, at 155.

³⁹ *Id.* at 148.

2. Discriminatory Workplace Treatment Negatively Impacts Women Who Are Lesbian, Gay, Bisexual, or Queer

Lesbian, gay, and bisexual people, particularly women, also face harassment in the workplace. In one study, 37% of gay and lesbian people reported harassment at work.⁴⁰ This is consistent with a 2013 study of women in construction in which 37% of LGBTQ women reported “constant or frequent discrimination and harassment based on their sexual orientation.”⁴¹ One example is Yolanda Boone, a lesbian from Baltimore, MD who was employed as a forklift operator. While working on the night shift, her manager repeatedly harassed her, making statements like “I want to turn you back into a woman,” “I want you to like men again,” and “[a]re you a girl or a man?”⁴² In another 2014 study, nearly two thirds of LGBTQ workers (62%) reported hearing jokes about gay or lesbian people.⁴³ LGBTQ workers were also four times more likely to be criticized for their gender expression and told that they should be more feminine or masculine in their style.⁴⁴

III. **The Scope of Legal Protections for LGBTQ Victims of Discrimination in the United States Remains Uncertain**

A. **LGBTQ Victims of Discrimination Have Repeatedly Sought Redress from U.S. Courts**

Some courageous individuals have challenged the discrimination they encountered through legal action to establish new norms regarding the treatment of LGBTQ people in U.S.-based

⁴⁰ Pizer *supra* note 22, at 721.

⁴¹ CTR. FOR AM. PROGRESS, MOVEMENT ADVANCEMENT PROJECT, *supra* note 5 at 10.

⁴² See Complaint, *EEOC v. Pallet Cos.*, No. 1:16-cv-00595-RDB (D. Md. Mar. 1, 2016), ECF No. 1, ¶ 15.

⁴³ Deena Fidas and Liz Cooper, *The Cost of the Closet and the Rewards of Inclusion: Why the Workplace Environment for LGBT People Matters to Employers*, HUMAN RIGHTS CAMPAIGN FOUND., May 2014, http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Cost_of_the_Closet_May2014.pdf

⁴⁴ *Id.* at 16.

courts.⁴⁵ This includes Ms. Mia Macy, a transgender activist who prevailed on her claim that discrimination against transgender persons is prohibited under U.S. civil rights laws. In Ms. Macy's case, the U.S. Equal Employment Opportunity Commission (EEOC) held in 2012 that Title VII of the Civil Rights Act of 1964 (Title VII) prohibits gender identity discrimination because discrimination based on a person's gender identity is discrimination based on sex, and thus, prohibited under current federal civil rights law. *Macy v. Dep't of Justice*, EEOC Appeal No. 0120120821, 2012 WL 1435995 (April 20, 2012). And the EEOC held in a 2015 decision that discrimination on the basis of sexual orientation is necessarily discrimination on the basis of sex and prohibited under Title VII. *Baldwin v. Dep't of Transportation*, EEOC Appeal No. 0120133080 (July 15, 2015).

Individuals have fought to have their right to be free from employment discrimination recognized through federal courts as well. Aimee Stephens, the funeral home director noted above who was terminated from her job for being transgender, is one of a handful of individuals who have successfully asserted in U.S. federal court that discrimination against transgender people violates U.S. civil rights laws. *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560 (6th Cir. 2018) (*Stephens*). Kimberly Hively, a professor from Indiana who was denied promotions and employment opportunities because she was a lesbian, also prevailed on her claim that workplace discrimination based on sexual orientation violates federal civil rights law. *Hively v. Ivy Tech Cmty. Coll. of Indiana*, 853 F.3d 339 (7th Cir. 2017). Similarly, Donald Zarda, a skydiving instructor at Altitude Express, mounted a successful legal challenge when he was fired by his employer after disclosing he was gay. *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2d Cir. 2018).

⁴⁵ See *Macy v. Holder*, Appeal No. 0120120821, 2012 WL 1435995 (EEOC Apr. 20, 2012) (holding that employers who deny employment opportunities to transgender individuals engage in unlawful discrimination in violation of the United States Civil Rights Act of 1964). The United States government has since petitioned the U.S. Supreme Court to upend this core legal holding.

However, not everyone who has challenged their employers' discrimination has been successful. Gerald Lynn Bostock was a child welfare services coordinator for Clayton County, GA. When Bostock sued his former employer for firing him because he is gay, his claim was initially rejected. *Bostock v. Clayton Cnty. Bd. of Comm'rs*, 894 F.3d 1335 (2018). The Supreme Court of the United States (Supreme Court) recently accepted the *Stephens*, *Zarda* and *Bostock* cases for review and will be holding oral argument on October 8, 2019. As such, within the next year, the Supreme Court will decide whether people who are discriminated against because of their sexual orientation or gender identity are protected by existing federal law.

B. The United States Government Is Presently Seeking to Dismantle Legal Protections Recently Gained by LGBTQ People

Despite the above recent legal gains, or perhaps because of them, the current United States administration has actively sought to roll back a range of recently-enacted protections against discrimination for people who are LGBTQ. In its briefs to the Supreme Court in the cases of *Zarda*, *Bostock*, and *Stephens*, the United States government asserted that U.S. civil rights laws prohibiting discrimination in the workplace do not afford protections to people who are discriminated against due to their sexual orientation or gender identity.⁴⁶ This position is in direct contradiction with the position initially taken by the EEOC, the federal agency which enforces federal laws prohibiting employment discrimination. The Supreme Court's decision in the *Zarda*, *Bostock*, and *Stephens* cases will be of enormous consequence—either affirming the right of the

⁴⁶ See, e.g., Brooke Sopelsa, *Gay Workers Not Covered By Civil Rights Law, Trump Admin Tells Supreme Court*, NBC NEWS, (Aug. 23, 2019), [nbcnews.com/feature/nbc-out/gay-workers-not-covered-civil-rights-law-trump-admin-tells-n1045971](https://www.nbcnews.com/feature/nbc-out/gay-workers-not-covered-civil-rights-law-trump-admin-tells-n1045971); Dominic Holden, *The Trump Administration Asked The Supreme Court To Legalize Firing Workers Just For Being Transgender*, BUZZFEED NEWS (Aug. 16, 2019), <https://www.buzzfeednews.com/article/dominicholden/trump-trans-scotus>; Ariane de Vogue, *Justice Dept. Reiterates It Believes Federal Employment Discrimination Law Doesn't Protect Transgender Workers*, CNN (Aug. 19, 2019), <https://www.cnn.com/2019/08/19/politics/justice-department-transgender-worker/index.html>.

LGBTQ community to be free of discrimination in the workplace, or denying them federal protection and subjecting them to a patchwork of conflicting state and local laws. If the Supreme Court limits federal anti-discrimination protections in employment, many LGBTQ people who live in jurisdictions without explicit state or local protections from gender identity or sexual orientation discrimination will be left without legal recourse.

Beyond employment, the U.S. government has attempted to limit protections for LGBTQ people in many other realms. Over the last several years, the U.S. federal government has targeted transgender people in an attempt to exclude them from military service, and presently is enforcing a near-blanket ban.⁴⁷ The U.S. government has also rescinded guidance or changed agency rules that protect LGBTQ people's access to healthcare,⁴⁸ protections in school⁴⁹ and has proposed to allow shelters to discriminate against transgender people who are seeking access.⁵⁰ In addition, the U.S. government issued a proposed rule in August 2019 that would give federal contractors a license to discriminate against LGBTQ job seekers, in addition to members of other disadvantaged

⁴⁷ Multiple groups have challenged the U.S. government's exclusion of transgender people from serving in the military, though legal action is still pending. *See Karnoski v. Trump* 926 F.3d 1180 (9th Cir. 2019); *Stockman v. Trump*, 331 F.Supp.3d 990 (C.D. CA 2018); *Doe 2 v. Shanahan*, 755 Fed. App'x. 19 (D.C. Cir. 2019); *Stone v. Trump*, 280 F.Supp. 3d 747 (2017).

⁴⁸ The U.S. Department of Health and Human Services (HHS) has proposed to rescind a rule interpreting the definition of sex as inclusive of sexual orientation and gender identity in the non-discrimination provision of the Affordable Care Act. *See* Section 1557 NPRM, HHS-OCR-2019-0007, RIN 0945-AA11; 45 C.F.R. Part 92, 81 Fed. Reg. 31376. HHS has also published a rule allowing employees of health care facilities to discriminate against LGBTQ people, and deny them services, if they have a religious or moral objection to their identity or procedure requested. 84 Fed. Reg. 23,170 (May 21, 2019) (to be codified at 45 C.F.R. Pt. 88).

⁴⁹ The U.S. Department of Education and U.S. Department of Justice rescinded guidance issued in May 2016 directing that schools treat a student's gender identity as the student's sex, as a protected characteristic under federal civil rights law. *See* <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>

⁵⁰ The U.S. Department of Housing and Urban Development is proposing changes to a rule preventing discrimination against transgender people's access to homeless shelters, to provide shelters with pretexts for discrimination against transgender people, including such broad categories as "practical concerns, [and] religious beliefs." *See* <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=2506-AC53>.

groups.⁵¹

While advocates are challenging, and will continue to challenge many of these rollbacks through the courts, if the Supreme Court ultimately sides with the United States government, discrimination against LGBTQ people in the United States will enjoy state sanction. An unfavorable Supreme Court ruling would also mean that many LGBTQ people would have little to no recourse when their right to earn a living is abridged. According to a 2019 study, nearly 4.1 million LGBTQ people in the United States live in jurisdictions where local protections against workplace discrimination simply do not exist.⁵² As such, the U.S. government's recent hostility to LGBTQ persons has created a landscape where their enjoyment of core human rights remains in peril.

IV. Discrimination Against LGBTQ People Leads to Material Harm

A. LGBTQ People Experience Elevated Rates of Poverty and Homelessness Due to Societal Bias

Women who are lesbian, gay, bisexual, or queer have fewer resources than their heterosexual peers. In a 2018 study, researchers found that sexual minority women were more likely to be near poor, receive public assistance, and report economic hardship in the past year.⁵³ According to the same study, sexual minority women were also less likely to graduate from college and were twice as likely to be unemployed, compared to heterosexual women.⁵⁴ In a 2013 study,

⁵¹ See Susan Rinkunas, *New Trump Rule Would Let Many Companies Fire People for Being Pregnant, Gay, or Trans*, VICE (Aug. 16, 2019), https://www.vice.com/en_us/article/a35dyz/trump-title-vii-rule-would-let-companies-fire-people-for-being-pregnant-gay-or-transgender.

⁵² UCLA WILLIAMS INST., *LGBT People in the U.S. Not Protected by State Nondiscrimination Statutes* (Apr. 2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Equality-Act-April-2019.pdf>

⁵³ See generally Kerith J. Conron et al., *Sexual Orientation And Sex Differences In Socioeconomic Status: A Population-Based Investigation In The National Longitudinal Study Of Adolescent To Adult Health*, 72 J. EPIDEMIOLOG. & COMMUNITY HEALTH, 1016-1026 (2018).

⁵⁴ *Id.*

for women between the ages of 18-44, more than a quarter of bisexual women are poor (29.4%) and more than 1 in 5 lesbians are in poverty (22.7%), a rate higher than the poverty rate among heterosexual women (21.1%).⁵⁵ This may be attributable to bias and discrimination that women who are lesbian, gay, bisexual, or queer face in various facets of life, including employment, and beginning in school systems. Indeed, half of girls who are lesbian, gay, bisexual, or queer in grades 6-12 (52%) reported feeling unsafe at school because of their sexual orientation.⁵⁶

Similarly, transgender people in the United States experience disproportionate levels of poverty and economic insecurity because of the barriers they face to accessing employment.⁵⁷ Transgender individuals experience unemployment at three times the rate of the general population—a rate that climbs to four times that of the general population for transgender people of color.⁵⁸ Studies have also shown that transgender people are nearly four times more likely to have a household income under \$10,000 per year (the threshold for extreme poverty) than the general population.⁵⁹ Transgender people of color and people with disabilities report even higher rates of extreme poverty.⁶⁰

LGBTQ people in the United States also experience disproportionate rates of homelessness

⁵⁵ Badgett *supra* note 29, at 2.

⁵⁶ CTR. FOR AM. PROGRESS, MOVEMENT ADVANCEMENT PROJECT, *supra* note 5, at 17.

⁵⁷ See James *supra* note 8; see also CTR. FOR AM. PROGRESS, MOVEMENT ADVANCEMENT PROJECT, *supra* note 5 (hereinafter “*Paying an Unfair Price*”); M.V. Lee et al., *Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination*, WILLIAMS INST. (June 2007), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Lau-Ho-Bias-in-the-Workplace-Jun-2007.pdf> (hereinafter “*Bias in the Workplace*”).

⁵⁸ James *supra* note 8, at 6, 141.

⁵⁹ Jaime M. Grant, et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, NAT’L CTR. FOR TRANSGENDER EQUALITY (2011), https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf (hereinafter “2011 U.S. Transgender Survey”).

⁶⁰ James *supra* note 8, at 144 (finding that 21% of people with disabilities, 19% of Black respondents, and 18% of Latino/a respondents reported a household income below \$10,000).

because of the barriers they face when trying to access employment.⁶¹ For LGBTQ youth, family rejection of young people’s sexual orientation or gender identity is a primary driver of homelessness.⁶² In a 2014 survey of homeless youth providers, of the respondents’ clients, 20% identified as gay or lesbian, 7% identified as bisexual, and 2% identified as questioning their sexuality.⁶³ Victoria, the transgender woman from Ohio discussed above, has been homeless and unemployed for months, and says that, for her, coming out as transgender “pretty much ended any hope for ever having a career.”⁶⁴ Jade, a 59-year-old transgender woman from San Francisco, has been homeless for half of her life because of discrimination that prevented her from securing jobs.⁶⁵ Today, job searching is nearly impossible for Jade because of her lack of employment history.

Cecilia Chung, a transgender activist from San Francisco saw her high-powered career in finance end when she transitioned in the early 1990s. After being forced out of corporate America, she became homeless and was forced to turn to sex work⁶⁶ to survive, despite having a bachelor’s degree in International Business Management. Being homeless and engaging in sex work made Cecilia a frequent target of violence, and she turned to self-medicating to get through each day. During this time, Cecilia found out she was living with HIV. Reflecting on her experience, Cecilia says:

I felt defeated and hopeless. It was very painful to survive each day not knowing where my income would come from, what danger I would face,

⁶¹ *Id.* at 174 (revealing that 30% of respondents experienced homelessness, and the rate was nearly twice as high among those who lost their job because of their gender identity or expression and transgender women of color); see also *Paying an Unfair Price; Bias in the Workplace*.

⁶² S.K. Choi et al., *Serving Our Youth 2015: The Needs and Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth Experiencing Homelessness* at 5 (June 2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-June-2015.pdf>.

⁶³ *Id.* at 4.

⁶⁴ Materials on file with counsel.

⁶⁵ Jaime M. Grant, *supra* note 59.

⁶⁶ “Sex work” refers to the exchange of sexual or erotic labor for money or resources. While individuals have varying reasons for entering sex work, here we center on those who feel pushed into it because of a lack of other employment opportunities that pay a living wage.

or whether I would eat.⁶⁷

Jade, Victoria, and Cecilia's stories exemplify a broader trend: 30% of respondents in the 2015 U.S. Transgender Survey experienced homelessness in their lifetime for reasons related to their gender, and 12% experienced homelessness in the past year.⁶⁸ Rates of homelessness were even higher among transgender people of color—especially transgender women of color—as a majority of Native American, Black, and multiracial women surveyed reportedly experienced homelessness.⁶⁹

B. Discrimination Pushes LGBTQ People Into Criminalized Economies and Increases their Likelihood of Being Trafficked or Incarcerated

Employment discrimination also forces many transgender people into criminalized, underground economies in order to survive.⁷⁰ Just consider Miss Major Griffin-Gracy, a legendary transgender rights activist and pioneer of the modern LGBTQ Rights movement who helped ignite the Stonewall Riots 50 years ago. Like Cecilia Chung, Miss Major turned to sex work after being repeatedly pushed out of jobs where her gender expression was incessantly policed and regulated.⁷¹ As she explains:

⁶⁷ Materials on file with counsel. Cecilia's story ultimately had a happy ending, because after three challenging years, Cecilia secured employment at a non-profit organization where she was able to present her full self. However, discrimination still cost her: even though Cecilia is a well-respected activist and public speaker who also serves as a Commissioner with the San Francisco Department of Public Health, her income is just a sliver of what she earned in finance prior to her transition.

⁶⁸ James *supra* note 8, at 178.

⁶⁹ *Id.* (finding that 59% of Native American women, 51% of Black women, and 51% of multiracial women had experienced homelessness).

⁷⁰ According to the 2015 U.S. Transgender Survey, one in five (20%) transgender people in the sample engaged in sex work, drug sales, or other activities for income, with higher rates for transgender women of color. *Id.* at 158. The vast majority (86%) of respondents who had interacted with police while doing sex work or while suspected of doing sex work faced mistreatment or abuse. *Id.* at 163. Respondents who were currently working in the underground economy faced high rates of violence. For example, 41% were physically attacked just in the previous year, and more than a third (36%) were sexually assaulted during that year. *Id.* at 202, 206.

⁷¹ Jessica Stern, *This is What Pride Looks Like: Miss Major and the Violence, Poverty, and Incarceration of Low-Income Transgender Women*, SCHOLAR & FEMINIST ONLINE, Fall 2011/Spring

Employers said that my gender expression was “vile,” “disgusting,” and “annoying.” I was called “an abomination” and “a man in a dress.” I was told I “shouldn’t be walking like a girl.” I was told they did not want the “kind of attention” I would bring to their company. They told me they couldn’t have “my kind” in a place of business.⁷²

Ultimately, sex work alone afforded Miss Major the means to stave off homelessness and the worst ravages of poverty.⁷³

Discrimination and bias forced Tracy, a transgender woman from Mississippi, to embark on a similar journey.⁷⁴ Tracy began supporting herself at the age of 17 when she was rejected by her family, initially through low-wage food service jobs. However, when Tracy publicly transitioned at the age of 20, she lost access to even low-wage work. Employers repeatedly felt emboldened to discriminate against Tracy because courts in Mississippi have yet to clarify that Title VII extends to transgender workers. Tracy was harassed and pushed out of a series of jobs at fast food restaurants and meat processing plants because she was transgender. At one job, Tracy was subjected to daily ridicule by coworkers who referred to her as a man and called her slurs in front of customers. Management did not intervene. After months of harassment that went unchecked, Tracy was terminated while her harassers remained on the job.

Losing access to steady employment meant Tracy was unable to afford healthcare or medication, including hormone replacement therapy critical to her well-being. Tracy was ultimately forced to turn to sex work, even though she detested it, because recurrent workplace discrimination deprived her of another means to support herself. Tracy continues to seek

2012, <http://sfoonline.barnard.edu/a-new-queer-agenda/this-is-what-pride-looks-like-miss-major-and-the-violence-poverty-and-incarceration-of-low-income-transgender-women/0/>.

⁷² Materials on file with counsel.

⁷³ Today, Miss Major is based in Arkansas, where she runs the Griffin-Gracy Educational Retreat & Historical Center (a.k.a. House of GG), a first of its kind retreat center for transgender people working for social justice in the South. See HOUSE OF G.G., *Safe Haven For Our Trans Community*, <http://bit.ly/HouseofGG> (last visited August 28, 2019).

⁷⁴ Materials on file with counsel.

employment in the formal economy, but roadblocks remain: most recently, Tracy secured a job at a daycare center, but was terminated on her first day after her new employee paperwork disclosed the male name and sex assignment given to her at birth.⁷⁵

Unfortunately, Tracy's story of economic hardship is not unique: Sabastian, a transgender man from the Bronx, engaged in sex work after being laid off in order to avoid becoming homeless.⁷⁶ Kat, a non-binary person from Arizona, had to donate plasma to survive after losing work due to discrimination.⁷⁷ Angelica, a transgender woman from South Carolina whose career as a media executive has been "in ruins" ever since she came out, recently filed for Chapter 7 bankruptcy and is thinking about engaging in sex work to survive.⁷⁸

The widespread incidence of workplace discrimination and bias also restricts the ability of transgender people to leave unsafe and undesirable jobs. Nick, the transgender law enforcement officer in Kentucky discussed above, remained at his job for months, despite being terrorized by management, because "finding a job while transitioning is almost impossible."⁷⁹ And, in the 2015 U.S. Transgender Survey, 26% of the respondents reported they stayed at a job they would have preferred to leave for fear of encountering discrimination elsewhere.⁸⁰

Transgender people face heightened vulnerability to exploitation and trafficking for similar reasons.⁸¹ Jasmine, the transgender woman from Georgia discussed above, was trafficked by an

⁷⁵ Materials on file with counsel.

⁷⁶ Materials on file with counsel.

⁷⁷ Materials on file with counsel.

⁷⁸ Materials on file with counsel.

⁷⁹ Materials on file with counsel.

⁸⁰ James *supra* note 8, at 154 (reporting even higher rates for American Indian, Black, Latinx, and disabled individuals).

⁸¹ While there is currently little data on the rates of trafficking of transgender people, anecdotal evidence suggests that job insecurity and financial precarity also make transgender people more vulnerable to human trafficking. See Lynly S. Egyes, *Borders and Intersections: The Unique Vulnerabilities of LGBTQ Immigrants to Trafficking*, in *Broadening the Scope of Human Trafficking*, at 181–82 (Eric C. Heil & Andrea J. Nichols eds., 2016).

abusive boyfriend and forced to return to sex work after she was fired from her job. Once, when Jasmine refused to see a client, her boyfriend broke her leg. Today, Jasmine is living with HIV, but is unable to afford medication due to her loss of income.⁸²

The discrimination that LGBTQ people routinely face has also given rise to a “discrimination-to-incarceration pipeline” whereby they are deprived of economic opportunity and become overrepresented in prisons and jails, with transgender people being among the most impacted.⁸³ According to one survey, one out of six transgender people (or 16%) have been incarcerated at some point in their lives—a rate that skyrockets to 47% among Black transgender people.⁸⁴ Transgender people are frequently incarcerated for poverty-related offenses like theft and survival sex-work.⁸⁵ Transgender people—particularly transgender women of color—are routinely arrested on mere suspicion that they are sex workers, pursuant to archaic anti-loitering statutes that effectively criminalize people for “walking while transgender.”⁸⁶ One-third (33%) of the Black

⁸² Materials on file with counsel.

⁸³ See, e.g., CTR. FOR AM. PROGRESS, *et al.*, *Unjust: How the Broken Criminal Justice System Fails LGBT People of Color*, (Aug. 2016), www.lgbtmap.org/file/lgbt-criminal-justice-poc.pdf (hereinafter “Unjust”); Christy Mallory, *et al.*, *Discrimination and Harassment by Law Enforcement Officers in the LGBT Community*, WILLIAMS INST. (Mar. 2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-and-Harassment-in-Law-Enforcement-March-2015.pdf>.

⁸⁴ Grant *supra* note 59, at 163.

⁸⁵ See AMNESTY INT’L, *Stonewalled: Police Abuse And Misconduct Against Lesbian, Gay, Bisexual And Transgender People In The U.S.* (Sept. 21, 2005), <https://www.amnesty.org/en/documents/AMR51/122/2005/en/>; CATHERINE HANSENS, ET AL., *A Roadmap For Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV*, (2014), https://www.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/roadmap_for_change_recommendations.pdf

⁸⁶ See, e.g., Chinyere Ezie, *Rainbow Police*, WASHINGTON POST (Jun. 20, 2019), www.washingtonpost.com/graphics/2019/opinions/pride-for-sale/ (noting that transgender women in New York State have been arrested for as little as waving, “wearing a skirt” or “standing somewhere other than a bus stop or taxi stand.”); Ginia Bellafante, *Poor, Transgender and Dressed for Arrest*, N.Y. TIMES (Sept. 30, 2016), www.nytimes.com/2016/10/02/nyregion/poor-transgender-and-dressed-for-arrest.html; MAKE THE ROAD N.Y., *Transgressive Policing: Police Abuse of LGBTQ Communities of Color in Jackson Heights* (Oct. 2012), www.maketheroadny.org/pix_reports/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf.

transgender women surveyed in the 2015 U.S. Transgender Survey reported being profiled as sex workers by law enforcement within the prior year.⁸⁷ One example illustrating this trend is Monica Jones, a transgender woman from Arizona, who was convicted for “manifesting prostitution” simply for accepting a ride from an undercover officer.⁸⁸

Like transgender women, lesbian, gay, and bisexual women are also disproportionately incarcerated in the United States. The best estimates of the percent of the adult women in the United States who identify as lesbian or bisexual is 3.4%.⁸⁹ Yet, data from the National Inmate Survey, analyzed by the Williams Institute at UCLA School of Law, reveals that 42% of incarcerated women identify as sexual minorities (lesbian, bisexual, or reported same-sex sexual experience before being incarcerated), including one in three (33%) who identify as lesbian or bisexual.⁹⁰

Once in prison, LGBTQ people face tremendous abuse and depravity from inmates as well as from the state.⁹¹ Transgender people are almost always placed in prisons based upon genitalia resulting in transgender women being placed in men’s prisons where they face unconscionable levels of violence: according to data collected by the Bureau of Justice Statistics at the Department of Justice, 40% of transgender people in state and federal prisons had been sexually assaulted by other inmates or by facility staff in the previous year alone—more than ten times the rate in the

⁸⁷ James, *supra* note 8 at 187.

⁸⁸ Megan Cassidy, *Phoenix Transgender Woman’s Conviction In Prostitution Case Is Thrown Out*, AZCENTRAL.COM (Jan. 26, 2015), www.azcentral.com/story/news/local/phoenix/2015/01/26/judge-vacates-transgender-activists-conviction-prostitution-case/22380437/.

⁸⁹ G.J. Gates, *How Many People are Lesbian, Gay, Bisexual, and Transgender?*, THE WILLIAMS INST. (2011), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>.

⁹⁰ I.H. Meyer et al., *Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011-2012*, 107 AM. J. OF PUBLIC HEALTH 234-39 (2017) (“*Incarceration Rates and Traits*”).

⁹¹ See generally CTR. FOR AM. PROGRESS, *supra* note 83 at 24–32; Jason Lydon, et al., *Coming Out of Concrete Closets: A Report on Black & Pink’s National LGBTQ Survey*, Black & Pink (Oct. 2015), www.blackandpink.org/coming-out-of-concrete-closets.

general population in prisons and jails.⁹²

For instance, Ashley Diamond, a transgender woman from Georgia who resorted to writing bad checks after repeatedly being turned away for jobs, was brutally raped, denied necessary medical care, and forced to de-transition by prison officials who also mocked her.⁹³ Reflecting on the ways that discrimination, bias, and unemployment eventually led her to incarceration, Ms. Diamond stated: “Every day I struggle with trying to stay alive and not wanting to die. Sometimes I think being a martyr would be better than having to live with all this.”⁹⁴ Passion Star, a transgender woman from Texas, also faced horrific abuse in prison: she was regularly raped, beaten, threatened, and forced into sexual relationships with inmates.⁹⁵ At one point, another inmate repeatedly slashed her with a razor, requiring 36 stitches on her face and forehead.⁹⁶ Stories like this are common, as transgender women are frequently targeted for sexual assault behind bars.⁹⁷

Lesbian, gay, and bisexual women who are incarcerated in the United States also face higher rates of sexual assault from other inmates. In the first National Former Prisoner Survey in

⁹² Compare Allen J. Beck, et al., *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12: Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmates*, U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS (Dec. 2014), www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf, with Allen J. Beck, et al., *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12: National Inmate Survey, 2011–12*, U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS (May 2013), www.bjs.gov/content/pub/pdf/svpjri1112.pdf. (finding an estimated 4% of state and federal prison inmates and 3.2% of jail inmates experienced sexual victimization during the same period).

⁹³ Deborah Sontag, *Transgender Woman Cites Attacks and Abuse in Men’s Prison*, N.Y. TIMES (Apr. 5, 2015), www.nytimes.com/2015/04/06/us/ashley-diamond-transgender-inmate-cites-attacks-and-abuse-in-mens-prison.html.

⁹⁴ *Id.*

⁹⁵ See Lambda Legal, *Lambda Legal Reaches Favorable Settlement for Transgender Woman Raped and Beaten in Texas Prisons* (March 18, 2016), https://www.lambdalegal.org/news/tx_20180315_tdcj-settlement.

⁹⁶ Deborah Sontag, *Push to End Prison Rapes Loses Earlier Momentum*, NY TIMES (May 12, 2015), <https://www.nytimes.com/2015/05/13/us/push-to-end-prison-rapes-loses-earlier-momentum.html>.

⁹⁷ See generally Beck, *Sexual Victimization*, supra Note 92; Lydon supra note 91.

2008, Bureau of Justice Statistics (BJS) determined that, of incarcerated women, 18% of bisexual women reported sexual victimization by other inmates, compared to 13% of lesbian women and 13% of heterosexual women.⁹⁸ Data from the National Inmate Survey evaluated by the Williams Institute combined the data for lesbian and bisexual women and found that 11.4% of lesbian and bisexual women reported sexual assault from another inmate, compared with 4.5% of heterosexual women.⁹⁹ Unfortunately, women who are lesbian, gay, bisexual, or queer are frequently unable to rely on correctional officers to protect them from sexual violence, because they are also perpetrators of gender-based violence. Of women incarcerated in state facilities, the rate of sexual victimization of both bisexual and lesbian women by staff *was double that* of heterosexual women; 8% of bisexual women and 8% of lesbian women reported experiencing sexual misconduct by state prison staff, compared with 4% of heterosexual women.¹⁰⁰

The wrongful discrimination that leads to incarceration detailed above creates additional forms of social exclusion for LGBTQ people: LGBTQ people released from prison or jail in most jurisdictions may be lawfully denied job opportunities on the basis of their criminal records. These structural barriers push many LGBTQ people, and particularly transgender individuals, further into underground economies, thus perpetuating a cycle of poverty, unemployment, criminalization, and violence.¹⁰¹

C. Discrimination Jeopardizes the Health and Well-Being of LGBTQ Individuals

Unsurprisingly, the discrimination that LGBTQ employees face also exacts a mental toll.

⁹⁸ Allen J. Beck & Candace Johnson, *Sexual Victimization Reported By Former State Prisoners 2008*, BUREAU OF JUSTICE STATISTICS (2012) at 5, <http://bjs.ojp.usdoj.gov/content/pub/pdf/svrfsp08.pdf> (*Sexual Victimization*).

⁹⁹ I.H. Meyer et al., *Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011-2012*, 107 AM. J. OF PUBLIC HEALTH 234–39, Tbl. 3 (2017).

¹⁰⁰ Beck & Johnson, *supra* note 98, at 16.

¹⁰¹ See James *supra* note 8, at 5, 153, 184.

Angelica, the transgender media executive from South Carolina discussed above, has suffered from severe clinical depression since she was terminated from her job for coming out as transgender.¹⁰² Angela, a transgender woman from New Jersey, was rocked with anguish when employers sent her home for wearing feminine clothing and told her to come back to work dressed as a man.¹⁰³ Angela felt as though she was being forced to “choose between my livelihood and my life,” and although she ultimately complied, Angela was terminated all the same. Today, Angela runs a small business out of her home because she “would sooner die than go on a job interview again.”

Alyna, a transgender woman from Wisconsin, who has been denied employment more than six times because she is transgender, recently attempted suicide and continues to suffer from anxiety, depression, and post-traumatic stress disorder because of her experiences with discrimination.¹⁰⁴ These problems are not isolated: 40% of transgender people surveyed in 2015 had attempted suicide in their lifetime—nearly nine times the attempted suicide rate in the U.S. population (4.6%).¹⁰⁵ Thus, discrimination against transgender people is often a life and death matter. Gay, lesbian, and bisexual people are also more likely than their heterosexual peers to have made a suicide attempt over the past year and/or over their lifetime.¹⁰⁶

Research demonstrates that experiencing discrimination can have an adverse effect on a person’s health.¹⁰⁷ Studies have found that “[h]igh levels of perceived discrimination or fear of

¹⁰² Materials on file with counsel.

¹⁰³ Materials on file with counsel.

¹⁰⁴ Materials on file with counsel.

¹⁰⁵ James *supra* note 8 at 5. Transgender people surveyed in 2015 were also nearly eight times more likely to be experiencing serious clinical distress than the general population, and nearly twelve times as likely to have attempted suicide in the previous year. *Id.* at 105, 112.

¹⁰⁶ LGBT MOVEMENT ADVANCEMENT PROJECT, *Talking About Suicide & LGBT Populations*, 1 (2d Ed. 2017), <https://www.lgbtmap.org/file/talking-about-suicide-and-lgbt-populations-2nd-edition.pdf>.

¹⁰⁷ Pizer *supra* note 22 at 738.

discrimination among LGBT people also have been linked to higher prevalence of psychiatric disorders, psychological distress, depression, loneliness, and low self-esteem.”¹⁰⁸ LGBTQ people’s experiences of “anti-gay verbal harassment, discrimination, and violence have likewise been associated with lower self-esteem, higher rates of suicidal intention, anxiety, anger, post-traumatic stress, other symptoms of depression, psychological distress, mental disorder, and deliberate self harm.”¹⁰⁹ And in a number of studies, employment discrimination against LGBTQ people in the United States has been found to negatively affect their well-being.¹¹⁰ For example, a 2009 survey found many LGBTQ employees reported feeling depressed, distracted, and exhausted, and avoided people and work-related social events as a result of working in an environment that was not accepting.¹¹¹

It is clear that continuing discrimination against LGBTQ people negatively affects their health and well-being, and a deterioration of protections in the employment sector for LGBTQ people would likely have additional adverse health consequences.

V. Discrimination in the Workplace Raises Serious Concerns Under International and Human Rights Law

Where, as here, discrimination results in the denial or infringement of a fundamental right, it constitutes persecution—a crime against humanity under international law. *See, e.g., Prosecutor v. Stakić*, Appeal Judgement, IT-97-24-A, Judgment, ¶ 327 (Mar. 22, 2006) (*Stakić Appeal Judgment*). As the Nuremberg Charter establishes, crimes against humanity encompass acts of persecution regardless of whether they are a “violation of the domestic law of the country where

¹⁰⁸ Pizer *supra* note 22 at 740.

¹⁰⁹ Pizer *supra* note 22 at 740-741.

¹¹⁰ Pizer *supra* note 22 at 741 (listing studies and results).

¹¹¹ HUMAN RIGHTS CAMPAIGN FOUND., *Degrees of Equality, A National Study Examining Workplace Climate for LGBT Employees*, 11, 13 (2009), http://www.hrc.org/files/assets/resources/DegreesOfEquality_2009.pdf.

perpetrated.” Nuremberg Charter, Art. 6(c). Likewise, as the International Criminal Tribunal for the former Yugoslavia (ICTY) clarified, the crime of persecution can encompass many acts, including those of a physical, economic or judicial character, which “violate an individual’s right to equal enjoyment of his basic rights.” *Prosecutor v. Tadić*, Case No.IT-94-1-T, Judgment, ¶ 710 (May 7, 1997) (*Tadić* Trial Judgment).¹¹² The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic, Social and Cultural Rights provide a relevant framework for identifying our basic rights. *See Prosecutor v. Kupreškić*, Judgment, IT-95-16-T, ¶ 621 (Jan. 14, 2000) (*Kupreškić* Trial Judgment).

In 2013, a United States court recognized that persecution on the basis of sexual orientation or gender identity constitutes a crime against humanity that “unquestionably violates international norms.” *Sexual Minorities Uganda v. Lively*, 960 F. Supp.2d 304, 316 (D. Mass 2013). The court noted that “[t]he history and current existence of discrimination against LGBTI people is precisely what qualifies them as a distinct targeted group eligible for protection under international law.” *Id.* at 318.

A. Discrimination on the Basis of Sexual Orientation and Gender Identity Are Proscribed by Customary International Law

The rights to equality and non-discrimination extend to all people, including lesbian, gay, bisexual, transgender and intersex persons, and constitute peremptory, *jus cogens* norms from which there can be no derogation. *See Atala Riffo and Daughters v. Chile, Inter-Am. Ct. H.R.* (ser.

¹¹² The ICTY has observed that, “[t]here are no definitive grounds in customary international law on which persecution must be based and a variety of different grounds have been listed in international instruments.” *Tadić* Trial Judgment, ¶ 711. The ICTY, whose jurisdiction was *statutorily* limited to the grounds of race, politics and religion, has nevertheless instructed that “the targeted group must be interpreted broadly.” *Prosecutor v. Naletilić and Martinović*, Judgment, IT-98-34-T, ¶ 636 (Mar. 31, 2003) (*Naletilić and Martinović* Judgment).

C) No. 239, ¶ 79 (Feb. 24, 2012) (*Atala Riffo*). Denying equality to LGBTQ persons is a form of persecution rooted in discriminatory animus toward a class of persons, particularly where such animus typically reflects archaic and irrational prejudice or fear and produces a denial of fundamental rights. Indeed, as the Inter-American Court of Human Rights recently held:

The notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority. It is equally irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified. . . . the fundamental principle of equality and non-discrimination has entered the realm of *jus cogens*. The juridical framework of national and international public order rests on this principle and permeates the entire legal system.

Atala Riffo, at ¶ 79 (holding that discrimination on the basis of sexual orientation and gender identity constitutes a violation of the American Convention on Human Rights) (citations and quotation marks omitted). In addition, the International Labor Conference adopted a convention on Violence and Harassment that protects LGBTQ workers from discrimination and abuse, alongside members of other vulnerable groups.¹¹³

The growing refusal of the United States government to respect, protect, and acknowledge the rights of LGBTQ persons does not diminish their rights to equal dignity under international law. See *Filártiga v. Peña-Irala*, 630 F.2d 876, 884 n. 15 (2d Cir. 1980) (explaining that violating a human rights principle “does not diminish its binding effect as a norm of international law.”). Rather, the rights to equality and non-discrimination constitute peremptory, *jus cogens* norms that

¹¹³ See International Labor Organization, 108th International Labor Conference, *New International Labour Standard To Combat Violence, Harassment, At Work Agreed* (June 12, 2019), [https://www.ilo.org/ilc/ILCSessions/108/media-centre/news/WCMS_711321/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/108/media-centre/news/WCMS_711321/lang-en/index.htm).

apply even though some states have not accepted them or regularly violate them. *See* Louis Henkin, *et al.*, *International Law: Cases and Materials* 93 (3d ed. 1993). As the Inter-American Court stated succinctly in the *Atala Riffo* case:

[T]he alleged lack of consensus in some countries regarding full respect for the rights of sexual minorities cannot be considered a valid argument to deny or restrict their human rights or to perpetuate and reproduce the historical and structural discrimination that these minorities have suffered.

Atala Riffo, at ¶ 92. (citations omitted).

B. The United Nations Has Further Recognized the Rights and Dignity of LGBTQ Persons

Moreover, United Nations bodies have long recognized the inherent dignity of LGBTQ persons, as well as their right to live in a world free of discrimination. In 1992, the United Nations Human Rights Committee held that the state of Tasmania’s law criminalizing same-sex conduct discriminated on the basis of sexual orientation and was therefore in violation of the ICCPR. *See Toonen v. Australia*, Communication No. 488/1992, CCPR/C/50/D/488/1992, April 4, 1992; *see also Young v. Australia*, Communication No. 941/2000, CCPR/C/78/D/941/2000, Sept. 18, 3003 (finding that Australia’s veterans’ entitlement laws discriminated against same-sex couples with regard to veterans’ pensions in violation of the ICCPR). Similarly, the Committee on Economic, Social and Cultural Rights has held that discrimination on the basis of sexual orientation and gender identity is prohibited under the International Covenant on Economic, Social and Cultural Rights (ICESCR) as “any other social condition.” *Accord* United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights, E/C.12/GC/20, (July 2, 2009).¹¹⁴

¹¹⁴ Additionally, the Committee has held that the Covenant “prohibits any discrimination in access to and maintenance of employment for reasons of [...] sexual orientation.” UNITED NATIONS, COMM. ON

Other United Nations treaty bodies have addressed the inclusion of sexual orientation and gender identity as prohibited grounds of discrimination in the context of their general observations and recommendations. The United Nations Committee on the Rights of the Child, established to oversee compliance with the Convention on the Rights of the Child, has identified discrimination based on sexual orientation as a concern with respect to access to healthcare related to prevention and treatment of HIV/AIDS. *See* United Nations, Committee on the Rights of the Child, General Comment No. 3, HIV/AIDS and the rights of the child, CRC/GC/2003/3, ¶ 8 (March 17, 2003). The Committee has further held that “States Parties have the obligation to ensure that all human beings under 18 enjoy all the rights set forth in the Convention without discrimination (Art. 2), regardless of race, color, sex, language, religion, or political or other opinion, national, ethnic or social origin, property, birth, disability or other status. These grounds also cover sexual orientation.” *Id.* (quotation marks omitted); *accord* United Nations, Committee on the Rights of the Child, General Comment No. 4, Adolescent Health and Development in the Context of the Convention on the Rights of the Child, CRC/GC/2003/4, ¶ 6 (July 21, 2003).

The United Nations Committee Against Torture, established to oversee compliance with the Convention Against Torture, has held that: “[t]he principle of non-discrimination is a basic and general principle in the protection of human rights and fundamental to the interpretation and application of the Convention. [...] States Parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of their [...] sexual orientation.” General Comment No. 2, Application of Article 2 by

ECON., SOC. AND CULTURAL RIGHTS, *General Comment No. 18, The Right to Work*, E/C.12/GC/18, ¶ 12 (Feb. 6, 2006); and further that “the Covenant proscribes all discrimination in access to health care and the underlying determinants of health, and to the means for their procurement, on the grounds of [...] sexual orientation.” *Id.*, General Comment No. 14, The Right to Enjoy the Highest Attainable Level of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2000/4, ¶ 18 (Aug. 11, 2000).

States Parties, CAT/C/GC/2, ¶¶ 20, 21 (Jan. 24, 2008).

Similarly, the Committee on the Elimination of Discrimination Against Women, established to monitor State compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), has included sexual orientation within its understanding of and approach to discrimination. *See* General Recommendation No. 27 on Women of Age and The Protection of Their Human Rights, CEDAW/C/GC/27, ¶ 13 (Dec. 16, 2010). *See* also General Recommendation No. 28 on the Core Obligations of States Parties Under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW/C/GC/28, ¶ 18 (Dec. 16, 2010).

The United Nations General Assembly also adopted the “Declaration on Human Rights, Sexual Orientation, and Gender Identity” in 2008, and reaffirmed that the principle of non-discrimination means human rights apply equally to every human being, regardless of sexual orientation or gender identity.¹¹⁵ Similarly, the United Nations Human Rights Council passed a resolution entitled “Human Rights, Sexual Orientation and Gender Identity” in June 2011, condemning violence and discrimination on the basis of sexual orientation or gender identity.¹¹⁶

United Nations Human Rights experts have similarly condemned discrimination and other human rights violations on the basis of sexual orientation or gender identity. Known as “Special Rapporteurs,” “independent experts,” or “special representatives,” these experts appointed by the Human Rights Council address thematic or country-specific issues. Discrimination on the basis of sexual orientation or gender identity has been addressed within the mandates of the special rapporteurs on violence against women, torture, extrajudicial executions, minorities, migrants,

¹¹⁵ *Statement On Human Rights, Sexual Orientation And Gender Identity*, U.N. G.A. 63rd Sess., U.N. Doc. A/63/635, 3 (Dec. 18, 2008), <https://outrightinternational.org/sites/default/files/311-1.pdf>.

¹¹⁶ UNITED NATIONS HUMAN RIGHTS COUNCIL, *Resolution Regarding Human Rights, Sexual Orientation and Gender Identity*, A/HRC/17/L.9/Rev.1 (June 15, 2011).

terrorism, freedom of religion or belief, housing, education, the independence of lawyers and judges, racism, human rights defenders, and health.¹¹⁷

Other United Nations entities have integrated issues of sexual orientation or gender identity into their work as well, including the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Labour Organization (ILO), the World Health Organization (WHO), the United Nations Population Fund (UNFPA) and the Joint United Nations Programme on HIV/AIDS (UNAIDS).¹¹⁸ In 2016, the United Nations Human Rights Council even went as far as appointing an Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity specially charged with studying matters germane to the enjoyment of human rights by LGBTQ persons across the globe.¹¹⁹

C. The Rights and Dignity of LGBTQ People Have Also Been Recognized by Other International Human Rights Bodies

African, European, and Inter-American human rights bodies have likewise recognized the

¹¹⁷ See, e.g., SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN, *Its Causes and Consequences, Fifteen Years of the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences—A Critical Review*, 11 (2009); *Report of the Special Rapporteur on the Question of Torture and Other Cruel, Inhuman or Degrading Treatment*, A/56/156, 17-25 (July 3, 2001); *Report on Civil and Political Rights, In Particular Questions Related to Torture and Detention*, E/CN.4/2002/76, 14 (Dec. 27, 2001); *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nigeria*, A/HRC/7/3/Add.4 (Nov. 22, 2007); *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Civil and Political Rights, In Particular Questions Related to Disappearances and Summary Executions*, E/CN.4/2003/3, ¶¶ 66, 67 (Jan. 13, 2003); *Report of the Independent Expert on Minority Issues*, A/HRC/13/23 (Jan. 7, 2010).

¹¹⁸ Report of the United Nations High Commission for Human Rights Navanethem Pillay, *Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity*, A/HRC/19/41, 3 (Nov. 27, 2011).

¹¹⁹ UNITED NATIONS OHCHR, *Independent Expert on Sexual Orientation and Gender Identity*, <https://www.ohchr.org/en/issues/sexualorientationgender/pages/index.aspx>.

rights to equality and dignity of LGBTQ people. In 2014, the African Commission on Human and People's Rights, the regional body responsible for monitoring implementation of the African Charter on Human and People's Rights by African states, recognized that sexual orientation or gender identity fall within the protections of the anti-discrimination and equal protection provisions of the Charter.¹²⁰ The Inter-American and European human rights bodies have also long recognized the rights of LGBTQ people through numerous cases and reports. For example, the Court of Justice of the European Union established that discrimination against transgender persons should be regarded as a form of sex discrimination more than twenty years ago. Case C-13/94 *P v. S and Cornwall County Council*, 1996 E.C.R. I-2143. The General Assembly of the Organization of American States has passed multiple resolutions condemning discrimination on the basis of their sexual orientation or gender identity, and the Inter-American Court of Human Rights has repeatedly found discrimination against LGBTQ people to be a violation of the American Convention on Human Rights.

CONCLUSION

LGBTQ people in the United States face unique obstacles in the Changing World of Work. The treatment of LGBTQ employees and job applicants raises significant concerns under international human rights law. The roots of the discrimination and inequality that LGBTQ workers face originate from the same forces of gender-based inequity that impact women workers with non-LGBTQ identities. Employment discrimination also exacerbates the other forms of systematic discrimination and bias that LGBTQ people experience, leading to extreme poverty,

¹²⁰ See AFRICAN COMM'N ON HUMAN AND PEOPLE'S RIGHTS, *Res. 275: Resolution on the Protection Against Violence and Other Human Rights Violations Against Persons on the Basis of Their Real or Imputed Sexual Orientation or Gender Identity*, May 12, 2014, <http://www.achpr.org/sessions/55th/resolutions/275>.

homelessness, incarceration, and other devastating consequences. Addressing the barriers faced by LGBTQ people in the workplace is part and parcel of the work towards securing the rights and equality of *all* workers.

Now that the United States government is increasingly hostile to the rights of LGBTQ people—refusing to acknowledge even their basic dignity—we, the fifty undersigned legal experts and advocates, implore the United Nations to devote focus and attention to LGBTQ people’s experiences with discrimination and inequality.

Respectfully,

1. The Center for Constitutional Rights
2. Lambda Legal Defense & Education Fund
3. Transgender Law Center
4. Ackerman Institute's Gender & Family Project
5. Campaign for Southern Equality
6. Claudia M. Flores, Director and Associate Clinical Professor, University of Chicago Law School International Human Rights Clinic
7. Cornell Law School Gender Justice Clinic
8. CUNY Law School Human Rights and Gender Justice Clinic
9. Equality California
10. FORGE, Inc.
11. Freedom Overground
12. FreeState Justice
13. GAPIMNY—Empowering Queer & Trans Asian Pacific Islanders

14. Garden of Peace, Inc.
15. Gender Benders
16. Gender Justice
17. Healthy and Free Tennessee
18. Griffin-Gracy Educational Retreat & Historical Center–House of GG
19. International Action Network for Gender Equity & Law
20. Kansas City Anti-Violence Project
21. LatinoJustice PRLDEF
22. LGBT Bar Association of New York
23. MADRE
24. Maine Transgender Network, Inc.
25. Make the Road New York
26. Maryland Trans*Unity
27. Movement Advancement Project
28. National Black Justice Coalition
29. National Center for Lesbian Rights
30. National Center for Transgender Equality
31. National LGBTQ Workers Center
32. National Trans Bar Association
33. National Women's Law Center
34. New York City Anti-Violence Project
35. No Justice No Pride
36. Nollie Jenkins Family Center, Inc.

37. Oasis Legal Services
38. OutRight Action International
39. Queer Connect, Inc.
40. Rights and Democracy Institute of VT and NH
41. Southern Poverty Law Center
42. Sylvia Rivera Law Project
43. Trans Empowerment Project
44. Trans Lifeline
45. Transformative Justice Law Project of Illinois
46. Transgender Assistance Program Virginia
47. Transgender, Gender-Variant, Intersex Justice Project
48. Transgender Resource Center of New Mexico
49. TransSOCIAL, Inc.
50. Woodhull Freedom Foundation

**APPENDIX: IDENTIFYING ALL FIFTY SIGNATORIES TO THE WORKING GROUP
SUBMISSION**

The **Center for Constitutional Rights** (“CCR”) is a national, not-for-profit legal, educational and advocacy organization dedicated to protecting and advancing rights guaranteed by the United States Constitution and international law. Founded in 1966 to represent civil rights activists in the Southern-half of the United States, CCR has a long history of advocating alongside those with the fewest protections and least access to legal resources, including LGBTQ communities impacted by discrimination and arbitrary state policies. In 2013, CCR represented LGBTQ advocates in Uganda who were persecuted pursuant to biased laws and statutes that were piloted by conservatives in the United States, and secured a United States court ruling that recognized persecution on the basis of sexual orientation and/or gender identity constitutes a crime against humanity that “unquestionably violates international norms.” *Sexual Minorities Uganda v. Lively*, 960 F. Supp.2d 304, 316 (D. Mass 2013). CCR is headquartered in New York, New York but operates nationwide. CCR is counsel for the signatories.

**

Lambda Legal Defense and Education Fund, Inc. (“Lambda Legal”) is the United States’ oldest and largest nonprofit legal organization working for full recognition of the civil rights of lesbian, gay, bisexual and transgender, and queer (“LGBTQ”) people and everyone living with HIV through impact litigation, education, and policy advocacy. Lambda Legal has served as counsel of record or amicus curiae in dozens of seminal cases in the United States regarding the rights of LGBT people and people living with HIV. *See, e.g., Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *United States v. Windsor*, 570 U.S. 744 (2013); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Bragdon v. Abbott*, 524 U.S. 624 (1998); *Romer v. Evans*, 517 U.S. 620 (1996).

For over 45 years, Lambda Legal has striven to ensure that courts recognize and enforce the employment protections LGBTQ workers have under existing federal civil rights law. Of special relevance here, Lambda Legal served as counsel or amicus curiae in numerous LGBTQ employment discrimination cases, including *Hively v. Ivy Tech Cmty. Coll.*, 853 F.3d 339 (7th Cir. 2017) (en banc), *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2d Cir. 2018) (en banc), *Wittmer v. Phillips 66 Co.*, 915 F.3d 328 (5th Cir. 2019); *Franchina v. City of Providence*, 881 F.3d 32 (1st Cir. 2018); *Evans v. Ga. Reg'l Hosp.*, 850 F.3d 1248 (11th Cir. 2017), among others. Lambda Legal has offices in New York, New York, Los Angeles, California, Washington, District of Columbia, Atlanta, Georgia, and Dallas, Texas. Lambda Legal is counsel for the signatories.

**

Transgender Law Center (“TLC”) was founded in 2002 and is the largest national transgender organization advocating self-determination for all people. Grounded in legal expertise and committed to racial justice, TLC employs a variety of community-driven strategies to keep transgender and gender nonconforming (“TGNC”) people alive, thriving, and fighting for liberation. TLC also pursues impact litigation and policy advocacy to defend and advance the rights of TGNC people, transform the legal system, minimize immediate threats and harms, and educate the public about issues impacting our communities. TLC is headquartered in Oakland, California but operates nationwide. TLC is counsel for the signatories.

**

Ackerman Institute for the Family (“Ackerman”) based in New York, New York is one of the premier institutions for family therapy and one of the best-known and most highly regarded training facilities for family therapists in the United States. Ackerman’s Gender & Family Project (“GFP”) empowers youth, families, and communities by providing gender affirmative services,

training, and research. GFP promotes gender inclusivity as a form of social justice in all the systems involved in the life of the family.

**

Campaign for Southern Equality (“CSE”) promotes full LGBTQ equality—both legal and lived—across the Southern United States. CSE supports LGBTQ Southerners in navigating employment contexts where they lack basic employment protections by providing legal resources, offering trainings in LGBTQ cultural competency to employers, and leading public education efforts on LGBTQ equality. CSE is based in Asheville, North Carolina.

**

Cornell Law School's Gender Justice Clinic engages in global, local, and transnational efforts to eliminate gender-based violence and discrimination. Under faculty supervision, law students work in teams on a wide range of issues relating to gender justice, including LGBTQ civil and human rights issues. Clinic members provide legal advice and representation to survivors of gender-based violence and discrimination, conduct fact-finding, participate in trainings, draft or analyze proposed legislation, litigate before regional or international human rights bodies, and contribute to community education initiatives, giving students the opportunity to contribute to efforts to advance gender justice at home and around the world.

**

The CUNY Law School Human Rights and Gender Justice Clinic (“HRGJ Clinic”) is widely recognized for its expertise and contributions to gender jurisprudence and human rights practice. The HRGJ Clinic advocates before international and regional human rights bodies and national and local courts and legal institutions. Our projects combat gender discrimination and sexual violence, advance reproductive and sexual rights and economic and social rights, and

promote women’s participation and empowerment. By addressing problems through the lens of human rights, HRGJ Clinic students use international human rights law and institutions to challenge and expand rights protections in both domestic and international fora.

**

Claudia M. Flores is **Director and Associate Clinical Professor of the International Human Rights Clinic at University of Chicago Law School**, which works to promote and protect the human rights of individuals and communities globally. Prior to joining the clinical faculty, Flores was a partner in the civil rights practice of Hughes Socol Piers Resnick & Dym, Ltd. Previously, she served as constitutional and legal advisor for the United Nations in East Timor and Zimbabwe. She also managed a program of the American Center for International Labor Solidarity to combat human trafficking in Indonesia and was a staff attorney at the American Civil Liberties Union Foundation in the Women’s Rights Project.

Flores was a Skadden Arps fellow at the International Women’s Human Rights Clinic at City University of New York School of Law and law clerk for U.S. Court of Appeals Judge Harry Pregerson.

**

Equality California is the largest statewide LGBTQ civil rights organization in the country with 800,000 members. Headquartered in Los Angeles, California, Equality California brings the voices of LGBTQ people and allies to institutions of power in California and across the United States, striving to create a world that is healthy, just, and fully equal for all LGBTQ people. Equality California is also active on the international state, and has taken action on several foreign policy matters within the past year.

**

FORGE is a national transgender anti-violence organization based in Milwaukee, Wisconsin. Founded in 1994, FORGE provides direct services to transgender, gender non-conforming and gender non-binary survivors of sexual assault. Since 2011, FORGE has served as the only transgender-focused organization federally funded to provide training and technical assistance to providers around the country who work with transgender survivors of sexual assault, domestic and dating violence, and stalking. FORGE's role as a technical assistance provider has allowed it to directly see key continued and emerging challenges many agencies are experiencing in serving sexual assault survivors of all genders.

**

Freedom Overground Corp. is a grass-roots, non-profit organization that uplifts and supports the transgender and gender non-conforming ("TGNC") incarcerated community. Freedom Overground programs are structured around improving the life expectancy and quality of life for TGNC people by working to ensure their dignity and safety while they are incarcerated. The organization is led by transgender and formerly incarcerated advocates who use their lived experiences to guide educational activities, engage the public on TGNC incarceration issues, and facilitate programs that support mental health to reduce the impact of Incarceration post-traumatic stress disorder on returning citizens. Since 2016, Freedom Overground has supported dozens of incarcerated and returning TGNC citizens with health care, mental health, education, and gender-related services. Freedom Overground is based in Atlanta, Georgia.

**

FreeState Justice is a legal advocacy organization based in Baltimore, Maryland that seeks to improve the lives of Maryland's low-income lesbian, gay, bisexual, transgender, and queer ("LGBTQ") residents. FreeState Justice assists LGBTQ people with challenges such as anti-

LGBTQ discrimination and harassment in employment, housing, foster care, healthcare and public accommodations, among others, and envisions a world where all people are free to live authentically, with safety and dignity, regardless of their identity.

**

GAPIMNY —Empowering Queer & Trans Asian Pacific Islanders is an all-volunteer, membership-based community organization that empowers queer and transgender Asian Pacific Islander people in the greater New York metropolitan area. GAPIMNY is committed to advancing racial justice and LGBTQ rights for intersectionally marginalized communities, and supports policies that equalizes opportunity. GAPIMNY is based in New York, New York.

**

Garden of Peace, Inc. headquartered in Pennsylvania is the only arts organization in the country founded and led by black transgender and queer individuals. Garden of Peace works to center black queer and transgender youth, elevates and empowers the narratives and lived experiences of black youth and their caretakers, and guides revolutionary spaces of healing and truth through art, education, and mentorship. Garden of Peace believes in the full humanity of every being on this planet, and has a consistent practice of protecting and empowering transgender and queer peoples.

**

Gender Benders is a grassroots support and advocacy organization serving approximately 550 transgender and queer individuals across the southeastern United States. Many of its members have dealt with or are currently dealing with issues of employment discrimination, and Gender Benders is invested in justice, equity, and liberation for all transgender and queer Southerners. Gender Benders is based in Piedmont, South Carolina.

**

Gender Justice is a nonprofit legal and policy advocacy organization based in the Midwest that is committed to the eradication of gender barriers through impact litigation, policy advocacy, and education. As part of its litigation program, Gender Justice represents individuals and provides legal advocacy as *amicus curiae* in cases involving issues of gender discrimination. Gender Justice is based in Saint Paul, Minnesota.

**

Healthy and Free Tennessee is an organization based in Memphis, Tennessee whose mission is to promote sexual and reproductive health and freedom across the state, including LGBT civil and human rights. Healthy and Free Tennessee advances policies and practices which recognize these elements as essential to the overall well-being of all individuals and communities.

**

Griffin-Gracy Educational Retreat & Historical Center (“House of GG”) is the first educational and historical center solely dedicated to transgender and gender nonconforming people in the United States. Located in Little Rock, Arkansas, House of GG offers a permanent safe space for the trans community in Arkansas, where Transgender people can get mentored and brought into the growing network of Southern transgender people working for social justice. House of GG is the legacy project of lifelong transgender activist Miss Major Griffin-Gracy, who helped pioneer the TLGBQ liberation movement and continues that work five decades later.

**

International Action Network for Gender Equity & Law (“IANGEL”) is an international network of lawyers dedicated to gender equity and justice. We harness the power of

pro bono legal assistance, connecting it to the cause of human rights for women, girls and LGBTQI individuals locally, nationally, and around the world. IANGEL is based in Oakland, California.

**

Kansas City Anti-Violence Project ("KCAVP") provides dedicated services to lesbian, gay, bisexual, transgender and queer ("LGBTQ") youth and adults, throughout Missouri and Kansas, who have experienced trauma, violence, harassment or neglect. Through direct advocacy, professional training and community education, we work to prevent and respond to domestic violence, sexual violence and hate crimes. Our Guiding Values are pursuing liberation, individual agency, resilience, and community. We seek to build communities free from isolation and shame through coalition, participation and conversation. KCVAP is based in Kansas City, Missouri.

**

LatinoJustice PRLDEF formerly known as the Puerto Rican Legal Defense & Education Fund is a national non-profit civil rights legal defense fund who since 1972 has advocated for and defended the constitutional rights of all Latinos. As part of our continuing mission to protect and advance the civil rights of the greater pan-Latinx community in the United States and Puerto Rico, LJP has engaged in and supported law reform litigation across the country addressing discriminatory policies and practices in numerous areas including LGBTQ rights. LatinoJustice PRLDEF is based in New York, New York.

**

The LGBT Bar Association of New York is a non-profit bar organization based in New York, New York that is dedicated to promoting equality and access to justice for members of the LGBTQ community.

**

MADRE is an international women’s human rights organization that supports gender justice, equal rights, and inclusion for all including LGBTIQ populations around the globe. MADRE is based in New York, New York.

**

Maine Transgender Network, Inc. (“Maine TransNet”) is Maine’s only organization explicitly dedicated to supporting the needs of the transgender community in Maine. Its work encompasses community building, peer-based support services, provider education, and policy advocacy. The realities of workplace discrimination are ever-present on the minds of many of Maine TransNet’s members, as poverty and isolation in rural communities frequently leaves them with no choice but to work in environments where they are actively mistreated because of gender identity and presentation with no options for escape. sometimes violent and hurtful workplaces and have little or no recourse to address the issues they face. Maine TransNet facilitates peer support groups for transgender people and allies throughout the state of Maine, and also directs transgender people to available resources and provides training and education opportunities.

**

Make the Road New York (“MRNY”) builds the power of Latinx and working class communities to achieve dignity and justice through organizing, policy innovation, transformative education, and survival services. We work at the intersection of different struggles, and specially this is of interest for our Trans Immigrant Project in Queens, and GLOBE Project in Brooklyn in fighting against trans-queerphobic practices while seeking employment. MRNY operates across New York State.

**

Maryland Trans*Unity is a volunteer-run, peer-facilitated support group and community building organization serving trans* people of all gender identities under the trans* umbrella. Maryland Trans*Unity also encourages and welcomes participation from those who stand in solidarity with trans* communities. Maryland Trans*Unity is based in Brentwood, Maryland.

**

Movement Advancement Project (“MAP”) is an independent, nonprofit think tank founded in 2006 that provides rigorous research, insight and communications that help speed equality and opportunity for LGBT and all people. MAP works to achieve these goals in three key ways: advancing the conversation, advancing policy, and advancing collaboration both within the LGBT movement and across progressive movements. MAP is based in Boulder, Colorado.

**

National Black Justice Coalition (“NBJC”) is a civil rights organization dedicated to the empowerment of Black lesbian, gay, bisexual, transgender, queer, and same gender loving (“LGBTQ/SGL”) people, including people living with HIV/AIDS. Since 2003, NBJC has provided leadership at the intersection of national civil rights groups and LGBTQ/SGL organizations, advocating for the unique challenges and needs of the African American LGBTQ/SGL community that are often relegated to the sidelines. As America’s leading national Black LGBTQ/SGL civil rights organization focused on federal public policy, NBJC has accepted the charge to lead Black families in strengthening the bonds and bridging the gaps between the movements for racial justice and LGBTQ/SGL equality. NBJC envisions a world where all people are fully-empowered to participate safely, openly, and honestly in family, faith, and community, regardless of race, class, gender identity, or sexual orientation. NBJC is based in Washington, District of Columbia.

**

The National Center for Lesbian Rights (“NCLR”) is a national nonprofit legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual, transgender, and queer people and their families through litigation, public policy advocacy, and public education. Since its founding in 1977, NCLR has played a leading role in securing fair and equal treatment for LGBT people and their families in cases across the country involving constitutional and civil rights. NCLR has a particular interest in eradicating discrimination against LGBT people in employment—and represents LGBT people in cases relating to employment discrimination and challenging discriminatory conduct throughout the country. NCLR also focuses on issues related to poverty and the criminalization of LGBT people by law enforcement agencies. NCLR has offices in San Francisco, California and Washington, District of Columbia.

**

National Center for Transgender Equality (“NCTE”) is devoted to advancing justice, opportunity, and well-being for transgender people through education and advocacy on national issues. Since 2003, NCTE has been engaged in educating legislators, policymakers, and the public, and advocating for laws and policies that promote the health, safety, and equality of transgender people. NCTE also provides resources to thousands of transgender people every year. NCTE also conducted the 2015 U.S. Transgender Survey, the largest survey of transgender Americans to date. NCTE is based in Washington, District of Columbia.

**

The National Trans Bar Association (“NTBA”) is a non-profit professional association of attorneys promoting equality both in the legal profession and under the law. In addition to direct works with transgender and gender non-conforming legal professionals the NTBA seeks to educate

and advocates for legislative changes that expand formal legal protections and access to legal representation for transgender and gender non-conforming people. NTBA is based in New York, New York but operates nationwide.

**

The National Women’s Law Center (“NWLC”) is a nonprofit legal organization dedicated to the advancement and protection of women’s legal rights and the right of all persons to be free from sex discrimination. Since 1972, NWLC has worked to secure equal opportunity in education for women and girls through enforcement of the United States Constitution and other laws prohibiting sex discrimination. The Center has both led and participated in numerous court filings to emphasize that the federal protections against sex discrimination contained in United States civil rights laws includes protections against discrimination based on sexual orientation and gender identity. NWLC is based in Washington, DC.

**

The New York City Anti-Violence Project (“AVP”) empowers lesbian, gay, bisexual, transgender, queer, and HIV-affected communities and allies to end all forms of violence through organizing and education, and supports survivors through counseling and advocacy. AVP's advocacy work addresses the systemic violence of economic injustice, particularly its impact on trans and gender non-conforming (TGNC) people. AVP's 2018 report, *Individual Struggles, Widespread Injustice: Trans and Gender Non-Conforming (TGNC) Peoples’ Experiences of Systemic Employment Discrimination in New York City* reveals clear patterns of discrimination during the job search process, harassment while in the workforce, unemployment and poverty rates higher than that of the general public, and a disconnect between education level and income. Highlights include:

- TGNC New Yorkers are both more likely to have a Bachelors' Degree than the average New Yorker and much more likely to live in poverty. 43% of people of color held bachelor's degrees and 41% made less than \$10,000 a year. Because of systemic employment discrimination, more education does not guarantee better jobs and higher salaries for TGNC people.

- 22% of TGNC New Yorkers surveyed are unemployed, which is more five times higher than the New York City unemployment rate.

- For jobs in which filling out an application form is required, 57% of respondents had to fill out a form on which they had to choose a gender that did not match their identity. Thirty-one percent of respondents were asked about how they were assigned at birth, which is an illegal question in an application and interview process in New York State.

- The process of reporting employment discrimination has many barriers for TGNC New Yorkers. Of the 58% of respondents who experienced but did not report workplace discrimination to their supervisor, 46% cited that their complaint was about their supervisor. Only 4% of survey participants reported discrimination to New York City's Human Resources Administration or the City Commission on Human Rights.

**

The National LGBTQ Worker's Center is an organization for and by LGBTQ workers. Our goal is to bring LGBTQ working people together in the fight for economic justice. Through labor education and grass roots organizing we work toward progressive social change with an emphasis on uplifting Queer Trans People of Color. The National LGBTQ Worker's Center is based in Chicago, Illinois.

**

No Justice No Pride (“NJNP”) is a collective of organizers and activists from across the District of Columbia. NJNP exists to end the LGBT movement’s complicity with systems of oppression that further marginalize queer and transgender individuals. Its members are black, brown, queer, transgender, gender nonconforming, bisexual, indigenous, two-spirit, formerly incarcerated, disabled, and white allies. Together, NJNP and its members recognize there can be no pride for some of us without liberation for all of us.

**

Nollie Jenkins Family Center, Inc. (“NJFC”) is a grassroots organization based in Durant, Mississippi. NJFC’s 180 Degrees of the South campaign highlights the joys, struggles, culture, and life of queer and non-conforming youth of color living in the rural south. Through this campaign, NJFC provides safe spaces, educates stakeholders, impacts local and state education and juvenile justice policies, and creates a platform that uplifts the stories and voices of the LGBTQ community.

**

Oasis Legal Services is a 501(c)(3) nonprofit that provides quality legal immigration services to under-represented low-income groups with a focus on LGBTQIA+ communities. Based in Berkeley, California, Oasis provides representation to immigrants living within the jurisdiction of the San Francisco Asylum Office, which extends from Alaska in the north to Bakersfield, California in the south. Oasis' services include: screening for immigration relief, affirmative asylum, residency, citizenship, and family petitions. Oasis also provides ongoing case management to low-income LGBTQIA+ clients who need assistance with social services, employment, housing, education, and discrimination. Oasis Legal Services is based in Berkeley, California.

**

OutRight Action International (“OutRight”) is a non-profit organization headquartered in New York, New York that advocates for the human rights of lesbian, gay, bisexual, transgender, intersex, and queer (“LGBTIQ”) people across the globe. OutRight, previously known as the International Gay and Lesbian Human Rights Commission–IGLHRC, was founded in 1990, and works at the international, regional and national levels to research, document, defend, and advance human rights for LGBTIQ people worldwide. OutRight has staff in six countries and is the only LGBTIQ organization that has a permanent presence at the United Nations Headquarters in New York to advocate for progress for LGBTIQ people. OutRight has a major stake in human rights and hold special consultative status at the United Nations, which allows it to bring to light the concerns of LGBTIQ people globally at this important world forum.

**

Queer Connect, Inc. is an organization committed to increasing visibility of and access to resources for all LGBTQ people living in and around Bennington, Vermont, where it is based.

**

The Rights and Democracy Institute of Vermont and New Hampshire (“Rights and Democracy Institute”) believes in Human Rights for workers and for all people. It opposes and fights against discriminations suffered by an already marginalized LGBTQA community. It supports several Vermont LGBTQA organizations as sponsors, and we fight for the Human Right to Health for all persons of all genders, and particularly for those with unique needs in the LGBTQA community. The Rights and Democracy Institute believes that a denial of any Human Right to one person is a denial of Human Rights to all persons. The Rights and Democracy Institute is based in Burlington, Vermont.

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The Southern Poverty Law Center (“SPLC”) is a non-profit civil rights organization dedicated to fighting hate and bigotry and seeking justice for the most vulnerable members of society. Since its founding in 1971, SPLC has won numerous landmark legal victories on behalf of the exploited, the powerless, and the forgotten. As part of its work, SPLC has served as counsel for lesbian, bisexual, gay, transgender or queer (“LGBTQ”) persons asserting their constitutional or civil rights and has filed multiple briefs in the United States Supreme Court and the courts of appeals. Most recently, SPLC submitted an amicus brief in *Bostock v. Clayton County*, (2019), a critical case before the United States Supreme Court addressing protections against employment discrimination for LGBTQ people.

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The Sylvia Rivera Law Project (“SRLP”) is a collective organization based in New York, New York that works to guarantee that all people are free to self-determine their gender identity and expression, regardless of income or race, and without facing harassment, discrimination, or violence. SRLP was founded on the understanding that gender self-determination is inextricably intertwined with racial, social and economic justice. Therefore, we seek to increase the political voice and visibility of low-income people and people of color who are transgender, intersex, or gender non-conforming. SRLP works to improve access to respectful and affirming social, health, and legal services for our communities. SRLP believes that in order to create meaningful political participation and leadership, we must have access to basic means of survival and safety from violence.

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Trans Empowerment Project (“TEP”) is a gender-expansive organization that is aimed at identifying and creating necessary resources to further the empowerment and progression of the

transgender community across the United States. TEP seeks to be a national resource for the trans community, bridge the gap between the trans community and its allies, and create positive resources for empowerment through community building, education, advocacy, and direct action. TEP offers a variety of programs, including assistance with employment, food, clothing, medical needs, and education. TEP is based in Knoxville, Tennessee.

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Trans Lifeline was founded in 2014 to connect trans people to the community, resources, and support they need to survive and thrive—stabilizing the lives of trans people and building a resilient trans community through trans-led direct services. Trans Lifeline’s Hotline is there to care for trans people through moments of crisis and suicidality. Beyond immediate crisis, their Microgrants program provides low-barrier grants to trans people in need of legal name changes and updated government IDs—as well as specialized support for trans people who are incarcerated or undocumented. By providing care, Trans Lifeline identifies the trans community’s most pressing needs and brings that expertise to the broad movement for LGBT equality. Trans Lifeline is based in Oakland, California.

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Transformative Justice Law Project of Illinois (“TJLP”) is an organization of attorneys, activists, and social workers who engage in direct legal services, policy advocacy, and community education work for transgender and gender expansive people in Illinois. TJLP’s legal services include assistance with legal name changes and identity documents, criminal defense, advocacy in jail and prison, and criminal record expungement. TJLP also advocates for transgender rights by pushing for policy changes at the city, county, state, and federal levels. Finally, TJLP facilitates “know-your-rights” workshops for transgender people, as well as trainings to assist employers,

landlords, non-profits, and government agencies in becoming more accessible and welcoming to transgender people. TJLP is based in Chicago, Illinois.

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Transgender Assistance Program of Virginia (“TAP VA”) is an all-volunteer, trans-led 501(c)(3) non-profit organization created to end homelessness within the transgender community in Virginia. TAP VA provides temporary emergency housing to homeless transgender adults in Virginia. TAP VA also provides educational opportunities around the important fact that transgender rights are human rights by explaining the intersectionality between homelessness, discrimination, socioeconomic status, and racism within the transgender community in Virginia. TAP VA is based in Virginia Beach, Virginia.

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Transgender Resource Center of New Mexico (“TGRCNM”) provides support, community, and connection to transgender, gender nonconforming, nonbinary, and gender variant people and their families through advocacy, education, and direct services. TGRCNM works for the safety and access of transgender and non-binary people in every area of life. With employment being one of the foundational pieces of self-determination and agency in society, barriers to jobs are a major issue in the TGRCNM community. TGRCNM is based in Albuquerque, New Mexico.

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TransSOCIAL, Inc. is a trans-led non-profit working to expand safe and affirming resources for the TLGBQ+ community. TransSOCIAL provides case management for trans and gender non-conforming individuals, including legal name change assistance and affirming medical

referrals; hosts peer support groups and social events to promote community building; and offers TLGBQ+ Cultural Sensitivity training to businesses, healthcare providers, and other organizations to build understanding and acceptance of TLGBQ+ community in public spaces. TransSOCIAL's TLGBQ+ community faces rampant employment discrimination, which leads to disproportionate rates of unemployment, homelessness, and poor health outcomes. TransSOCIAL is committed to advocating for equal rights for the TLGBQ+ community to protect from this discrimination and marginalization. TransSOCIAL is based in Miami, Florida.

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Transgender, Gender-Variant, Intersex Justice Project (“TGJIP”) is an organization comprised of transgender, gender-variant, and intersex people - inside and outside of prisons, jails, and detention centers - creating a united family in the struggle for survival and freedom. TGJIP is based in San Francisco, California.

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Woodhull Freedom Foundation is a human rights organization working at the intersection of sexual and human rights. It believes human rights are not dependent on anything other than our humanity - there are no exceptions to our rights. Woodhull Freedom Foundation hosts an annual four-day sexual freedom summit, affirming sexual freedom as a fundamental human right. We provide scholarships and other forms of support to those attendees who demonstrate a need. A percent of our attendees are transgender people. Further, this year we partnered with a sex worker rights organization and transgender laborers are disproportionately impacted by discrimination, hate crimes, employment discrimination and housing issues. Woodhull Freedom Foundation is based in Washington, District of Columbia.