Broken Dreams: How Enforcement-Only Bills in the House of Representatives Threaten to Further Marginalize the LGBT Undocumented

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“There seems to be a gap between the legislation and the realities of the community.”
—Danilo Machado

“I can’t imagine life outside the United States. Back home in Mexico, LGBT people are isolated, sexually abused, and thrown from their homes.”
—Trina Vasquez

“I want to see rights without as many barriers.”
—Jerssay Arredondo
Executive Summary

Lesbian, gay, bisexual, and transgender (“LGBT”) undocumented immigrants, who are already subject to rampant discrimination, are now further threatened by current immigration proposals in the House of Representatives. The Strengthen and Fortify Enforcement (“SAFE”) Act, Legal Workforce Act (also referred to as the “E-Verify Bill”), the Agricultural Guestworker (“AG”) Act, and the Supplying Knowledge Based Immigrants and Lifting Levels of STEM Visas (“SKILLS Visa”) Act undermine the goals of both the LGBT equality and immigration rights movements. If enacted, they will subject LGBT immigrants to discrimination, physical and sexual assault, and harsh criminal penalties.

The SAFE Act will result in increased detention, which poses known risks to LGBT people. Specifically, the act will:

- Criminalize unlawful presence in the United States, subjecting millions of undocumented people to arrest and imprisonment solely because of their status;
- Eliminate Deferred Action for Childhood Arrivals (“DACA”), stripping thousands of young Dreamers of their ability to work and subjecting them to deportation;
- Increase mandatory detention of undocumented immigrants, which will result in increased sexual and physical violence against LGBT individuals;
- Strip the Department of Homeland Security (“DHS”) of its prosecutorial discretion;
- Expand the deportation of undocumented immigrants, even those who may be persecuted in their home countries due to their sexual identity; and
- Grant inexperienced state and local governments the authority to create and enforce their own immigration enforcement laws.

The Legal Workforce Act will make it harder for LGBT immigrants to find jobs, regardless of immigration status. Specifically, the act will:

- Incorrectly deprive some legal immigrants of their ability to work due to false E-Verify results; and
- Subject current employees to increased workplace discrimination.

The AG Act will increase the discrimination and abuse faced by agricultural guest workers while simultaneously reducing their earnings. Specifically, the act will:

- Separate families;
- Increase the risk of discrimination and abuse by limiting government oversight;
- Reduce workers’ earnings;
- Limit access to judicial and legal assistance;
• Displace lawful resident immigrants who have year-round, permanent agricultural jobs; and
• Create a class of low-paid temporary workers with a limited ability to earn tax credits or welfare benefits.

Finally, the SKILLS Visa Act will make it harder for immigrants to receive sponsorship from family members. Specifically, the act will:
• Separate families, and
• Eliminate one pathway to citizenship for members of the global LGBT community without providing a viable alternative.

These bills will subject undocumented members of the LGBT community to increased risk of physical attacks, sexual assault, and psychological harm by increasing detention and deportation. The bills will also reduce the number of available jobs, decrease earnings, and make it harder for the LGBT undocumented to find work, thus exacerbating their socioeconomic marginalization. Dreamers, undocumented young people who came to the U.S. as children, will be especially hard hit. If these bills are enacted, DACA will be eliminated. Thousands of Dreamers will lose their ability to work legally and will face arrest, criminal punishment, and deportation.

Immigration legislation should not criminalize undocumented status or have a blanket requirement that all undocumented individuals be subject to mandatory detention and deportation. Any legislation that passes the House should include accessible pathways to citizenship for all undocumented people, protection for Dreamers, and provide greater governmental and judicial oversight.

This report demonstrates that the House bills described above pose a direct threat to undocumented members of the LGBT community. It urges LGBT and immigration advocates to come together to combat these dangerous proposals.
Introduction

Trina Vasquez says that she is “caught between life and trying to survive it.” An undocumented, transgender woman from Oaxaca, Mexico, Trina struggles to find appropriate transgender medical care and worries about her “trans sisters who have to sell their bodies to get money to transition.” Like other undocumented members of the LGBT community living within the United States, she is a member of two marginalized communities. As such, she is doubly targeted by measures before the House of Representatives that would criminalize undocumented status and increase arrests, detentions, and deportations. Deferred Action for Childhood Arrivals (DACA) has given Trina the ability to work legally and protection from deportation. Passage of these bills would eliminate DACA and subject Trina to arrest, criminal punishment, and deportation. As an advocate for transgender rights representing both the undocumented and the LGBT community, Trina hopes for legislation that is fair and compassionate and creates an accessible path to citizenship.

Of the 904,000 adult LGBT immigrants living in the United States today, 30% are undocumented. At least 267,000 undocumented immigrants in the United States identify as lesbian, gay, bisexual, or transgender. As these estimates only account for adult LGBT undocumented immigrants and do not include those who are forced to hide their sexual identity, it is likely that there are many more undocumented LGBT immigrants living in the United States than are demonstrated by the available statistics.

LGBT undocumented immigrants face a disproportionate risk of psychological and physical abuse and discrimination due to their double minority status. As members of the LGBT community, they are more likely than their non-LGBT peers to be targeted and discriminated against because of their sexual and gender identity. For example, Jerssay Arredondo, a queer undocumented man living in Arizona, reports that fellow LGBT undocumented individuals have been arbitrarily put in deportation proceedings and have suffered anti-gay mistreatment at the hands of detention facility staff. He fears he would suffer a similar fate if he becomes subject to arrest, imprisonment, and deportation. Unfortunately, the “enforcement-only” immigration bills currently before the House demonstrate a total disregard for these realities.

Indeed, these bills would eliminate one of the few programs to have offered some protection for undocumented people in recent years. The SAFE Act would end DACA, which has allowed thousands of undocumented youth who have lived most of their lives in the U.S. to work legally and attend school without fear of deportation. Dreamers would instead be subject to arrest, criminal punishment, and forced removal to their countries of origin.
Removal from the United States is especially devastating to many LGBT undocumented immigrants, since many of them are sent back to countries where they face further discrimination, harassment, and violence because of their LGBT identity. For example, Danilo Machado, a gay Dreamer from Columbia, barely remembers his home country but knows that he would be subject to a culture dominated by “machismo” and homophobia if he were forced to return. Danilo and many other LGBT Dreamers who have lived nearly their entire lives in the United States would be pariahs in their home countries. Approximately 2,000 LGBT refugees immigrate to the United States every year to flee LGBT persecution in their home countries. These LGBT refugees constitute 6% of all refugees in the United States.

The detention and deportation process also exposes undocumented LGBT immigrants to additional risks of physical and psychological abuse. LGBT immigrants often experience discrimination, harassment, and physical and sexual violence while in detention because of their LGBT identity. Moreover, the U.S. detention system routinely fails to adequately safeguard detained LGBT immigrants from abuses perpetrated by other detainees and detention facility guards.

This report will examine the hardships currently faced by undocumented members of the LGBT community living in the United States and how these hardships will be exacerbated if the following immigration proposals are passed: The Strengthen and Fortify Enforcement (“SAFE”) Act; the Legal Workforce Act (also referred to as the “E-Verify Bill”), Agricultural Guestworker (“AG”) Act; and the Supplying Knowledge Based Immigrants and Lifting Levels of STEM Visas (“SKILLS Visa”) Act. This report will demonstrate that these immigration proposals should be rejected because they will further marginalize undocumented LGBT community members while undermining the goals of the LGBT equality movement as a whole. If passed, these bills will make it impossible for Trina, Danilo, and Jersey to pursue their education and give back to their communities without fear of persecution and abuse.
A General Overview of Proposed Immigration Bills

A. The Strengthen and Fortify Enforcement (“SAFE”) Act

On June 6, 2013, the House Judiciary Committee considered the SAFE Act. If passed, the SAFE Act will subject undocumented LGBT immigrants to devastating outcomes. Specifically, this broad immigration enforcement bill will:

- Criminalize unlawful presence in the United States;
- Eliminate Deferred Action for Childhood Arrivals (DACA), stripping thousands of Dreamers of their ability to work legally without fear of deportation;
- Increase mandatory detention of undocumented immigrants;
- Impose harsher penalties for immigration violations;
- Strip the Department of Homeland Security (“DHS”) of its ability to use prosecutorial discretion;
- Expand the deportation of undocumented immigrants; and
- Grant inexperienced state and local governments the authority to create and enforce their own immigration enforcement laws.

As noted by the Immigration Policy Center, “the SAFE Act represents an attrition-through-enforcement approach to unauthorized immigration that has not proven effective and which runs contrary to many of the objectives of immigration reform.” In other words, the SAFE Act tries to make it impossible for undocumented people to work, find a place to live or go to school. The stated goal is to make undocumented people’s lives so dangerous and miserable that they are forced to flee. The policies embodied in the SAFE Act will not only negatively impact undocumented immigrants as a whole, but will subject LGBT undocumented immigrants in particular to increased harassment and abuse.

B. The Legal Workforce Act (“E-Verify Bill”)

While the SAFE Act is the most dangerous bill in the House Judiciary Committee for undocumented LGBT individuals, the E-Verify Bill will also cause significant harm to LGBT undocumented immigrants. The bill will require all employers to use E-verify, an internet-based system designed to allow employers to verify the eligibility of their employees to work in the United States for all new hires within two years. It also provides that verification must take place during a specified “verification period.” During this period the employer must verify that an employee is not an unauthorized alien by: (1) obtaining the prospective employee’s social security number or recording the identification number designated by DHS and (2) examining the prescribed documents that establish identity and employment authorization. Under this bill, workers will need a social security card to prove their authorization to work in the United States. By excluding workers who do not have a social security card from the workforce, this
bill will disproportionately impact undocumented members of the LGBT community, who are already statistically more likely to live in poverty than their non-LGBT peers. If passed, the E-Verify Bill will criminalize employers who fail to use the E-Verify system and subject them to penalties, including up to ten years in prison. The bill will also require some current employees to re-verify their eligibility to work in the United States through the E-Verify system and will allow employers to voluntarily re-verify employees who have already been hired. Most distressing are the proposed limits on remedies available to workers who lose their job due to errors made by the E-Verify system. Specifically, the bill prohibits class action suits and fails to provide an administrative or judicial appeals process. If passed, the bill will impact undocumented LGBT immigrants in the following ways:

- Make it harder for LGBT immigrants to find jobs, regardless of immigration status;
- Incorrectly deprive some legal LGBT immigrant workers of their ability to work due to false E-Verify results; and
- Subject current LGBT employees to increased workplace discrimination.

This bill will disproportionately compromise the ability of LGBT immigrants to work and provide for their families. Some employers may use the system as a pretext to discriminate against LGBT people—for example, by not hiring them or forcing present employees to undergo repetitive employment checks. Moreover, many LGBT people will lack the identification documents required by the bill. For example, transgender people are frequently unable to obtain identity documents that match their lived gender identity and, thus, are likely to be disproportionately impacted by this bill.

**C. The Agricultural Guestworker (“AG”) Act**

The AG Act was introduced to the House in April of 2013. This bill does not create a pathway to citizenship for agricultural workers. Instead, it grants undocumented farmworkers new temporary guest worker visas that do not allow them to bring members of their nuclear family to the United States. The bill also reduces current labor protections for guest workers. For example, it eliminates the requirement that employers provide guest workers access to housing, pay them more than minimum wage, reimburse workers for travel expenses, and guarantee guest workers at least three quarters of the work they were initially offered. Specifically, this bill will negatively impact immigrant workers by:

- Separating families;
- Increasing the risk of discrimination and abuse by limiting government oversight;
- Reducing earnings;
- Limiting access to judicial and legal assistance;
• Displacing lawful resident immigrants who have year-round, permanent agricultural jobs; 53 and
• Creating a class of low-paid temporary workers with a limited ability to earn tax credits or welfare benefits. 54

It is well established that members of the LGBT community face high levels of workplace discrimination. 55 One study found that 37% of LGBT people experienced workplace discrimination in the last five years. 56 Another found that 90% of transgender individuals reported experiencing harassment at work. 57 The AG Act limits access to judicial oversight and legal assistance, meaning that LGBT guest workers may be left without legal recourse when employers discriminate against them. 58 This lack of procedural safeguards will create an environment that no individual should have to live in—one characterized by discrimination, isolation, lack of adequate housing, and vulnerability to abuses and psychological harm.

D. Supplying Knowledge Based Immigrants and Lifting Levels of STEM Visas ("SKILLS Visa") Act

While the SKILLS Visa Act creates new green card programs for foreign graduates of American universities with science and technology degrees and increases visas for immigrant entrepreneurs and high-skilled immigrants, it does so to the detriment of immigrants suffering from economic marginalization. 59 Specifically, this act excludes undocumented members of the LGBT community who have not had the opportunity to attain an education or skilled employment in their home countries. 60

The SKILLS Visa Act eliminates visas for siblings of American citizens 61 and those available through the diversity lottery 62 and reduces the visas available for family-sponsorship. 63 These restrictions are especially harmful for LGBT immigrants who are estranged from their family members and have a limited number of people to turn to when seeking sponsorship. In these cases, sibling sponsorship may be critical, especially for those who are close with their brothers or sisters but estranged from their parents. In short, this bill will:

• Make it harder for immigrants to receive sponsorship from family members, thus separating families, and
• Eliminate one pathway to citizenship for members of the global LGBT community without providing a viable alternative. 64
Trina Vasquez: An Undocumented Champion of Transgender Rights

Trina came to the United States when she was two. She has no memory of Mexico, but she knows the stories passed down by the Mexican transgender women in her support group—women in their thirties and forties who faced rejection by their families, were forced into a life of prostitution, found themselves homeless, and were sexually abused by employers, police, and family members. To Trina, Mexico is an utterly foreign place filled with sexual violence.

Trina is now twenty-four. It was difficult to come out to her family as transgender, but Trina feels that they are “transitioning along with” her. However, Trina says that “they still fear for my safety—they want to protect me from this idea of the transsexual [who can be victimized].”

Although Trina is glad to have finally come out as transgender, she still has a difficult time obtaining the medical care she needs to transition. For Trina, and many other transgender people, the external transition is as fundamental as the internal transition. Trina’s lack of immigration status makes the transition process significantly harder for her, as undocumented transgender people do not qualify for many health programs. Trina travels to Los Angeles from Anaheim once a month to participate in the only program that offers hormone therapy she can afford. Unfortunately, due to cutbacks in Los Angeles County, her clinic can no longer provide her with hormone injections; she now takes hormone pills that threaten her kidney health. Despite her difficult situation, Trina acknowledges that she was lucky to find a program that provides her with affordable hormone treatment. She explains that it is not uncommon for transgender people to go to the black market to buy hormones to aid in their transition.

Trina is now part of several groups that advocate for transgender health and rights. She qualified for DACA, has her work permit, and now works in a family restaurant that accepts her transition. She goes to college and hopes to receive her fashion certificate. When Trina applies for jobs, she finds that employers never ask about her immigration status because she appears so Americanized. Unfortunately, this would change under E-verify and the elimination of DACA. Under the SAFE act this transgender advocate would be targeted as a criminal merely for her presence in the United States and would lose her ability to work legally with the termination of the DACA program.
Cumulative Negative Impacts of Proposed Immigration Bills on Undocumented LGBT Immigrants

A. Criminalizing Unlawful Presence

If the SAFE Act is passed, all 11 million undocumented immigrants living in the United States will face up to six months of jail time, fines, and subsequent deportation merely due to their immigration status. In addition, individuals who enter the United States unlawfully after the passage of the act will face up to two years of jail time and fines. This provision will have a significant negative impact on undocumented LGBT people, who will face imprisonment simply for being undocumented.

B. The Lack of Prosecutorial Discretion: The Deportation of LGBT Dreamers

Currently, DHS has prosecutorial discretion when enforcing immigration laws. This allows DHS to choose when to strictly enforce harsh immigration laws. At present, U.S. Immigration and Customs Enforcement (“ICE”) policy is to exercise discretion in certain cases. The SAFE Act will strip DHS of this prosecutorial discretion when enforcing immigration laws. When combined with the criminalization of unlawful presence in the United States, depriving DHS of its prosecutorial discretion will have far-reaching consequences for all undocumented immigrants and will have a particularly devastating impact on the undocumented LGBT community.

For example, the SAFE Act will mandate the deportation of Dreamers, young undocumented immigrants who were brought to the United States as children and grew up and attended school in the United States. These “Americans without papers” can receive “deferred action” under the DACA program. To qualify for DACA, applicants must first meet certain age and educational requirements, pass a background check, and demonstrate that they are not a threat to national security or public safety. DACA offers a two-year reprieve from deportation that may be renewed. During the deferral period, DACA youth are eligible for work authorizations. As of 2012, an estimated 936,930 immigrants between the ages of fifteen and thirty qualified for the DACA program. Of these potential beneficiaries, 68% are from Mexico, 13% are from North and Central America, 8% are from Asia, 7% are from South America, 2% are from Europe, and 2% are from other countries. The ratification of the SAFE Act would void Dreamers’ deferred action status, putting thousands of young people at risk of immediate deportation and criminal penalties because they are undocumented.

The fact that LGBT Dreamers would face deportation to their home countries is especially concerning in light of the negative attitudes that many of these countries have toward LGBT individuals. For example, a 2010 human rights report notes that, although Mexico’s laws prohibit discrimination against LGBT individuals, members of the LGBT community frequently face
human rights violations due to their minority status. Specifically, the report notes that: 76.4% of LGBT persons in Mexico have been subject to physical violence due to their sexual orientation or gender identity and 53.3% have been assaulted in public spaces; 30% of LGBT individuals have been discriminated against by police and 20% have been assaulted by the police; transgender persons are subject to mass detentions, extortion, and physical abuse by the police and military officials; and LGBT persons face widespread employment discrimination. Mexican LGBT rights activists report that “[many Mexicans] are accustomed to the idea that lesbians and gays have no rights.”

In addition, many families may also be unwilling to accept the gender identity of their LGBT family members, leaving deported Dreamers without anywhere to turn to for support.

There are no current estimates for the total number of LGBT Dreamers currently in the United States. However, some LGBT Dreamers have already received sponsorship through the LGBT Dreamers Fund and the donations of over three-dozen LGBT organizations. These LGBT Dreamers have either received or are in the process of receiving their two-year work permits and a reprieve from deportation and are looking forward to continuing their education, starting their careers, and helping to provide for their families without fear of detention and deportation. For example, after receiving his social security card and work permit, LGBT Dreamer Jaime Diaz stated, “I feel more free because of DACA and I am no longer scared of the police or of being treated like a criminal.” The ratification of the SAFE Act would void the protection provided to Dreamers under DACA and make LGBT Dreamers, such as Jaime, immediately subject to criminal sanctions and deportation.

C. The Expansion of Immigration Violations: Imposing Additional Bars to the Path to Legal U.S. Residency for LGBT Individuals

The SAFE Act will increase the types of behaviors subject to immigration penalties. Of particular concern is the fact that the SAFE Act expands the definition of “aggravated felony,” a type of offense that leads to automatic deportation and a permanent bar to U.S. citizenship without consideration of personal circumstances. Under the SAFE Act, the definition of aggravated felony includes, among other things, two convictions for driving while intoxicated, regardless of when the convictions occurred or whether they were misdemeanor offenses. The fact that the SAFE Act’s definition of aggravated felony is overbroad is obvious from the fact that crimes as disparate as two DUI convictions and a conviction for premeditated murder would both be punished identically with mandatory detention and deportation.

The SAFE Act will not only expand immigration penalties, but will also reduce the standard of proof required to declare immigrants inadmissible, removable, or ineligible for certain benefits.
Danilo Machado: An Advocate for Intersectional Immigration Reform

Danilo Machado is a twenty-year-old undocumented gay man from Colombia who immigrated to the United States with his parents when he was seven years old. Although he is out to his family, friends, teachers, and co-workers, he knows that his life would be very different if he were deported to Colombia. When asked how he would feel if he were forced to permanently return to his birth country, he replied that he “would feel like a stranger.” Although he was young when he left Columbia, he still recalls a culture dominated by machismo and in which being gay is regarded as a “shameful secret.”

Like many other Dreamers, Danilo goes to college and has his driving permit as well as a work authorization card. Although he has not secured a job yet, he is happy that DACA has opened new doors for him by giving him the ability to legally apply for jobs. Danilo describes receiving deferred action as a “breath of relief” because he now feels that he has a “safety net” protecting him from the immediate threat of detention and deportation.

Over the past year, Danilo has become increasingly interested in intersectional organizing. He became a member of United We Dream, a youth-led organization that advocates for the rights of undocumented youths and their families, and interned for Funders for LGBTQ issues in New York City. He describes the latter experience as being particularly enlightening because it allowed him to more closely examine the obstacles faced by undocumented members of the LGBT community and “put faces on the numbers.”

Danilo has a clear vision of what he would like to see in future immigration reform. He describes his ideal version of immigration reform as being “compassionate, reasonable, and not stigmatized.” “There seems to be a gap between the legislation and the realities of the community,” he explained. “Future legislation will need to take those realities into account.” He also acknowledged the need for LGBT and immigration reform advocates to work together in order to improve the quality of life for undocumented members of the LGBT community. While interning for Funders for LGBTQ Issues, Danilo learned that only 2% of LGBT funding goes toward funding immigration-related projects. Those statistics convinced him that “a common struggle” will be necessary to make significant improvements in immigration reform and in the lives of undocumented members of the LGBT community.
In some cases, the reduced standard of proof will permit the removal of undocumented immigrants due to the mere suspicion of illegal activity. For example, mere “reasonable suspicion” of involvement in gang-related activity would render an alien deportable. LGBT people are already more likely to be unfairly targeted on suspicion of certain crimes such as prostitution. These problems will only be compounded by the fact that the act will increase the use of expedited removal, during which immigrants will be removed without an opportunity to be heard in court. The SAFE Act will also apply retroactively to actions taken by undocumented immigrants prior to its ratification.

D. Increased Mandatory Arrest and Detention: Exposing Undocumented LGBT Immigrants to Abuse

The SAFE Act will require federal authorities to take undocumented immigrants into custody within forty-eight hours of a state or local arrest or at the conclusion of state criminal procedures, regardless of individual circumstances, and could also require the detention of undocumented immigrants charged with, but not yet convicted of a crime. The act will also permit the unlimited detention of those who are ordered removed and cannot be repatriated—a practice found unconstitutional by the Supreme Court. The E-Verify Bill will also subject undocumented immigrants to increased incidences of detention and deportation. It requires employers to report employees to DHS if their immigration status cannot be confirmed through the E-Verify system. This will lead to more people being imprisoned in immigration detention.

Placing undocumented LGBT immigrants in detention exposes them to additional, substantial risks to their physical and mental health. Statistics from state prisons shed some light on the high levels of sexual victimization and abuse LGBT people face in detention. A report issued by the U.S. Department of Justice found that 39% of gay men in state prisons reported being victimized by another inmate. This rate is eleven times the rate of similar victimization reported by heterosexual inmates. 12% of gay men reported victimization at the hands of prison staff compared to 5% of straight men. The rate of rape of lesbians by inmates is the same as that of straight inmates, but the rate of rape by staff is nearly double. A stark 59% of transgender inmates in California prisons report being raped. 48.3% of transgender individuals interviewed in the same California study reported that they had non-consensual sexual experiences while incarcerated. Transgender individuals are more likely to be held in administrative segregation because of their perceived vulnerability to assault in detention. While ostensibly a protective measure for the benefit of the inmate, administrative segregation is essentially solitary confinement, which has documented ill effects on the psychological and physical health of inmates. Overall, detention poses a grave threat to the safety of LGBT people.
Immigration detention centers may pose even greater risks than U.S. prisons. Ten reports issued by the Detention Watch Network described intolerable conditions in ICE prisons—with detainees waiting weeks for medical treatment, incarceration in remote facilities that make legal visits all but impossible, and inadequate protection from sexual and physical assault. As in the U.S. Prison system, LGBT people face disproportionate risks of sexual assault in ICE detention facilities. ICE facilities are often remote, underfunded, and lacking adequate medical care for detainees. Their remote location also makes it difficult for detainees to access legal help to fight their deportation from the United States. These factors only compound the dangers LGBT people face in detention generally.

As of 2011, there have been nearly 200 allegations of sexual abuse in American immigration detention facilities, with allegations coming from almost every state that has such a facility. In 2011, Heartland Alliance’s National Immigrant Justice Center (“NIJC”) filed seventeen complaints with DHS’s Office of Civil Rights and Civil Liberties and Office of Inspector General and demanded an investigation into the allegations of abuse of LGBT immigrants in DHS custody. The complaints alleged various violations including: sexual assault, denial of medical and mental health treatment, arbitrary long-term solitary confinement, and frequent harassment by officers and facility personnel. A Mexican transgender woman was kept on “22-hour lockdown” because her Southern California detention facility “arbitrarily subjected all sexual minorities to this isolated detention.” A Peruvian man seeking asylum was held in solitary because of his HIV status and sometimes prevented from taking his medication. The seventeen undocumented immigrants who filed the complaints fled their home countries to escape persecution based on their LGBT status, only to face abuse at the hands of the immigration system.

The risk of abuse while in detention is especially high for transgender individuals, partially due to the fact that U.S. detention facilities are ill-equipped to protect transgender individuals in custody. For example, as of 2008, at least 186 transgender individuals have filed complaints alleging abuse during detention. Of those 186, seventy alleged rape or sexual assault, thirty-four reported being placed in segregated isolation for indefinite periods of time, and twenty-four alleged harassment and assault. Although mechanisms exist for detained transgender individuals to report incidences of abuse, the reporting system currently fails to provide adequate protection to transgender detainees. For example, the complainants’ gender identity in 115 of 186 cases was listed as either unstated or redacted, suggesting that many gender non-conforming individuals were targeted for abuse. Moreover, some transgender detainees also refrain from filing complaints alleging abuse while in detention out of fear that they will be subjected to further humiliation and abuse as punishment. It is impossible to know how many cases of abuse against transgender individuals have either been redacted or remained unrecorded altogether. However, as Keren Zwick, managing attorney for the NIJC’s LGBT Immigrant Rights Initiative
and Adult Detention Project, aptly noted, “I have never met a transgender detainee who hasn’t experienced some kind of sexual harassment, at the very minimum, or being propositioned for sex or being called names. Never once.”

Jerssay Arredondo: Fighting for Increased Pathways to Citizenship

Jerssay Arredondo is a twenty-one-year-old undocumented queer man from Mexico City who has been living in the United States since he was three years old. Growing up in Arizona, a state known for its harsh immigration policies, Jerssay has already faced some of the obstacles posed by E-Verify and local immigration enforcement requirements. For example, Jerssay explained that, before receiving DACA, he was unable to find a job because Arizona state law requires employers to use E-Verify. Although he now has a work permit, Jerssay noted that it is still challenging for many DACA recipients living in Arizona to find a job because of the E-Verify requirements. “There are a lot of E-Verify errors now affecting DACA recipients,” he explained. He added that many Arizona employers also require a state-issued ID, something that DACA does not provide.

Jerssay has also witnessed how local immigration enforcement can lead to increased detention. “I had a queer friend who had just started living in Phoenix when a police officer stopped him on his bike and gave him a ticket because he didn’t have proper lighting for the bike,” Jerssay recalled. “[The police officer] asked my friend for ID and my friend was undocumented, so he didn’t have any. Then the police officer started questioning my friend’s immigration status and my friend was eventually put in deportation proceedings.” Jerssay’s friend was held in detention for three or four months before finally being released. When asked about what detention conditions are like for undocumented members of the LGBT community, Jerssay replied, “You don’t get treated equally.” He added, “Transgender people especially aren’t treated with respect and a lot of the abuse comes from the guards.”

Today, Jerssay works for the Queer Undocumented Immigrants Project (“QUIP”) through United We Dream. Inspired by the obstacles he’s faced as an undocumented member of the LGBT community, Jerssay hopes to see more pathways to citizenship become available for undocumented immigrants. He maintains that programs that only offer partial, temporary benefits, such as DACA, are not doing enough to help undocumented individuals. “The pathway to citizenship should be made as easy as possible and should be inclusive to all members of the undocumented community,” he explained. “I want to see rights without as many barriers.”
E. Enforcing Local Immigration Laws: Illegal Profiling of LGBT people and Arbitrary Enforcement by Police

The SAFE Act will give local governments the authority to enforce federal immigration laws. By giving local governments this power, the Act attempts to override the Supreme Court’s ruling in *Arizona v. United States*, which held that states are limited in their ability to enact immigration laws because immigration law is in the federal domain. The SAFE Act would not only run contrary to the Court’s holding in *Arizona*, but would also create a unworkable system of conflicting, burdensome, and potentially discriminatory laws. In fact, the SAFE Act will expressly require the federal government to reenact certain federal-state immigration enforcement models that were previously rejected by DHS because they were inefficient and likely to cause discrimination and racial profiling.

Local law enforcement typically does not handle immigration enforcement and will not be adequately trained on how to enforce immigration policies while simultaneously protecting undocumented immigrants’ basic human rights. Although the SAFE Act provides that local law enforcement should receive training manuals regarding the enforcement of immigration laws, the Act does not require local law enforcement agents to participate in formal training. Even more frightening is the fact that law enforcement officers will receive immunity for actions undertaken in the course of enforcing immigration laws, regardless of whether or not they received appropriate training.

Undocumented LGBT people face grave risks of inhumane treatment at the hands of local immigration enforcement officials. A study by the National Coalition of Anti-Violence Programs demonstrates that transgender people are 3.32 times more likely to face violence from law enforcement than non-transgender individuals. In addition, transgender individuals of color are nearly 2.5 times more likely to face attacks by police than white transgender individuals. Members of the LGBT community are also more likely to be charged with certain crimes than non-LGBT individuals. For example, in New York City, law enforcement officials have arrested LGBT individuals for merely possessing condoms, which were considered evidence of prostitution. This preexisting anti-LGBT prejudice would only worsen the impact of local immigration laws on undocumented LGBT individuals. Because police officers are already more likely to target LGBT individuals, undocumented LGBT individuals would face tremendous risk of being wrongfully charged with a crime and facing immediate detention and deportation.

Permitting local police to enforce immigration laws may also mean undocumented LGBT immigrants will be less likely to report serious crimes. As Sergio Diaz, Chief of Police in the California city of Riverside puts it,
“[W]hen law enforcement officers are perceived to be an arm of immigration, there are people in the immigrant community who will avoid contact with the police and anyone else in the criminal justice system. They don’t report crimes, they don’t identify criminals, and they don’t give testimony to the police; nor do they do so in court. This is an advantage only for criminals.”

If local police are charged with enforcing federal immigration laws, undocumented LGBT immigrants who are victims of offences such as anti-gay hate crimes may be too afraid to seek police protection. There has been an increase over the past year in violence against LGBT people across the country. LGBT people are often reluctant to report these incidents because of a fear that they will be further victimized by the police. For example, many undocumented LGBT immigrants in San Francisco avoid reporting hate crimes because they fear deportation. Maria Carolina Morales, a Community United Against Violence organizer, notes that, “[Undocumented LGBT] victims of violence are seeing their survival criminalized by the state.”

F. Encouragement of Workplace Discrimination and E-Verify Errors

Numerous scholars, reports, and courts have documented the long history of pervasive discrimination against LGBT people in the workplace. One study found that “37 percent [of LGBT people] had experienced workplace harassment in the last five years.” In the largest survey of transgender people to date “90 percent of respondents reported harassment or mistreatment at work.” The proposed expansion of E-Verify will compound these problems by giving employers a pretext for discrimination. Under the proposed Legal Workforce Act, employers will be able to voluntarily submit their current employees for verification or re-verification. This creates great danger that LGBT individuals will be targeted with discrimination in the form of immigration checks. The E-Verify system is also notoriously inaccurate; subjecting all workers to it will produce a significant percentage of false results and unfair terminations.
Conclusion & Recommendations

If passed, the SAFE Act, the AG Act, the SKILLS Visa Act, and the Legal Workforce Act will have devastating effects on undocumented members of the LGBT community. Therefore, we ask Congress to reject these bills as well as any future proposals that will:

- Criminalize unlawful presence in the United States;
- Eliminate DACA, stripping thousands of Dreamers of their ability to work legally and subjecting them to deportation;
- Increase mandatory deportation and detention in the United States;
- Impose harsher penalties for immigration violations;
- Strip DHS of its ability to use prosecutorial discretion;
- Grant inexperienced state and local governments the authority to create and enforce their own immigration enforcement laws;
- Reduce workers’ earnings and limit their access to judicial and legal assistance;
- Make it more difficult for immigrants to receive sponsorship and eliminate viable pathways to citizenship;
- Make it more difficult for LGBT immigrants to find jobs and subject current LGBT employees to increased workplace discrimination.

Rejecting these proposals will not only further the goals of LGBT and immigration advocates alike, but will also ensure that individuals members of the undocumented LGBT community, such as Trina, Danilo, and Jerssay will be safe from detention and deportation.

This report demonstrates that proposed House bills pose direct threats to undocumented members of the LGBT community. Enforcement-only immigration bills threaten the LGBT undocumented with physical, sexual, and psychological harms by increasing detention and deportation. They will deplete available jobs and make it almost impossible for LGBT undocumented people to work. This report calls for immigration and LGBT advocates to work together and for Congress to pass comprehensive immigration reform that takes into account the realities and vulnerabilities of the LGBT undocumented.

Immigration legislation should not criminalize undocumented status or have a blanket requirement that all undocumented individuals be subject to mandatory detention and deportation. Any legislation that passes the House should create accessible pathways to citizenship, protect Dreamers, and provide greater government and judicial oversight.
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6 Id. at 1, 6.
7 Id. at 1–2.
8 Id. at 6.
9 See generally Jaime M. Grant et al., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY, (2011), http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf (documenting how LGBT individuals are routinely subject to widespread discrimination because of their gender identity).
10 Id. at 24–25.
12 ORAM, supra note 11.
13 Burns, supra note 5, at 18–19.
14 SAFE Act.
15 E-Verify Bill.
16 AG Act.
17 SKILLS Visa Act.
19 SAFE Act, §102.
20 Id. § 602 (as amended by H. Comm. on the Judiciary June 18, 2013).
21 Id. § 108.
22 Id. § 315, § 323.
23 Id. § 602 (as amended by H. Comm. on the Judiciary June 18, 2013).
24 Id.
25 See id. §§ 101-115; Cracking the SAFE Act, supra note 18, at 4–7.
26 Cracking the SAFE Act, supra note 18, at 1.
28 See infra Part II (regarding the negative impacts of the House immigration bills on LGBT undocumented).
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32 See id.

33 See id. § 2(b)(1)(A)(ii).


35 See E-Verify Bill, § 8.

36 See id. § 2(b)(2)(C).

37 See id. § 3.

38 See ACLU: E-Verify Makes It Harder to Get a Job and Violates Privacy, ACLU (Sept. 21, 2011), https://www.aclu.org/immigrants-rights/aclu-e-verify-bill-makes-it-harder-get-job-and-violates-privacy (although this article refers to another House bill proposed in 2011, the effects described in this summary are essentially the same as those of the E-Verify Bill currently before the House).

39 The 10 Big Problems with E-Verify, ACLU (May 2013), https://www.aclu.org/files/assets/everify_white_paper.pdf (estimating that 1 in 400 workers, or 400,000 people, will be deprived of their ability to work due to mistakes made by the E-Verify system).

40 For a general overview of how E-Verify may lead to increased employment discrimination, see David Bier, Will E-Verify Have Discriminatory Results?, HUFFINGTON POST (Apr. 26, 2013), http://www.huffingtonpost.com/david-bier/will-everify-have-discrim_b_3165193.html.

41 See generally e.g., Grant et al., supra note 9.

42 Id. at 139 (“Forty percent (40%) of those who presented ID (when it was required in the ordinary course of life) that did not match their gender identity/expression reported being harassed and 3% reported being attacked or assaulted. Fifteen percent (15%) reported being asked to leave the setting in which they had presented incongruent identification.”).


44 See AG Act, § 3(c); “Agricultural Guestworker Act” Would Harm Farmworkers, supra note 43.

45 “Agricultural Guestworker Act” Would Harm Farmworkers, supra note 43.

46 See AG Act, § 3(k)(2); “Agricultural Guestworker Act” Would Harm Farmworkers, supra note 43.

47 “Agricultural Guestworker Act” Would Harm Farmworkers, supra note 43.

48 AG Act, § 218A (k)(3)(A)(i); “Agricultural Guestworker Act” Would Harm Farmworkers, supra note 43.
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“Agricultural Guestworker Act” Would Harm Farmworkers, supra note 43.

Id.

Id.

Id.


See e.g. Grant et al., supra note 9, at 50–69 (“The data show not only the rampant discrimination against transgender and gender non-conforming people, but also show that large numbers have turned to the underground economy for income, such as sex work or drug sales, in order to survive.”).


See id.

“Agricultural Guestworker Act” Would Harm Farmworkers, supra note 43.


SKILLS Act, § 105; SKILLS Act Impacts on Immigration, supra note 59.

SKILLS Act, § 106; SKILLS Act Impacts on Immigration, supra note 59.

SKILLS Act, § 105; SKILLS Act Impacts on Immigration, supra note 59.

See Burns et al., supra note 5. (“Since one’s sexual orientation and gender identity is not always readily apparent, LGBT asylum seekers are at risk of having their cases dismissed because they fail to conform to stereotypes about what it means to be a gay man or lesbian woman.”).

Cracking the SAFE Act, supra note 18, at 3.

Id. at 6.

Memorandum from John Morton, Dir. of U.S. Immigration and Customs Enforcement, to All U.S. Immigration and Customs Enforcement Field Office Directors, Agents in Charge, and Chief Counsel (June 17, 2011), available at http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf. For example, ICE agents may choose not to deport undocumented immigrants who suffer from severe mental or physical illness, who are elderly or minors, who are pregnant or nursing, or who have served in the U.S. military. Id.

Cracking the SAFE Act, supra note 18, at 7.


Id.
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1 Consideration of Deferred Action for Childhood Arrivals Process, USCIS, http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=f2ef2f194707310VgnVCM100000082ca60aRCRD&vgnextchannel=f2ef2f194707310VgnVCM100000082ca60aRCRD (last updated Jan. 18, 2013).


5 See infra note 123 and accompanying text.

6 Immigrants removed through expedited removal are barred from returning to the United States for five years or more. The DHS officer’s decision is final and, in most cases, there is no right to speak with an immigration judge. See 8 U.S.C. § 1225(b)(1)(B)(iii)(I) (2006); see also Jennifer Koh, Waiving Due Process (Goodbye), 91 N.C. L. REV. 475 (2013) for a discussion on streamlined deportation procedures that compromise due process.

7 See Cracking the SAFE Act, supra note 18, at 6–7.

8 See generally sections in Title III (The amendments “shall apply to any act or conviction that occurred before, on, or after [the enactment of this Act].”)

9 SAFE Act, § 108(a).

10 SAFE Act, § 108; Cracking the SAFE Act, supra note 18, at 5.

11 Cracking the SAFE Act, supra note 18, at 5; see generally Zadvydas v. Davis, 533 U.S. 678 (2001) (holding that immigrants may not be detained indefinitely where the United States can find no country to accept them).

12 Legal Workforce Act § 2.


14 See id.

15 See id.


17 See id. at 27.

18 Burns et at., supra note 5, at 20–21, LGBT detainees in administrative segregation can be kept in total isolation for up to twenty-three hours a day without access to library resources, outdoor recreation, or legal services that are otherwise available to detainees. Id. Segregating LGBT detainees heightens a sense of helplessness and fosters depression, increasing the risk of self-harm. Id. Administrative segregation also imposes limits on when and for what length of time detainees can visit with loved ones. Id. While immigration


See id.

See id.

See id.


SAFE Act, §§ 101-115; Cracking the SAFE Act, supra note 18, at 5.

Cracking the SAFE Act, supra note 18, at 3.

SAFE Act, § 109; Cracking the SAFE Act, supra note 18, at 5.

SAFE Act, § 110; Cracking the SAFE Act, supra note 18, at 5.


Fleischer, supra note 123.

Employment Benefits, 45 Loy. L.A. L. Rev. 715, 720–21 (2012) (“Research conducted over the past four decades yields compelling evidence that employment discrimination against LGBT people exists and that it has a range of negative effects on LGBT employees.”).

133 See id. at 721.

134 See id.

135 David Bier, Will E-Verify Have Discriminatory Results?, HUFFINGTON POST (Apr. 26, 2013, 6:26 PM) (“According to E-Verify’s 2009 audit, as many as 57% of E-Verify users prescreen employees to avoid those who are not immediately confirmed. A full two thirds take adverse actions against those who receive errors—by firing them or restricting their hours or responsibilities.”); Timothy Lee, E-verify is Supposed to Stop Undocumented Employment. It Could Also Harm Legal Workers, WONKBLOG (June 3, 2013, 10:25 AM), http://www.washingtonpost.com/blogs/wonkblog/wp/2013/06/03/e-verify-is-supposed-to-stop-undocumented-employment-it-could-also-harm-legal-workers/ (finding that “hundreds of thousands of workers could be harmed by E-Verify errors”).
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