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Attorneys for Proposed Intervenors

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA (FRESNO DIVISION)

JANINE CHANDLER, et al.,

Plaintiffs,

v.

CALIFORNIA DEP'T OF CORRECTIONS
AND REHABILITATION, et al.,

Defendants.

Case No. 1:21-cv-01657-JLT-HBK

DECLARATION OF ALEX BINSFELD

1 I, Alex Binsfeld, declare as follows:

2 1. I am the Legal Director of Transgender Gender-Variant & Intersex
3 Justice Project (“TGIJP”). My pronouns are “they” and “them.” I have been
4 working for TGIJP since 2019.

5 2. I am a California resident and a member of the California bar. I make
6 this declaration based on my own personal knowledge and my review of records
7 maintained by TGIJP. If called as a witness, I could and would testify competently
8 about the matters set forth herein.

9 3. TGIJP is a not-for-profit 501(c)(3) organization based in San
10 Francisco, California. We are a group of transgender, gender-variant, and intersex
11 (“TGI”) people—inside and outside of prisons, jails, and detention centers—
12 creating a united family in the struggle for survival and freedom. We work in
13 collaboration with others to forge a culture of resistance and resilience to strengthen
14 us for the fight against human rights abuses, imprisonment, police violence, racism,
15 poverty, and societal pressures. We seek to create a world rooted in self-
16 determination, freedom of expression, and gender justice. Our members include no-
17 to low-income TGI people who are Black or Black and Brown, and our families
18 who are in prison, formerly incarcerated, and/or targeted by the police.

19 4. TGIJP works alongside currently and formerly incarcerated
20 transgender, gender-variant, and intersex people—especially TGI people who are
21 Black or Black and Brown—advocating for them during incarceration and through
22 the re-entry process.

23 5. Our organization has a non-hierarchical decision-making model within
24 the legal team. This means that we emphasize working with incarcerated TGI
25 people to design collaborative solutions to their issues. We help with a wide range
26 of topics from individual housing and safety concerns to broader policy matters. We
27 also have a robust letter-writing program and regularly visit folks inside locked
28 facilities in order to build solidarity.

1 6. I submit this declaration in support of TGIJP's motion to intervene,
2 and to explain TGIJP's substantial interest in this litigation.

3 **History and Background of TGIJP**

4 7. TGIJP was founded in 2004 by Alexander Lee, a Soros Justice Fellow
5 from the Open Society Institute. The original purpose of TGIJP was to provide
6 legal services for TGI people, primarily those in California prisons, jails, and
7 detention centers.

8 8. In 2005, Miss Major Griffin-Gracy joined TGIJP to help run the
9 organization, which had just merged with the Transgender in Prison ("TIP")
10 Committee. TIP was originally an offshoot from the HIV-in-Prison Committee, a
11 community-based program of a grassroots organization called California Prison
12 Focus. After merging with TGIJP, TIP became the community organizing program
13 of the organization, and Miss Major was hired to oversee it. Lee left TGIJP in 2009
14 and a year later, Miss Major became the organization's first Executive Director.

15 9. From 2010 to 2014, TGIJP shifted its focus from legal service work to
16 peer legal advocacy programs. These formative years included a time where the
17 staff was entirely composed of transgender people of color, three out of four of
18 whom were formerly incarcerated transgender women of color. In 2015, TGIJP
19 hired a staff attorney, establishing an effective combination of rigorous legal
20 service work and peer advocacy power-building both inside and outside California
21 prisons, jails, and detention centers.

22 10. In late 2015, Miss Major retired and passed the torch to Miss Janetta
23 Johnson, TGIJP's current Executive Director. Under Miss Janetta's leadership, we
24 have implemented the Melene Eleneke Social-Economic Justice Grassroots Re-
25 Entry Program, which supports TGI people leaving incarceration to make sure that
26 no one slips through the cracks. Miss Janetta long dreamed of what she called a
27 "Bill of Rights" for incarcerated TGI people. SB 132 came to be as a result of,
28 among other things, Miss Janetta's vision.

TGIJP's Advocacy for Incarcerated TGI People

11. TGIJP has been engaged in advocacy work regarding appropriate housing for incarcerated TGI people in California since long before the enactment of SB 132. For instance, we have a long history of advocating for individual TGI folks seeking safer housing because of ongoing threats to their physical and emotional wellbeing.

12. TGIJP has also been actively involved in changing existing housing policies to better protect TGI people in California carceral facilities. For instance, in 2015, TGIJP collaborated with other organizations to create a housing policy for TGI folks in San Francisco jails that would give TGI people the choice to be housed according to their gender identity. This housing policy is still in place today, and it was the basis for some of the language in SB 132.

13. TGIJP has also been involved in policy advocacy at the statewide level. Prior to SB 132, TGIJP worked with Senator Scott Wiener's office and other advocates in 2017 and 2018 to develop and advocate for legislation that would benefit incarcerated TGI people who were placed in administrative segregation ("Ad Seg") for non-punitive reasons. Many TGI people are placed in Ad Seg allegedly for their own safety; while in Ad Seg, incarcerated people are not only more vulnerable to staff abuse, they also cannot access programs, which means that TGI people end up being incarcerated for a longer period of time because they cannot accumulate credits. The proposed bill, SB 990, would have allowed people who were in Ad Seg for non-punitive reasons to access programs. Unfortunately, this bill ultimately did not pass.

14. TGIJP also gathers and shares information about the experiences of incarcerated TGI people in order to gain a better understanding of the carceral climate and to circulate best practices about how to survive in such an environment. For example, not only has TGIJP received thousands of letters from TGI people incarcerated throughout the state of California in the past several years, TGIJP also

1 devotes its resources to respond to those letters with information, practical tips, and
2 limited offers of advocacy.

3 **TGIJP's Involvement in Drafting and Sponsoring SB 132 and Its**
4 **Interest in the *Chandler* Litigation**

5 15. After continuing to hear about the experiences of our inside leaders
6 and members, TGIJP decided that SB 132 was the next step in the organization's
7 advocacy work for incarcerated TGI people in California.

8 16. We joined the SB 132 Coalition, which was a collaboration of
9 advocacy organizations—including TransLatin@ Coalition, Transgender Law
10 Center, Equality California, the ACLU of California, and Lambda Legal—that
11 shaped, drafted, and fiercely advocated for SB 132 alongside its principal author,
12 Senator Scott Wiener, in the California legislature. TGIJP and the other advocacy
13 organizations involved in this endeavor also formally sponsored SB 132 throughout
14 the legislative process.

15 17. While drafting SB 132, the co-sponsoring organizations and Senator
16 Wiener's office gathered feedback from incarcerated TGI people to ensure that the
17 statute would promote their safety and dignity. The co-sponsors and author also
18 took into account other factors, such as: (1) the federal Prison Rape Elimination Act
19 ("PREA") and its implementing regulations, which already required carceral
20 agencies to consider a TGI person's own views about what housing placement and
21 search protocol would be safest for them; (2) the experiences of carceral agencies in
22 Connecticut, Massachusetts, and other jurisdictions that have adopted laws,
23 policies, or regulations for housing TGI people in facilities consistent with their
24 gender identity; and (3) the existing framework of constitutional and statutory law
25 protecting the rights of TGI people in prisons and other settings in California.

26 18. In addition to being one of the primary drafting and sponsoring
27 organizations behind SB 132, TGIJP represents the interests of many incarcerated
28 TGI people, all of whom directly benefit from SB 132. If SB 132 were invalidated

1 as a result of the *Chandler* litigation, our incarcerated members would face not only
2 a serious risk of physical and psychological harm, but also a violation of their
3 constitutional and statutory rights.

4 19. Moreover, TGIJP continues to offer one-on-one advocacy services for
5 incarcerated TGI people for a variety of issues, including the proper
6 implementation of SB 132. TGIJP is aware that CDCR has repeatedly delayed and
7 stonewalled SB 132 transfer requests made by incarcerated TGI people. For
8 instance, our incarcerated members report having to wait months on end, without
9 any explanation, for hearings on their transfer requests; having their requests
10 dropped; and receiving denials of transfer without statutorily required explanations.
11 Specifically, the CDCR website, a copy of which is attached hereto as EXHIBIT A,
12 says that as of April 17, 2022, at least 321 TGI people have requested transfers, but
13 CDCR has failed to respond to the vast majority of those requests, granting just 46
14 transfers. CDCR, *Senate Bill 132 FAQs: Housing and Searching Incarcerated*
15 *People Consistent with their Gender Identify* [sic],
16 <https://www.cdcr.ca.gov/prea/sb-132-faqs/> (last visited May 6, 2022). Some
17 members have even reported that their SB 132 transfer requests were approved, but
18 that they have been waiting for months, without adequate justification, for their
19 actual transfer to occur. In the midst of all of this, many incarcerated TGI people
20 continue to experience persistent misgendering and other gender-based harassment
21 at the hands of CDCR staff, which is in direct violation of SB 132.

22 20. Our organization is dedicated to protecting the TGI community—
23 especially incarcerated TGI folks in California who are Black or Black and
24 Brown—against violence and human rights abuses. Thus, a court decision that
25 dismantled the protections of SB 132 would seriously undermine one of TGIJP's
26 core objectives, significantly set back our advocacy work, and force us to expend
27 resources on trying to address the harms that TGI people would suffer—in relation
28

1 to their safety and dignity—due to the loss of their rights under current California
2 law.

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1 I declare under penalty of perjury of the laws of the State of California and
2 the United States that the foregoing is true and correct to the best of my knowledge
3 and belief.

4 Executed this 6th day of May 2022 at San Francisco, California

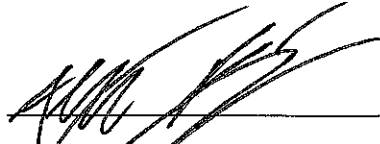
5
6 
7 Alex Binsfeld

EXHIBIT A

Senate Bill 132

FAQs


Housing and Searching Incarcerated People Consistent with their Gender Identify

Background:

Senate Bill 132, *The Transgender Respect, Agency and Dignity Act*, became effective on January 1, 2021. It allows incarcerated transgender, non-binary and intersex people to request to be housed and searched in a manner consistent with their gender identity.

The California Department of Corrections and Rehabilitation is committed to providing a safe, humane, respectful and rehabilitative environment for all incarcerated people including the incarcerated transgender, non-binary and intersex community, and is working to implement the law.

CDCR signed a contract with The Moss Group, Inc., a Washington, D.C.-based, nationally renowned criminal justice consulting firm, in October 2021 to provide long-term policy recommendations to help ensure successful continued implementation of SB 132.

How many incarcerated transgender, non-binary and intersex people are there in state prison? 

As of April 17, 2022, there are 1,503 incarcerated people identified as transgender, non-binary and intersex. (This number is based

on incarcerated people who self-identify using the Gender Identity Questionnaire.)

CDCR created a report of the incarcerated population by gender identity. It can be found on CDCR's population reports (<https://www.cdcr.ca.gov/research/population-reports-2/>) webpage.

Why is CDCR housing transgender people based on their gender identity?



Who will decide if an incarcerated person can be housed based on their gender identity?



How are gender-based housing requests evaluated?



Is the placement to an institution in accordance with an incarcerated person's gender identity automatic upon their request?



How many people housed in male institutions have requested to be housed in a female institution, how many were approved, and how many were denied?



As of April 17, 2022, 311 people housed in male institutions have requested to be housed in a

female institution.

- 46 were approved for transfer
- 12 were denied
- 27 changed their minds

The remaining requests are being reviewed.

How many people housed in female institutions have requested to be housed in a male institution, how many were approved, and how many were denied?



As of April 17, 2022, 10 individuals housed in a female institution have requested to be housed in a male institution. The requests are under review.

Will housing transgender women in a female institution put the safety of cisgender women at risk?



Have there been assaults by transgender women on cisgender women?



Could implementing this policy result in pregnancy?



Are condoms provided in female



institutions?

Is there a risk that cisgender men will falsely claim to be transgender women in order to be housed with women?

+

How does CDCR determine if an incarcerated person is transgender?

+

Does a transgender person have to have gender-affirming surgery to be housed at an institution that matches their gender identity?

+

Are transgender people required to be on hormones if they want to be housed in an institution that corresponds with their gender identity?

+

Why can't CDCR designate a facility specifically for transgender people?

+

Will a transgender person be housed in a cell with a cisgender person?

+

What accommodations will a non-binary incarcerated person be given?

+

Once an incarcerated person is approved for housing based on gender identity, can that approval be rescinded? +

What if an incarcerated person who was previously approved for housing based on gender identity changes their mind? +

Can an incarcerated person, housed at an institution that does not match their gender identity, be searched by staff of a different gender? +

Is CDCR the first prison system to allow incarcerated people to be housed based on their gender identify? +

Usage tip: click FAQ titles to expand content. Any content that is expanded can be printed.

Note: Numbers will be updated monthly.