

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

**TANYA ASAPANSA-JOHNSON
WALKER, and**

CECILIA GENTILI,

Plaintiffs,

v.

**ALEX M. AZAR II, in his official capacity
as the Secretary of the United States
Department of Health and Human Services,
and**

**UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,**

Defendants.

CIVIL ACTION NO. _____

DECLARATION OF TANYA ASAPANSA-JOHNSON WALKER

I, Tanya Asapansa-Johnson Walker, pursuant to 26 U.S.C. § 1746, declare:

1. I am a Plaintiff in this action. I am a 57-year-old Black, transgender woman and a veteran of the United States Army.
2. I identify as pansexual, meaning that my attraction towards others is not based on their gender identity. I have endured racism, homophobia, transphobia, harassment, and violence on account of my race, perceived sexual orientation, and gender identity throughout my life.
3. I was born in Staten Island in 1963, but most of my childhood was spent in New Jersey. My family moved to North Carolina when I was a teenager.
4. I have lived in New York since 1986, and currently reside in Manhattan.
5. I am the Co-Founder of the New York Transgender Advocacy Group (“NYTAG”). NYTAG is a Trans-led organization focused on advocacy for more inclusive,

gender-based policies that benefit transgender, and gender non-conforming/non-binary (“TGNCNB”) individuals through building community leaders, educating practitioners, and influencing policy makers.

6. I represented NYTAG as a stakeholder in the Advocates Coalition, a group that included other lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) organizations and the staff of New York Governor Andrew Cuomo, focused on LGBTQ issues, including support for New York’s Gender Expression Non-Discrimination Act (“GENDA”). GENDA was successfully passed and became effective in the state of New York on February 25, 2019. GENDA amended multiple sections of the New York State Human Rights Law to add “gender identity or expression” as a protected category, and added sections to bar discrimination, harassment, and retaliation on the basis of “gender identity or expression,” which is defined as “a person’s actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender.” N.Y. Exec. L. § 292(35); *see also* N.Y.C. Admin. Code §§ 8-102, 8-107(1)(a); 9 N.Y.C.R.R. § 466.13(c). It also added gender identity and expression to the Penal Law section defining hate crimes.

7. I have been an LGBTQ rights advocate for more than 26 years and have been focused on fighting for TGNCNB rights—and for myself to be treated with basic human dignity and respect—for 17 years.

8. I have known I was transgender since I was around five years old, but I lacked the terms to describe what I knew for a long time. For years, I identified as a gay man because I lacked the terminology to express myself and live as a woman. The only time I was able to “live in my gender” was on Halloween when I was able to wear a costume.

9. People who are gender non-conforming often possess particular needs for critical medical science and health care to achieve physical and mental health and well-being. However, it is in the health care setting where I have seen and experienced some of the most abhorrent discrimination against TGNCNB people like myself.

10. I enlisted in the United States Army at 17 because I thought, at the time, that it could make me “straight,” particularly because I did not yet understand my gender identity.

11. During my service in the United States Army, I was a constant target for anti-LGBTQ harassment because I was perceived to be effeminate and gay.

12. Additionally, I was sexually assaulted. I did not report the incident because my perpetrator was male and I feared being discharged for being labeled as gay. Others even tried to “out” me and to have me dishonorably discharged.

13. Despite this, I received an honorable discharge in 1984, after completing my three-year term of service.

14. Following my service in the military in 1984, I moved home to North Carolina and eventually moved to New York in 1986. In New York I found a community of kind and caring people, as well as other TGNCNB individuals like me. Nevertheless, I continued to face discrimination and harassment.

15. For example, I studied social work at College of Staten Island for three years. I was the Lesbian Gay Group’s Facilitator until I was forced to leave the school abruptly due to discrimination and threats of violence from other students because of my perceived sexuality and gender identity. Despite my reporting these threats to the school’s administration and to City law enforcement, the threats were ignored.

16. In 1988, I was seriously injured in a car accident. My survival served as a catalyst

for me to come to terms with my identity as a woman, and I decided that life is too short for me to live unauthentically.

17. It was at this time I decided to begin the process of transitioning so that my gender expression would match my gender identity as a woman.

18. “Transitioning” for many transgender and gender non-conforming people may include a range of medical treatments and social changes, the array of which are different for each individual. For me, this meant that I began to outwardly express my identity as a woman by making changes in how I dressed, groomed, and behaved. I also sought hormones to further express my identity through my physicality. I could not, however, find or receive formal medical care and treatment for my transition. My transition was also not covered by insurance.

19. The extent to which transgender women and other TGNCNB individuals experience discrimination, abuse, and mistreatment in the health care setting is likely shocking to most people.

20. From 1990 through 2010, it was virtually impossible to find doctors or other medical providers who did not overtly reject, minimize, and, at times, even ridicule and mock my identity as a transgender woman.

21. Many transgender individuals, including myself, resort or have resorted to seeking care on the street by buying hormones and other medications on the black market to assist with transitioning, with no way of knowing whether what we are/were buying is/was even real, and without any help to administer these hormones and other medications safely.

22. Additionally, many of my transgender friends and I were unable to find employment because employers would not hire us because we are transgender.

23. Despite being a veteran of the United States Army, I have relied frequently on

food pantries and soup kitchens to eat throughout my adult life because I could not find a job as a Black transgender woman.

24. In order to pay my rent and purchase hormones, I turned to survival sex work. I know many other transgender individuals that also turned to survival sex work just to pay for their health care needs.

25. Even today, it is very difficult to find care that does not come with ignorance around gender identity issues, medical mistreatment, or humiliation and degradation of our human dignity because our fundamental identities are disrespected. This is true even in facilities that operate clinics that specifically serve the TGNCNB community.

26. As a result, many transgender people—including myself—fear seeking health care and may avoid it until absolutely urgent.

27. I am HIV-positive.

28. I believe I was infected with HIV due to sharing needles while self-treating myself with hormones to assist with my transition. I purchased the hormones on the street and from pharmacists and doctors that were willing to sell them to me for cash.

29. I am also a two-time lung cancer survivor.

30. Several important aspects of my health care needs involve my ongoing treatment related to my prior lung cancer and my ongoing HIV-positive status. The discrimination and mistreatment I experience in attempting to meet my most basic health care needs has caused me to fear for my life on more than one occasion.

31. For TGNCNB individuals, the commonplace denial of the most fundamental aspect of our identities—namely our gender identity—is a violent form of discrimination because it is an attack directly on our human dignity.

32. “Misgendering” and “deadnaming” are specific verbal assaults against TGNCNB individuals that those in the cisgender community (i.e., those people whose gender identity matches their sex assigned at birth) never have had to experience.

33. “Misgendering” is when someone refers to a person as the wrong gender or uses language to describe a person that does not align with that person’s affirmed gender. For example, calling a transgender woman a “guy” or using masculine pronouns.

34. “Deadnaming” is just as harmful as misgendering. Deadnaming occurs when someone calls or refers to a TGNCNB individual by the name that the individual was assigned at birth even if the individual requests to be referred to by a name consistent with their gender identity or legally changed their name and requests to be referred to by the now-legal chosen name. In other words, incorrectly (and usually maliciously) referring to the individual by their “birth name” or their “given name.”

35. Misgendering and deadnaming are verbal acts of violence against TGNCNB individuals. They stigmatize and dehumanize the individual, “out” the individual to others in the vicinity, cause a severe and negative impact on the individual’s self-esteem and sense of self, and expose the individual to risk of physical or bodily harm. Misgendering and deadnaming contribute to a culture that demeans the TGNCNB community, a community that is already at an increased risk of physical violence, harassment, and death.

36. I have been deadnamed and misgendered countless times in the course of seeking health care—both before and after I legally changed my name—by health care professionals, including doctors, nurses, therapists, and social workers.

37. For example, in or around 1991, because I did not have health insurance, I sought health care services from a public interest organization located in Staten Island. Specifically, I

made an appointment with a doctor in an attempt to get hormone medications to assist with my transition. However, despite identifying myself as female, the doctor at the organization diminished and dismissed my efforts to claim my identity, derisively telling me that I “dressed like a woman” because I was “unable to handle being a gay man.”

38. Rather than prescribe me appropriate medication to assist with my transition, this doctor prescribed me with schizophrenia medication without a benztropine to reduce the side effects—despite never having been diagnosed with schizophrenia by any other medical professional. The schizophrenia medication without benztropine caused me to suffer debilitating psychotropic effects of the medication. I never returned to the organization for treatment. To this date, I have never been diagnosed with schizophrenia.

39. I have also witnessed numerous TGNCNB individuals be misgendered, deadnamed, receive transphobic comments, and suffer other mistreatment in the course of seeking medical and health care.

40. For example, around 1999, I was able to find a job as a community follow-up worker and then case manager at Housing Works, a New York-based nonprofit that addresses HIV/AIDS and homelessness. My work as a case manager involved assisting TGNCNB clients with a variety of needs, including accompanying them to medical appointments to act as a literal human shield and advocate against the mistreatment and disrespect that is almost always guaranteed.

41. In my time as a case manager at Housing Works, several of my LGBT clients avoided seeking the medical treatment and care they needed because of their past experiences of discrimination, harassment, and medical neglect from health care workers. As a consequence, several of my clients died.

42. The mental and emotional toll this work took on me, combined with my own struggle to find adequate and discrimination-free health care, was overwhelming.

43. It was not until around 1999 that I was able to obtain health insurance coverage for the first time—through my job at Housing Works. Notwithstanding my coverage, I continued to face harassment and discrimination due to my gender identity.

44. Most medical practitioners lack basic cultural competence, training, and experience to treat TGNCNB individuals adequately.

45. A best-case scenario is when a medical care provider—whether a doctor, nurse, therapist, psychiatrist, or other professional—is merely ignorant but willing to learn. This means I frequently must try to educate my own medical care providers while I am receiving care. This is not something cisgender individuals encounter when seeking medical care and treatment.

46. Often, though, health care professionals are hostile towards my identity as a transgender woman, which leads to negligent, inadequate, harmful, or even abusive care, or worse, a refusal of care altogether.

47. Both doctors and nurses have refused to treat me upon realizing I am a transgender woman. I know that almost without exception, any trip to a new doctor, clinic, or hospital will be wrought with humiliation. Sometimes staff—from the receptionist to the doctor—will refuse to address me with my name or pronouns that reflect my gender identity.

48. It is a particular horror while in a crowded doctor's office waiting room to hear deadname being called, or to be addressed as "Mr." when you have specifically explained on your intake form that you are a woman and you are presenting as a woman.

49. I have had doctors' receptionists mock and laugh at me as I politely try to appeal to them to address me by my proper name or by feminine pronouns.

50. It is no surprise that many TGNCNB people avoid health care altogether, or avoid seeking treatments until or unless urgently needed. On many occasions during my life, I avoided seeking health care just to spare myself from discrimination and harassment.

51. However, my status as both HIV-positive and a two-time lung cancer survivor have necessitated health care and urgent medical care to remain alive, which will continue to be required for the rest of my life.

52. I was diagnosed with HIV around 1997, and I take two daily medications in connection with my treatment.

53. My first lung cancer scare was in 2013. One night I was coughing up blood and still did not want to go to the hospital because of the prior discriminatory treatment I had received, even though my then-boyfriend wanted to call for an ambulance. Finally, I went to the hospital the next day.

54. Before I received any treatment, a doctor and a nurse cornered me in an empty room and began asking invasive questions about my gender and my genitals, demanding to know “what” I had “down there.” I am not a medical expert, but I do not believe that my genitalia was particularly relevant to emergency treatment for lung cancer. However, the doctor and nurse were not going to help me unless I answered their questions, so I did. Only after I answered their invasive questions did they conduct any examination of me. I was diagnosed with pneumonia, prescribed medication, and discharged. However, my symptoms did not change over the course of the next five months. I had to plead with the doctors to conduct further testing, which they eventually did. On October 1, 2013, I was diagnosed with stage 3 adenocarcinoma lung cancer.

55. In January 2014, I had lung cancer surgery to have the middle lobe of my right lung removed.

56. Between 2014 and 2017, I continued to receive treatment for lung cancer that included routine tests to detect recurrence.

57. In 2017, I was diagnosed again with lung cancer, and I sought care at the same hospital where I had my first lung surgery and had been receiving ongoing treatment. My treatment there required another surgery to remove the upper lobe of my right lung.

58. The nurses assigned to care for me verbally assaulted and harassed me, and mocked my transgender identity. They refused to address me by my proper name or pronouns. Instead, one nurse told me, “I am going to call you by how I see you,” “however you look and whoever you say you are out there, in here, I am going to call you as I see you,” which I took to mean she “saw” me as a cisgender male.

59. I was not given the care at this hospital that is afforded to other patients. I was given medication that caused extreme and uncontrollable diarrhea. Rather than help me, I was left to lie in my own feces for hours, which eventually forced me out of bed (when I should have been resting to recover from major surgery) to crawl on the floor dragging my oxygen tank and IV pole across the room—all with one arm because the other was immobilized from the surgery—to the bathroom to clean myself, then clean the bathroom. I then had to crawl back to my bed to clean it and the floor before I could get any rest. While this was happening, my calls and requests for help were ignored.

60. The nurse who was particularly outspoken about misgendering me also repeatedly called unnecessary attention to my genitals. I have not yet undergone gender confirmation surgery. Another nurse violently inserted and removed a catheter, which caused me intense pain, blood loss, mental anguish, and humiliation.

61. The nurses who treated me also made a point of openly misgendering me in the

presence of other staff members, patients, and hospital visitors. In addition to being stigmatizing, dehumanizing, and humiliating, these actions violated my privacy by unnecessarily disclosing my transgender status to others.

62. During my hospital stay, I was also refused my HIV medication for nearly a week despite repeatedly demanding that it be administered. Missing HIV medications can greatly reduce their efficacy leading to detrimental health complications.

63. On one occasion when the nurse came in to administer my medication, she handed me a used cup with an unknown substance, left over from visitors earlier that day. I drank out of it and noticed an unpleasant taste as I swallowed my medications. When I requested a new, clean cup of water, the nurse gave me a dirty cup from a fast food chain that someone had brought from outside, refilled with water.

64. The nurses deliberately and repeatedly exposed my genitals to my roommate by failing to close the curtains around my bed and removing the sheets from my bed while I was lying down.

65. I complained about this mistreatment and a nurse representative apologized to me, but told me there was nothing she could do, and the mistreatment did not stop.

66. This constant abuse and humiliation prevented me from sleeping and properly recovering from surgery. I worked with a non-profit organization to send a letter detailing my treatment, but never heard from the hospital that any steps were taken in response to the letter. The hospital has since refused to see or treat me, forcing me to seek medical follow-up care at the Veteran Affairs (the "VA").

67. The discriminatory treatment that I have experienced by medical professionals and staff has resulted in me being accompanied by someone whenever I seek medical treatment

so that I have a witness in the event I experience discrimination.

68. I am currently seeking to undergo gender confirmation surgery, which is a critical and monumental step to allow me to match my gender identity with my physical self—something that I have been working towards for decades.

69. One of the prerequisites for this procedure is a letter from a medical professional stating why the gender confirmation surgery is medically necessary.

70. I tried—to no avail—to get this letter from the VA. I first met with a VA therapist in the Bronx for the purpose of obtaining this letter in 2012. But when I asked the therapist to write the letter, she refused without any explanation.

71. The VA assigned me a different therapist. But that therapist also refused to write the letter, and instead asked me if I was going to commit self-harm and whether I was depressed. The therapist further said that she did not know what to write. In response, I explained what the letter was and used my phone to show her a website that discussed gender confirmation surgery and explained the content of the required letter. Instead of reviewing the website, the therapist physically turned away from my phone and refused to write the letter.

72. I complained to the VA administration that this therapist clearly lacked cultural competence to treat members of the LGBTQ community and asked for a new therapist. To my knowledge, nothing was done to address the complaint, and I was never able to find the help necessary to obtain the letter I needed from the VA.

73. One of the VA therapists I went to also refused to write the gender confirmation letter I requested, stating only, "It is too painful," without an explanation.

74. I understand that the Department of Health and Human Services (the "Department") published a new rule on June 19, 2020 (the "2020 Rule") that rescinds critical

protections against discrimination for the LGBTQ community, including TGNCNB individuals, in the health care setting.

75. In addition to an attack on my basic human dignity, by removing the prior nondiscrimination protections, this new 2020 Rule threatens my health, my safety, and my life.

76. As a Black transgender woman with severely limited lung capacity living in New York City, the global epicenter of the COVID-19 pandemic, I am at imminent risk of death if I contract COVID-19. It has been widely reported that the risk factors for death from contracting COVID-19, which attacks the lungs, include: (i) being a racial minority; (ii) having a condition that weakens or compromises the immune system, such as HIV; and (iii) having a pre-existing lung condition. I have every single risk factor above, and the 2020 Rule, if permitted to go into effect, would allow medical professionals to deny me medical treatment or provide me with substandard care because I am transgender. This has caused me a great deal of stress and fear of contracting COVID-19 because it could lead to severely negative health consequences or even my death.

77. It is unconscionable—particularly during this global pandemic—that the Department would seek to end protections against discrimination for transgender people in receiving health care given the harsh realities we face, like the circumstances I describe above.

78. Currently, I am receiving treatment at a different facility to obtain clearance for my gender confirmation surgery. The 2020 Rule threatens my ability to obtain that surgery, which is a critical step towards my full transition to female that medical experts on the subject agree constitutes critical care for transgender individuals. In addition to certain required physical criteria for the surgery, I have learned that the list of applicants for gender confirmation surgery is long because of the number of out-of-state transgender patients seeking surgery. This is

causing me extreme anxiety and mental anguish.

79. Moreover, the 2020 Rule's elimination of protections against discrimination for the LGBTQ community will only further enable the VA's discriminatory practices, and I rely on the VA for basic care. For example, prior to legally changing my name, but when I identified as female, the doctors, nurses and staff at the VA referred to me as "Mister" and deadnamed me. When I legally changed my name and presented my name-change documents, including the judge's order granting my name change, the doctors, nurses and staff continued to misgender and deadname me.

80. My prior discriminatory experiences with the VA, coupled with the 2020 Rule, make it more likely that I will avoid necessary medical care from the VA, as well as other medical professionals, because I am afraid of further harassment, substandard care, or even denial of care.

81. In addition to health care related to my gender confirmation surgery, I currently need continuous medical check-ups and treatment in relation to my status as a two-time cancer survivor and an HIV-positive individual.

82. I need a computerized axial tomography scan (a CAT scan) of my chest every six months for the rest of my life as a result of my lung cancer diagnoses. I am currently communicating with the VA regarding my previous CAT scan results and next steps. The 2020 Rule compromises my ability to receive this care adequately and without discrimination because it would make it permissible for a medical professional or health care provider to deny me care, provide me with sub-standard care, or discriminate against me in the course of giving care, because I am transgender.

83. I must also regularly have bloodwork done every three months for the rest of my

life to ensure my HIV medication is still effective and that it is not causing any dangerous side effects. Due to the ongoing COVID-19 pandemic, I have not yet had a chance to schedule my next bloodwork appointment. The 2020 Rule compromises my ability to receive this care adequately and without discrimination because it would make it permissible for a medical professional or health care provider to deny me care, provide me with sub-standard care, or discriminate against me in the course of giving care, because I am transgender.

84. The 2020 Rule allows my health care providers and the VA to deny me critical health care necessary for my well-being and survival, including (but not limited to) my gender confirmation surgery, my regular CAT scans associated with my prior lung cancer diagnoses, and my regular bloodwork associated with my HIV-positive status.

85. The 2020 Rule allows my health care insurer and prescription drug providers to deny me access to medications necessary to complete my gender confirmation surgery and to keep me alive on account of my HIV-positive status.

86. Legal protections against discrimination of the LGBTQ community and TGNCNB individuals help curtail the pervasive abuse, mistreatment, and misconduct all too often suffered by me and the LGBTQ and TGNCNB community, particularly in health care. Without these protections, the discrimination, mistreatment, and inadequate care of the LGBTQ community and TGNCNB individuals in seeking health care will continue without redress.

87. In the face of these obstacles and with the 2020 Rule being published, fear of seeking treatment will only increase and access to health care will diminish. The reluctance to seek care will in turn lead to more serious health consequences and even deaths.

88. As a result of the 2020 Rule, I am angry and experiencing heightened and extreme anxiety, mental anguish, fear, and emotional distress about my ability to complete my gender

confirmation surgery, and receive critical care related to my lung cancer diagnoses and HIV-positive status. And even if I am able to receive such care, the 2020 Rule has caused me extreme anxiety and emotional distress not only about the quality of that care but that it will be accompanied by humiliation, mistreatment, other forms of discrimination, and even mental and physical abuse at the hands of medical professionals, as I have experienced so frequently in the past.

89. The 2020 Rule also stigmatizes me (and the rest of the LGBTQ and TGNCNB community) as an “outsider” not worthy of the same discrimination-free medical care and treatment as others. This stigma has negatively impacted my self-esteem, caused me to feel shame and hopelessness, and will likely contribute to my reluctance to seek health care treatment.

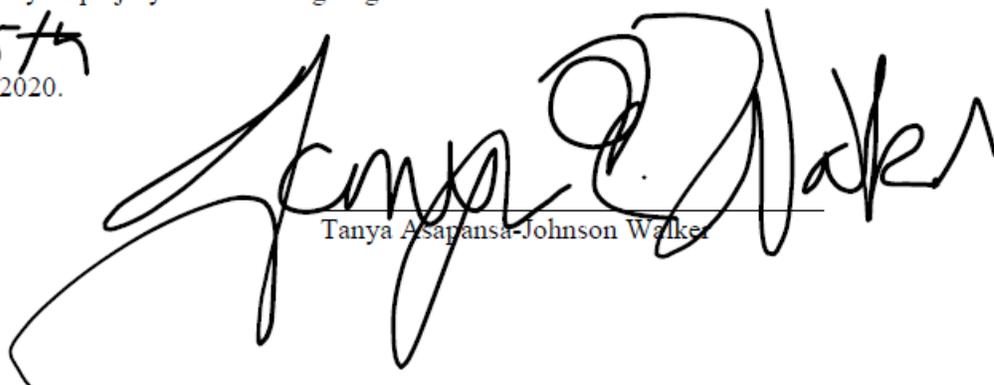
90. I am further harmed by the 2020 Rule because it eliminates my previous ability to seek recourse for any discrimination or mistreatment I experience from my health care providers or insurers due to my gender identity. This only further contributes to my anger, heightened anxiety, and mental distress about my health care caused by the 2020 Rule.

91. The 2020 Rule should be vacated or set aside—my life and the lives of so many other LGBTQ and TGNCNB individuals depend on it.

[Signature on next page]

I declare under penalty of perjury that the foregoing is true and correct.

DATED: June ^{25th} __, 2020.



Tanya Asapansa-Johnson Walker