

EXHIBIT C

**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 CECILIA GENTILI

I, Cecilia Gentili, pursuant to 26 U.S.C. § 1746, declare:

1. I am a Plaintiff in this action. I am a 48-year-old transgender woman.
2. I identify as pansexual, which means that my attraction towards others is not based on their gender identity.
3. I was born in Gálvez, in the state of Santa Fe, Argentina in 1972. When I lived there, it was under a dictatorship for many years. I came to the United States in 2000 seeking freedoms not available in Argentina. I have been a resident of New York since 2004, and currently reside in Ridgewood, Queens.
4. Currently, I am the principal and owner of Transgender Equity Consulting, a business I founded in 2018 that provides services around transgender sensitivity and inclusion issues. Many of my clients work in health care.

5. I have also authored several pieces on transgender awareness, advocacy, and history for *The New York Times*, including “Did the ‘T’ Fall Off of ‘L.G.B.T.Q.’?” published on July 19, 2019 (<https://www.nytimes.com/2019/06/19/us/cecilia-gentili-transgender-lgbtq.html>), and “What Lorena Borjas Did for the Trans Girls of Queens,” published April 11, 2020 (<https://www.nytimes.com/2020/04/11/opinion/lorena-borjas-coronavirus.html>). I also collaborated on a book, *Trans Bodies, Trans Selves: A Resource for the Transgender Community*, edited by Jennifer Finney Boylan and published in 2015. I also appeared in Honest Accomplice Theatre’s resource workshop “The Trans Literacy Project” and the FX Networks’ award-winning drama series “Pose.”

6. I previously served as the Vice President of the Board of Directors for Transcend Legal—an organization dedicated to cultivating equitable social, medicinal, and legal recognition of transgender people by offering culturally competent, transgender-led legal representation, public policy advocacy, community empowerment, and public education.

7. I also serve as the Director of Gender Inclusion at CAI Global. CAI’s mission is to use the transformative power of education and research to foster a more aware, healthy, compassionate, and equitable world. CAI tackles the toughest health and social issues that confront populations and communities most impacted by health disparities. It works as trusted partners with numerous funders to foster and inspire change that improves the health and well-being of communities.

8. Additionally, I currently serve on the Board of Directors for Stonewall Community Foundation, a public charity that funds over 100 nonprofit organizations a year in more than 30 issue areas, and houses five scholarships programs, including the largest in the country created to support LGBTQ refugees and asylum seekers.

9. I also serve on the Board of Directors for TransLatinx Network, which offers a full spectrum of services, including support, community closet, employment training and connection, legal services, connection to health care for general wellness, HIV, STD, Hep C prevention and treatment, transition services, and more to the LGB and transgender, gender non-conforming, and non-binary (“TGNCNB”) communities in the five boroughs and metro New York City.

10. I also serve as a Board Member of the New Pride Agenda, a statewide political advocacy organization that advocates for LGBTQ rights, looking to secure equality for LGBTQ people in the state of New York.

11. From 2012-2016, I managed the Transgender Health Program at Apicha Community Health Center, a clinic in New York City that specializes in improving the health of LGBTQ individuals and people living with HIV/AIDS by increasing access to comprehensive primary care, preventative health services, mental health, and supportive services. In this position, I heard firsthand from TGNCNB individuals about the mistreatment they received seeking health care.

12. From 2016-2019, I was the Policy Director at the Gay Men’s Health Crisis, the world’s first and leading provider of HIV/AIDS prevention, care, and advocacy.

13. My first job in New York City was as an intern at the LGBT Center beginning in 2011. The LGBT Center gave me my first opportunity to be of service as a proud transgender woman in any professional context.

14. Between my community, advocacy, and consulting work, I have extensive knowledge of the realities and risks, which include harassment, discrimination, violence, and even the outright refusal to provide care, that TGNCNB individuals face in seeking health care.

15. Moreover, I have several chronic health conditions that require regular monitoring and have required me to seek emergency, life-saving care.

16. I have experienced several different forms of discrimination throughout my life, including in seeking health care.

17. During my childhood under a conservative dictatorship in Argentina, I lacked the words to describe my identity. Nevertheless, I knew from a young age that I was not a boy, and that I was queer. I spent years feeling like an outsider and I did not have the tools or vocabulary to articulate what was wrong.

18. When I was roughly 18, in Argentina, I met a transgender person, who changed my life. I saw myself in her and that gave me the confirmation I needed to express my needs. It was a revelation to find other people like me, who were going through what I was going through.

19. Immediately thereafter, I began transitioning.

20. A few years later, I moved to Miami, Florida. While I was fortunate to live in a free society, at that time, I could not find work because no one would hire a transgender woman. Because I had no income or other means to support myself, I relied on sex work to survive, which unfortunately is a harsh reality for so many in our community just to get by. This harmed my physical and mental health, but I had nowhere to turn to get treatment.

21. Even though I have been at risk for various health issues throughout my life, I have had trouble getting the care and treatment I have needed. When I did seek care, I quickly learned that it came at a high price because of my gender identity.

22. For example, while living in Miami, Florida, I went to a private doctor for a routine visit. After I took off my clothes for a physical examination, the doctor responded with shock. He made it clear that he did not want to see my body and that he could not treat me. I left

in fear and humiliation.

23. Around 2004, I moved to New York City, where I continued to rely on sex survival work. This took a huge toll on my physical and mental health. I experienced significant mental health issues and developed a drug dependence to cope. This, in turn, harmed my physical well-being. I did not have, and was afraid to seek, the medical and mental health services I needed.

24. Through the charity and kindness of others, around 2010, I checked into a long-term drug and alcohol dependence rehabilitation center where I sought treatment for the next 17 months.

25. This facility was co-ed. I was assigned to a male residential area, where I had to sleep and shower for the entire year-and-a-half I was there. It was uncomfortable for me to have to live with men for such a prolonged duration, but I was determined to break my drug dependence and found a way to manage. I was also cognizant that a charity was paying for my treatment, and I did not want to risk being told to leave.

26. In late 2011, after finishing the long-term rehabilitation treatment, I stopped engaging in survival sex work and started seeing a counselor at the LGBT Center. I also began interning for them. This marked the beginning of my advocacy for the LGBTQ community.

27. In addition to what I identified above, I have had numerous other experiences with medical providers mistreating me because of my gender identity. I have been directly told by a doctor that I should not be transgender. Others have pushed medical options that would purportedly “treat” my gender identity, even against my stated wishes. For example, one of the doctors in the long-term treatment facility refused to prescribe the hormones I needed while insisting that I could not live as a woman unless I had what she called a “sex change” operation.

The psychiatrist I saw at that facility kept saying that I used drugs because I am transgender. These opinions are based on ignorance and bias, not on science or best medical practices. Most doctors I have encountered lack the cultural competence and training necessary to adequately treat TGNCNB people.

28. The discrimination TGNCNB people like me face in seeking health care includes harassment, misgendering, deadnaming, and even actual withholding of treatment.

29. “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.”

30. “Deadnaming” occurs when someone calls or refers to a TGNCNB individual by the name that the individual was assigned at birth even though that person has chosen a new name in line with their gender identity. These are verbal acts of discrimination against TGNCNB individuals that stigmatize, dehumanize, and even “out” the individual to others in the vicinity, causing a severe and negative impact on a person’s self-esteem and sense of self, and expose that person to risk of physical or bodily harm.

31. One instance of deadnaming and misgendering I experienced was about two years ago in Miami. The provider asked me for my “real name,” spoke to me in Spanish using masculine words and pronouns, and even called me “papi.” This experience was terrible.

32. As a result of these instances of discrimination and harassment, I suffer significant anxiety whenever I need to see an unfamiliar health care provider.

33. Unfortunately, mistreatment of transgender people in seeking and receiving health care is common, so this type of fear is held by other members of the transgender community.

34. For instance, my friend, Lorena Borjas, who was a transgender woman, recently

got sick and showed symptoms indicative of COVID-19, including a cough and fever.

35. Though I urged my friend to go to the doctor, she delayed seeking treatment out of fear for how she would be treated on account of being transgender. I eventually had to call an ambulance for her because she was so sick. She ultimately passed away due to COVID-19.

36. I have also personally delayed seeking treatment due to my prior experiences and known stories from other transgender individuals.

37. For example, about 2 years ago, I had a medical issue that caused me to use the restroom constantly and experience a burning sensation when urinating.

38. I refused to seek treatment until I awoke in extreme pain at around 2:00 A.M., leaving me with no choice but to go to the emergency room.

39. While there, a triage nurse harassed and embarrassed me about my gender identity in front of a waiting room full of people. Specifically, the nurse loudly and continually pressed me to provide the date of my last menstruation, notwithstanding my own repeated explanation about my gender identity.

40. I have also sacrificed health care due to doctors' treatment of me. For instance, a dermatologist I went to several times focused too much on my genitals in a way that I felt was to satisfy his personal curiosity more than assist in my treatment, so I stopped going to him even though it meant foregoing the most effective treatment for my chronic psoriasis.

41. I understand that the Department of Health and Human Services ("the Department") has published a new rule that rescinds critical protections against discrimination for the LGBTQ community, including TGNCNB individuals, in the health care setting (the "2020 Rule"). In addition to attacking my basic human dignity, by removing these protections,

the 2020 Rule's rescission of nondiscrimination protections threatens my health, my safety, and my life.

42. Like all people, I have health needs, which the 2020 Rule puts at risk simply because of my gender identity. I also have specific, personal medical needs due to my transgender identity, which the 2020 Rule also puts at risk simply because of my gender identity.

43. For example, I take two types of hormones daily. In my personal and specific circumstances, hormone therapy is an important part of my gender-affirming care and transition process. The 2020 Rule threatens my ability to continue to take my daily hormones. Without protections against discrimination, I am afraid that I could be charged, for example, ten times more than a non-transgendered person for the same hormones, which I would be unable to pay. The 2020 Rule, therefore, is causing me extreme mental anguish, anxiety, and fear about my access to my daily hormones.

44. I also have several chronic health conditions that require ongoing, regular monitoring and treatment, including regular bloodwork.

45. The conditions that place me in the most imminent, consistent danger are chronic obstructive pulmonary disease ("COPD") and emphysema, with which I was diagnosed in late 2018. Even after my diagnosis and treatment of these conditions, I must closely monitor my breathing and lungs because I can quickly go from slight trouble breathing to requiring emergency room treatment. For instance, I live only two or three blocks from a hospital, but have had to call an ambulance multiple times because I could not get there myself due to my breathing issues.

46. Complicating these serious lung issues, I have latent tuberculosis, which is currently asymptomatic, but requires ongoing management and could become an active infection

at a later point in my life. It also limits the types of medications that I can take, because the interaction of certain prescriptions with the disease could suppress my immune system.

47. I am also Hepatitis-C positive. Due to extensive treatment I underwent in 2016, I am considered cured because the virus is undetectable (and hopefully will remain so for the rest of my life), but I must undergo regular blood testing to confirm my status.

48. I visit my primary care physician every four months for check-ins and management of my general health, my hormone treatment, and numerous existing conditions, including my COPD, emphysema, psoriasis, Hepatitis-C positive status, and tuberculosis.

49. About ten days in advance of these visits, I get blood drawn so that my primary care physician can evaluate my health, including hormone levels.

50. My next primary care physician appointment for bloodwork and monitoring is in the next two months.

51. I currently pay a \$40 co-pay for each visit to my primary care physician.

52. I meet with a urologist about every three months for a condition related to my hormone treatment. My next appointment will be in late July or early August.

53. I also pay \$40 a visit to meet with a psychiatrist I found through my insurer. Due to my experience with the psychiatrist at the long-term treatment facility, I was wary of psychiatrists and accustomed to holding back information about myself, but the new psychiatrist has been better.

54. The medications I take daily include: Spiriva for my COPD; two types of hormones; oxybutynin; pantoprazole; Adderall; topical medicines for my psoriasis; and hydroxyzine. I pay a monthly co-pay of approximately \$185-\$220 for my prescriptions.

55. I like, and am not apprehensive about visiting, my primary care physician, but I am still fearful that my treatment and access to my hormones will be impacted by the 2020 Rule's removal of nondiscrimination protections.

56. Even in New York City, I have experienced discrimination in seeking health care. For example, my urologist regularly makes uncomfortable and unnecessary comments about my genitals. On several occasions, he has made comments assuming that I want to pursue an orchiectomy, which I have never asked for and repeatedly declined. He reduces to his biased and uninformed idea of who a transgender person is, while ignoring my individualized needs and identity. When I think about his comments, I find myself laughing. It makes me sad that I have learned to laugh at my own oppression as a way to cope with the discrimination and mistreatment I so routinely face due to my gender identity. At the same time, I know that I need this medical care, so I find myself simply "living with" this conduct.

57. Also, in late 2018, a nurse in the hospital where I sought emergency treatment for my COPD told me that "we do not have any male rooms" when she found out I am transgender, even though I have and expressed the need and right to be in a woman's room.

58. My current health conditions, particularly my COPD and emphysema, place me in constant health risk because I travel frequently for work, typically once or twice a month for around a week at a time. In other words, nearly half of my life is lived on the road. I generally avoid seeking any sort of medical treatment or health care outside of New York City for fear of discrimination and mistreatment based on my gender identity, but due to my work travel requirements, there may come a time when I have no choice.

59. I suffer great fear and anxiety about what I would do, or what would happen, if I became seriously ill while on a trip. In many places throughout the country, there are no medical

health care providers who have had any experience with the TGNCNB community, ignorance and bias is the norm, and there are no protections against discrimination at the state or local level. The 2020 Rule has amplified this fear and anxiety.

60. My fear and anxiety about seeking treatment from unfamiliar providers are based on my own experience and the ongoing experiences of other TGNCNB individuals. For example, around September 2019, I went to Louisiana for about 10 days. On my second day there, I spoke with several transgender women who told me that they cannot find a doctor who treats them well, so whenever they need health care, they go all the way to another state.

61. I was anxious the rest of my time in Louisiana about what might happen should I need care.

62. I was in Florida when COVID-19 became generally known as a pandemic. As a Latina, transgender woman with COPD and emphysema (i.e., serious lung conditions) 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 because I am a racial minority with pre-existing lung conditions. These factors put me at a greater risk from COVID-19 and, if I do contract it, a single biased or discriminatory doctor or nurse could truly be the difference between my life or death.

63. When I learned of the pandemic, I was terrified that, should I become sick in Florida, I would receive inadequate care. The 2020 Rule has amplified my grave fear and anxiety about contracting COVID-19. Because of the 2020 Rule, health care providers can either refuse to treat me or provide me with incomplete care on account of my being transgender, which could ultimately lead to severe health consequences or even my death.

64. When travel becomes safe again, my work will require me to travel frequently across the county. My forthcoming work travel includes lectures, conferences, and advocacy

work, but I will also likely travel across the country to teach pharmacists how to administer HIV tests (an option that only recently emerged, so widespread training is required).

65. I have imminent work-related travel planned to California, Texas, Georgia, and Florida. Because of the 2020 Rule, I am petrified to make these trips out of fear of how I would be treated were I to require health care for any reason.

66. Because the 2020 Rule leaves me without certain discrimination protections, I am afraid that health care providers could deny me critical health care that is necessary for my well-being and survival, including the regular monitoring of my lung conditions, Hepatitis-C, and even potentially life-saving intervention should I have another respiratory attack.

67. Because the 2020 Rule leaves me without certain discrimination protections, I am also afraid that my health care and prescription drug providers and my health care insurer can deny me access to my hormone treatments and other necessary medications. This would cost me hundreds, if not thousands of dollars a month. One of my routine bloodwork checks alone was billed to me at over \$300 due to a change in insurance coverage.

68. Legal protections against discrimination for the LGBTQ community and TGNCNB individuals help curtail the pervasive abuse, mistreatment, and misconduct all too often suffered by me and my fellow 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.

69. In the face of these obstacles, fear among LGBTQ and TGNCNB individuals of seeking treatment will only increase and access to health care will diminish. This reluctance to seek care will in turn lead to more serious health consequences and even deaths. LGBTQ and TGNCNB individuals' access to insurance coverage will also likely decrease.

70. The 2020 Rule has exacerbated my risk of receiving improper, abusive, and discriminatory health care and medical treatment—merely because of my gender identity as a transgender woman.

71. As a result of the 2020 Rule, I am experiencing heightened and extreme anxiety, mental anguish, fear, and emotional distress about my ability to obtain regular, adequate, and discrimination-free medical care, and the eventuality that I will suffer breathing trouble and need emergency intervention. 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, and other forms of discrimination, as I have experienced so frequently in the past.

72. The 2020 Rule also creates a stigma for the entire LGBTQ and TGNCNB communities—sending a message to us all that we are “outsiders” who are not worthy of the same protections afforded to others. This stigma has led to feelings of shame and hopelessness, and negative self-esteem. It will also likely cause me to avoid seeking medical treatment when needed.

73. The 2020 Rule further harms me by eliminating my previous ability to seek recourse for any discrimination or mistreatment I receive from health care providers or insurers on account of my gender identity, which further contributes to my heightened anxiety and mental distress about my health care caused by the 2020 Rule.

74. It is unconscionable that Defendants would seek to end critical protections for transgender people against discriminatory practices in health care and pass the 2020 Rule in light of the extreme difficulties we face to receive adequate, appropriate and discrimination-free health care, like the examples described above. Further, enacting the 2020 Rule in the middle of

the COVID-19 pandemic is particularly gross and inhumane towards transgender people, given our history of health care barriers, discriminatory treatment when seeking health care, and prevalence of avoiding care altogether for fear of mistreatment—on top of any existing health conditions—all of which leads to a heightened risk of severe health consequences or death.

75. The 2020 Rule highlights the harsh reality for me and other members of the LGBT and TGNCNB communities of living in constant fear, anxiety, and uncertainty about whether or not we have certain fundamental, critical rights, simply depending upon who is in power. As the 2020 Rule shows, we are in a constant state of vulnerability because our basic human rights to live free from discrimination, particularly when seeking life or death health care treatment, can be “given” and then taken away at a whim.

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

DATED: June 25, 2020.



Cecilia Gentili