

Dallas Morning News, TX, USA

January 4, 2018

Trump likely to undo Obama-era transgender prisoners policy, ending Texas court battle

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Prisoner #64023-061 has been called many names over the years — member of the Midwest Bank Robbers, co-founder of the Aryan Republican Army, Commander Pedro, and, simply, Peter.

But for the last 20 years, this inmate has preferred a wholly different moniker: Donna.

Two decades into a life sentence, Donna Langan — ex-thief, self-described reformed white supremacist and transgender woman — was recently moved to the Federal Medical Center, Carswell, a female-only prison near Fort Worth. She's now one of a small number of trans prisoners who've successfully lobbied to be housed not according to their birth sex, but to their gender identity.

The Trump administration may change all this, however — and soon.

After fighting a yearlong suit against a group of Carswell inmates, prison officials are negotiating a settlement that could result in major changes to the way Langan — and the 472 other trans men and women in federal lockup — are treated and housed.

The settlement terms could be released in a matter of weeks, ending a legal battle that's spanned two presidential administrations and pitted a black Republican woman against a reformed white supremacist and a handful of other trans inmates. The outcome will map the future for hundreds of prisoners and provide a window into how the Trump administration views the rights of transgender Americans, both free and behind bars.

### **'A serious effort'**

In late 2016, three inmates at Carswell demanded the U.S. Bureau of Prisons remove all transgender inmates from the facility. Calling their grievance a "gender discrimination claim," the women compared being incarcerated with trans women — who were born male but identify as female — to "cruel and unusual punishment."

"My bodily rights are being violated by the Defendants housing men in the prison," lead plaintiff Rhonda Fleming wrote in January 2017. "I am being humiliated and degraded every day so that men that identify as women can be comfortable."

There are 473 self-identifying transgender offenders out of a total 184,000 total federal inmates, according to the Bureau of Prisons, or BOP. That's about one-quarter of one percent of all federal prisoners. It's unclear how many are housed with the 1,600 women at FMC Carswell, the only federal medical center for female offenders.

During President Barack Obama's tenure, the federal government fought hard for the rights of LGBT Americans, and crafted policies, regulations and laws across several agencies that protect trans men and women. Just two days before Trump took the oath of office, the BOP [released a new agency manual](#) clarifying the rights of transgender offenders in housing, strip searches and medical care. It said the identities of trans inmates should be respected and that, on a case-by-case basis, they could be moved to prisons matching their gender.

But the federal government's stance on LGBTQ rights has taken a sharp right turn since Trump took office. The Department of Education [rescinded guidelines accommodating trans kids](#) in public schools, the president [has called for a ban on transgender soldiers](#) from the U.S. armed forces and civil rights groups are calling the Justice Department's new "religious liberty" interpretations a ["license to discriminate."](#)

The U.S. Bureau of Prisons could be next.

The Alliance Defending Freedom, or ADF — [the same conservative Christian legal organization that helped the DOJ write its new guidelines](#) — is representing the plaintiffs in the negotiations with the federal government.

In interviews with *The Dallas Morning News*, ADF lawyer Gary McCaleb said he was "pretty confident" the Bureau of Prisons will change its policies for housing transgender inmates.

"We have a multitude of issues. But certainly you're going to have to find a way to separate, either in space or time, men and women in the general population," McCaleb said. "However it's done is less our concern than ensuring the privacy of women in prisons is protected."

McCaleb doesn't expect the BOP to require all transgender women to be housed in men's prisons. Trans inmates interacting with others in the yard or mess hall also is less of a concern, he said. It's the housing issue — whether transgender women are allowed to room with non-trans prisoners — that he thinks will change.

"We expect a serious effort on the part of the federal government to correct this," McCaleb said. "We need to see progress. If there's no progress, we'll be back in court."

If McCaleb's predictions are right, the move would represent a major policy shift from current federal regulations, which prohibit segregating trans inmates unless the decision is made "in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates."

Requiring trans women to be housed in all-male prisons — or separating them in women's

institutions — just because other inmates have called for their expulsion could run afoul of these regulations, civil rights attorneys said.

“Specialized housing is flatly inconsistent with the regulation,” said Margo Schlanger, a civil rights and criminal detention expert at the University of Michigan Law School. “If it’s confining (transgender inmates) not to protect them, but to protect others from them, that does not comply.”

Changing federal regulations to remove protections for trans inmates would involve a time-consuming and complex process requiring extensive stakeholder input and public comment periods to alter. And changing the corresponding federal law — [the Prison Rape Elimination Act](#) — would require Congress to unravel legislation that took years to write, pass and implement.

Schlanger also questioned why there are no transgender inmates involved in the negotiations, adding it’s “weird” the two parties seeking a settlement aren’t at odds with one another.

“You have transphobic plaintiffs’ counsel against a transphobic administration,” she said, referring to the ADF and the Trump White House, respectively. “It’s unsurprising that they’d agree with each other.”

### **‘I don’t hate these people’**

An ardent Trump supporter, the lead plaintiff is a black Republican who says she has been persecuted for her political beliefs in prison.

[Convicted in April 2009 of running a multimillion-dollar Medicaid fraud scheme](#), Rhonda Fleming has been reprimanded for devoting “a good part of her time (in prison) to filing frivolous lawsuits.” She claims prison officials have conspired to silence her — forcing her to quit a hunger strike she’d undertaken to force out the trans inmates — for political reasons.

First, the Obama administration put the rights of trans inmates over hers, she says. Now, Fleming believes the Trump administration is trying to sweep her suit under the rug during midterm election season by settling instead of going to court. She wants the feds should emulate Texas’ example, where [politicians have pushed to segregate bathrooms based on sex](#) and where [transgender women are still incarcerated with men](#) in state prisons.

“Let me be clear,” Fleming wrote in a Nov. 24 email to *The News*. “I don’t hate these people, but I have a preference for the safety of women in prison.”

This month, two additional women asked to be named as plaintiffs on the case.

They said they feel threatened by Linda Thompson, [a trans woman who intentionally robbed a Wyoming bank so she could be sent back to prison](#). Thompson self-castrated the last time she was incarcerated, and the two women complaining about her said she’s made

inappropriate comments to them while in confinement.

Thompson denies any wrongdoing. She wrote in a January 2017 letter that said these complaints aren't widespread, but come from "a small contingent of women here that don't want any trans women here."

That small contingent is now asking a judge to halt the settlement proceedings and remove all transgender inmates from women's prisons immediately. Fleming agrees with their demands, but has concerns about their motives because they're being represented by Lisa Biron, [an incarcerated lawyer who was convicted of sexually exploiting her 14-year-old daughter](#).

Fleming's other two co-plaintiffs have agreed to drop their monetary demands, McCaleb said, but not Fleming. She wants the ADF off her case, arguing the group's cozy relationship with the Trump administration raises conflict of interests concerns.

"If you guys had just been upfront this case would have been over," Fleming wrote to McCaleb this month. "Due to your attempt to deceive me, she is litigating for those inmates.

"Now you have a child molester in the case. Hope you guys are happy."

### **'The end of me'**

The story of Donna Langan, one of the trans inmates at the center of the lawsuit, is the stuff of a Hollywood action flick. While she's not the only transgender inmate mentioned in the lawsuit, Fleming points to her recent transfer as the precedent for moving other trans women to Carswell.

In the mid-1990s, Langan and the three other members of the Aryan Republican Army knocked over 22 banks in two years. Taking cues from the 1991 movie *Point Break*, they donned Richard Nixon and Ronald Reagan masks on their raids. During one Christmastime robbery, Langan dressed as Santa and yelled at frightened bank patrons to "Ho ho ho, get on the floor!"

But it wasn't just the group's rapid pace or blustery antics that put it on the fed's radar. The ARA was also spreading racist messages through videos like "Rated: Extreme Hate," where a ski-mask clad Langan advocated for ethnic cleansing. Caught, then released, by the U.S. Secret Service, Langan was eventually ratted out by his ARA co-founder.

In the courtroom, lawyers were surprised to see Langan — the wild redhead called "Commander Pedro," a warrior-sort who'd grown up traveling the world with his diplomat parents — sporting tidily manicured nails that were painted pink.

It'd later be revealed that Langan was living a double life — as Peter, the hardcore white supremacist, by day, and Donna, the feminine redhead, by night.

Two decades later, Langan says she's long renounced her racist views. *The Turner Diaries*, a white supremacist tract that was required reading for the ARA, has been replaced by biographies of transgender celebrities, she says, like Janet Mock and Caitlyn Jenner. Living at Carswell has changed her life. Langan has said after two decades behind bars, she finally feels safe to be herself.

Langan has repeatedly asked to be added as a party to the Carswell lawsuit, but hasn't received a response. Fleming claims she is dangerous; Langan has responded by submitting affidavits from friends attesting to her good behavior and feminine demeanor.

The backlash against her presence there, she says, is nothing more than a "dog and pony show" perpetrated by "shysters and pettifoggers."

"I have tried over the years to be a better person, mostly by letting go of my old attitude and ideas about race and religion," Langan said. "Someone does not choose to be transgender. It is not a lifestyle. My not being able to deal with it myself led me down a path of self destruction. My only possible redemption is to complete my transition.

"To send me away to a male prison will surely be the end of me."

<https://www.dallasnews.com/news/texas-politics/2018/01/04/trump-likely-undo-obama-era-transgender-prisoners-policy-ending-texas-court-battle>