

JENNIFER C. PIZER (SBN 152327)
jpizer@lambdalegal.org
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
4221 Wilshire Boulevard, Suite 280
Los Angeles, California 90010
Telephone: (213) 590-5903

OMAR GONZALEZ-PAGAN*
ogonzalez-pagan@lambdalegal.org
RICHARD SAENZ*
rsaenz@lambdalegal.org
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, New York
Telephone: (212) 809-8585

BRIDGET CRAWFORD*
bcrawford@immigrationequality.org
IMMIGRATION EQUALITY
594 Dean Street
Brooklyn, New York 11238
Telephone: (212) 714-2904

JEFFREY S. TRACHTMAN**
jtrachtman@kramerlevin.com
AARON M. FRANKEL**
afrankel@kramerlevin.com
JASON M. MOFF**
jmoff@kramerlevin.com
CHASE MECHANICK**
cmechanick@kramerlevin.com
KRAMER LEVIN NAFTALIS &
FRANKEL LLP
1177 Avenue of the Americas
New York, New York 10036
Telephone: (212) 715-9100

AUSTIN MANES (SBN 284065)
amanes@kramerlevin.com
KRAMER LEVIN NAFTALIS &
FRANKEL LLP
990 Marsh Road
Menlo Park, California 94025
Telephone: (650) 752-1718

* Application for admission *pro hac vice*
pending.
** Application for admission *pro hac vice*
forthcoming.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

IMMIGRATION EQUALITY, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, et al.,

Defendants.

Case No.: 4:20-cv-09258

**DECLARATION OF MADISON BLU
FAIRCHILD, DIRECTOR OF LEGAL
SERVICES AT THE TRANSLATIN@
COALITION, IN SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY
RESTRAINING ORDER, PRELIMINARY
INJUNCTION, AND STAY UNDER 5 U.S.C. §
705.**

1 I, Madison Blu Fairchild, upon my personal knowledge, hereby declare as follows:

2 1. I am the Legal Services Director for The TransLatin@ Coalition’s Legal Services
3 Project, a plaintiff in the above-captioned case.

4 2. I submit this declaration in support of Plaintiffs’ Motion for a Temporary
5 Restraining Order, Preliminary Injunction, or Stay to prevent the rule entitled *Procedures for*
6 *Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review*, 85 Fed. Reg.
7 80,274 (Dec. 11, 2020), published by the United States Department of Justice’s Executive Office
8 for Immigration Review and the United States Department of Homeland Security (the “Final
9 Rule”), from taking effect. Through its multitude of drastic regulatory changes, the Final Rule
10 seeks to severely curtail, if not eliminate, the ability of asylum applicants to obtain asylum or other
11 form of relief from life-threatening persecution. As such, the Final Rule will irreparably harm the
12 TransLatin@ Coalition, its clients, and its members.

13 3. The TransLatin@ Coalition’s Legal Services Project was founded in October of
14 2018.

15 4. As the Legal Services Director, I oversee the Legal Services Project and its
16 activities. I manage the legal staff, programming, development, and our active cases. In addition,
17 I am in communication with an array of other organizations and Pro Bono Attorneys. Originally
18 the project was dedicated to helping connect community members with Pro Bono Assistance. We
19 were able to place about 13 cases with Pro Bono attorneys. Due to the heightened need of the
20 transgender, nonbinary, gender nonconforming, and queer-bodied (“TGNC”) community, we have
21 had to hire two full time legal staff. As such, we represent TGNC individuals seeking asylum and
22 other forms of relief directly before United States Citizenship and Immigration Services
23 (“USCIS”), U.S. Immigration and Customs Enforcement (“ICE”), and the Executive Office for
24 Immigration Review (“EOIR”).
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1 *The TransLatin@ Coalition's Mission and Clients*

2 5. The TransLatin@ Coalition ("the Coalition") was founded in 2009 by a group of
3 transgender, gender nonconforming, and intersex immigrant women, as a grassroots response to
4 address the specific needs of TGNC Latin@ immigrants who live in the United States. The
5 Coalition is headquartered in Los Angeles, California. The mission of TransLatin@ Coalition is
6 to advocate for the specific needs of the transgender Latin@ community that resides in the United
7 States and to plan strategies that improve their quality of life.

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9 6. The TransLatin@ Coalition's Legal Services Project serves community members
10 who are TGNC. Our project focuses on undocumented TGNC immigrants, who tend to be low-
11 income people of color, primarily Latinx, and victims of human rights violations. A majority of
12 our clients have survived years of trauma in their country of origin as a result of their gender
13 identity and/or gender expression.

14 7. Our Legal Services Project works hand in hand with a team of award-winning case
15 workers to help our clients navigate and succeed in the United States. As such, the Coalition has
16 an Anti-Violence Program, a Re-entry Program, and Workforce Development and Emergency
17 Housing (H.O.P.E House) program. We also assist clients with applying for Refugee Cash
18 Assistance, Refugee Medical Assistance or Medi-Cal, Refugee Support Services, CalWORKs,
19 CalFresh, Supplemental Security Income/State Supplemental Payment, Social Security Cards, and
20 California Identification/California Driver's Licenses.

21
22 8. Our Legal Services Project is comprised of myself (the Legal Director) and a Staff
23 Attorney. We occasionally have a Law Student Intern and a few pro bono attorneys who take
24 cases we refer to them from those that we have screened. With their assistance we have been able
25 to accomplish things we had not dreamed our project could have done a year or two ago.
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1 9. As of the final quarter of 2020, we have several affirmative asylum cases and we
2 are preparing multiple defensive asylum cases for hearings for the 2021 year. We are also working
3 with a few Asylum and U-Visa Adjustments.

4 10. On June 15, 2020, DHS and EOIR released a Notice of Proposed Rulemaking
5 entitled *Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear*
6 *Review*, 85 Fed. Reg. 36,264 (Jun. 15, 2020), that only provided a 30-day window to submit public
7 comments. This comment period was entirely too short given that the NPRM involved substantial
8 changes that would have far-reaching ramifications for asylum seekers in the United States.
9 Moreover, the period to respond was during a time when our office was dealing with the
10 unprecedented challenges that the COVID-19 pandemic had imposed upon our organization, and
11 which had handicapped our ability to meet our clients' needs as well as respond to the NPRM
12 along with the other rules proposed around the same time. Not only were we faced with the
13 challenges of COVID-19 but our legal services project was only being staffed by myself at the
14 time and I had to devote our limited resources to manage and service all of our clients. Given our
15 commitments and the burdens draining our time during the short 30-day window to file public
16 comments, our office was not able to file a comment in such a short time period.

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19 ***Impact of the Final Rule***

20 11. The Final Rule represents a stark departure and drastic overhaul of the United States'
21 asylum system.

22 12. As outlined below, the Final Rule makes a multitude of regulatory changes that will
23 disproportionately and negatively impact the ability of LGBTQ asylum seekers to obtain asylum
24 or other forms of relief, particularly TGNC migrants like those The TransLatin@ Coalition's Legal
25 Services Projects represents, refers to Pro Bono attorneys, and otherwise serves. For example, the
26 Final Rule's provisions regarding the one-year filing deadline exception, the definitions of
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1 “persecution” and “nexus,” the burden of proof when persecution is committed by private actors,
2 the use of “cultural stereotypes” as evidence, the ability to seek asylum depending on an applicant’s
3 method and manner of entry into the United States, and the disclosure of asylum records, have a
4 particularly deleterious effect on the Legal Services Project’s clients and other TGNC asylum
5 seekers.

6 13. Additionally, the Final Rule poses a grave threat to the ability of TGNC refugees
7 the Legal Services Project directly represents, as well as those it refers to Pro Bono Attorneys. It
8 also means that the Legal Services Project will need to allocate a significant amount of staff time
9 and resources to learning the new regulation and its impact on existing and future clients,
10 conveying that information to our clients, as well as alter the way in which we conduct our client
11 representation and decide which cases we can refer to Pro Bono Attorneys.

13 *Exclusion of Gender-Based Claims*

14 14. The Final Rule prohibits asylum claims based on “gender.” 8 C.F.R §§
15 208.1(f)(1)(viii) (proposed).

16 15. While the Final Rule does not deny that LGBTQ people constitute protected a
17 particular social group, the Departments failed to respond to comments seeking clarification that
18 the Final Rule’s prohibition on asylum claims based on gender did not apply or encompass claims
19 based on sexual orientation, gender identity, or gender nonconformity. *See* 85 Fed. Reg. at 80,826-
20 80,827.

21 16. For LGBTQ asylum seekers, particularly TGNC migrants like those represented by
22 the Legal Services Project, gender language is used throughout their claims. For example, a
23 transgender woman who survives physical and sexual violence targeted at her because of her
24 gender identity has the word “gender” appearing in multiple ways in her claim. Decades of
25 precedent have regarded such claims as meritorious and worthy of a grant of asylum.
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1 17. There is a real risk, which the Departments leave unaddressed, that adjudicators
2 will construe the exclusion of gender-based claims to preclude otherwise meritorious sexual
3 orientation, gender identity, and gender nonconforming claims.

4 18. The Legal Services Project and its TGNC clients will be negatively impacted by
5 this ill-conceived and unexplained exclusion of gender-based asylum claims. The exclusion of
6 these claims will sow confusion and require us to devote more time and effort in our cases,
7 including with each client, to explain why the “gender” exclusion does apply to claims by LGBTQ,
8 particularly TGNC, asylum seekers.

9 19. By establishing this gender-based exclusion, which is unmoored from the law, the
10 Department raise an unlawful, and possibly insurmountable, barrier for the asylum claims of
11 LGBTQ asylum seekers. It will be nearly impossible to clarify for adjudicators, our clients, or the
12 attorneys we work with how this bar does not apply to LGBTQ asylum seekers. And if they
13 understand it to apply, which would represent a remarkable deviation from existing precedent, it
14 will virtually guarantee the denial of asylum claims by LGBTQ people, particularly TGNC
15 individuals like those we serve.

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18 ***Exclusion of Claims Based on Interpersonal Animus***

19 20. The Final Rule excludes asylum or withholding of removal for persecution based
20 on “personal animus or retribution.” 8 C.F.R. §§ 208.1(f)(1)(i), 1208(f)(1)(i) (proposed). It also
21 excludes “interpersonal animus in which the alleged persecutor has not targeted, or manifested
22 an animus against, other members of an alleged particular social group in addition to the member
23 who has raised the claim at issue.” 8 C.F.R. §§ 208.1(f)(1)(ii), 1208(f)(1)(ii) (proposed).

24 21. The exclusion of these interpersonal claims would dramatically impact LGBTQ
25 asylum seekers, including TGNC applicants like those we serve.
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1 22. For one, the persecution LGBTQ people, and in particular our clients, experience
2 is frequently perpetuated by private actors close to the applicant. And unfortunately, sometimes
3 the violence and torture experienced by LGBTQ refugees comes from individuals who
4 mistakenly believe they are helping the LGBTQ refugees in question. For example, it is not
5 uncommon for claims to be based on violence perpetrated by family members who use beatings
6 or corrective rape in a perverse attempt to “help” the applicant to stop being LGBTQ. Other
7 times the LGBTQ asylum seeker may have been the first LGBTQ person their persecutor has
8 ever encountered. An anti-LGBTQ family member who has never manifested animus against
9 other LGBTQ individuals – likely because they have never knowingly met LGBTQ person –
10 may specifically target the applicant with violence as a stand-in for animus against LGBTQ
11 people in general. Often times the aforementioned is based not on animus towards the applicant
12 in particular, but on cultural and societal norms and attitudes prevalent in the applicant’s country
13 of origin.

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15 23. In addition, the Final Rule creates the perverse result in which a persecutor
16 targeting one LGBTQ individual on account of that individual’s sexual orientation or gender
17 identity is not enough on its own to establish an asylum claim. If an asylum seeker is trying to
18 escape violence or potential death, it would be absurd to require the asylum seeker to investigate
19 whether their persecutor has harmed other people like them.

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21 ***The Final Rule’s Redefinition of Persecution***

22 24. The Final Rule narrows the definition of “persecution,” excluding a range of
23 commonly recognized scenarios in which the lives and safety of asylum seekers are threatened.
24 Specifically, the Final Rule creates a heightened standard by defining “persecution” to require that
25 threats be “exigent” and emphasizing that the harm be “extreme.” In addition, the Final Rule
26 excludes from the definition of “persecution” so that it “does not include intermittent harassment,
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1 including brief detentions,” or “threats with no actual effort to carry out the threats.” 8 C.F.R. §§
2 208.1(e), 1208.1(e) (proposed). The Final Rule, however, does not define “exigent” or “extreme,”
3 nor does it provide guidance on what is intermittent harassment or what efforts a persecutor would
4 have taken to give credence to their threats. It also ignores the import of cumulative harm, such
5 as a series of detentions that may be individually brief.

6 25. The Final Rule thus defines “persecution” in manner that will negatively and
7 disproportionately impact LGBTQ refugees, including our TGNC clients and community
8 members.
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10 26. Our TGNC clients often have been subjected to credible threats based on what they
11 have seen happen to other TGNC people in their countries of origin. And oft-times, they have no
12 recourse in the police who either willfully turn a blind eye to such violence against LGBTQ people
13 or actively participate in their persecution. The Final Rule thus creates the perverse incentive of
14 requiring LGBTQ asylum seekers, like our TGNC clients and members, to expose themselves to
15 risk of violence in order to meet this proposed new definition of persecution.
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17 27. The Final Rule also ignores that it is terribly commonplace for LGBTQ people to
18 be targeted, terrorized, and detained on a regular basis to express societal contempt for their sexual
19 orientation or gender identity, and to attempt to coerce them to change. Indeed, police are often
20 the instigators of the violence and persecution that LGBTQ refugees, including our TGNC clients
21 and members, experience, and that intermittent but common detentions occur frequently, each time
22 subjecting the LGBTQ refugees to abuse and sending the message they can be detained and abused
23 with impunity. The Final Rule however ignores the pernicious effect of such cumulative harms
24 may have.
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1 28. The Final Rule’s redefinition of “persecution” will negatively impact our ability to
2 obtain asylum or other relief for our TGNC clients, as well as our members’ ability to obtain such
3 relief.

4 ***Elimination of Exceptions to the One-Year Filing Deadline***

5 29. The Final Rule eliminates the exceptions to the one-year filing deadline and
6 mandates a discretionary denial of asylum to applicants who have “[a]ccrued more than one year
7 of unlawful presence in the United States prior to filing an application for asylum.” 8 C.F.R. §§
8 208.13(d)(2)(i)(D); 1208.13(d)(2)(i)(D) (proposed). This provision of the Final Rule will have dire
9 consequences for the Coalition and its Legal Services Project clients.
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11 30. For example, changes in circumstances that materially affect a TGNC applicant’s
12 eligibility are no longer considered sufficient to waive the one-year filing deadline requirement
13 under the Final Rule. This will greatly harm our community members’ claims.

14 31. A majority of our TGNC clients and community members experience their sexual
15 and gender identity journeys at different phases in their life. A TGNC individual may socially
16 transition, medically transition, and/or legally transition. A social transition is when folks begin to
17 transition, medically transition, and/or legally transition. A social transition is when folks begin to
18 express to others that they do not fall under the cisgender spectrum and begin to live openly in
19 manner consistent with their identity. For example, their gender expression begins to change. A
20 medical transition is when an individual begins to medically align their physical features with their
21 identity. Legal transition refers to when individuals seek to legally change their names and/or
22 correct the gender markers on identity documents, in a manner consistent with their identity.
23

24 32. Many of our clients and community members are at different stages of their journey
25 to self-discovery or realization that they are TGNC when they enter the United States, including
26 sometimes after years of being in the United States. Some of them are taught that being
27 “gay/homosexual” are one in the same as being TGNC in their countries, while others fear going
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1 through any type of transition around their identity because they fear putting themselves at risk.
2 Some may not have come to terms with their identity due to family rejection and the very
3 persecution they fear being returned to once they realize they are TGNC.

4 33. Simply put, many of our TGNC clients and community members sometimes lack
5 the social terminology or social awareness of their identities until later in life. This rule would
6 prevent individuals who have found themselves in the United States from applying for protections
7 for asylum or other forms of relief. And when returned, they would be subjected to the persecution
8 and violence with impunity that TGNC individuals face in their countries of origin.
9

10 ***Waiver of “Particular Social Group” Claims First Asserted on Appeal or in a Motion to Reopen
11 or for Reconsideration***

12 34. The Final Rule would prohibit applicants from seeking asylum based on
13 membership in a particular social group (“PSG”) if they did not immediately assert and adequately
14 define the contours of that PSG in their initial application. This unprecedented prohibition would
15 require applicants to immediately and clearly articulate every cognizable PSG before the
16 Immigration Judge or forever lose the opportunity to present it, even on a motion to reopen or for
17 reconsideration based on changed circumstances or where an applicant was represented by
18 ineffective counsel.
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20 35. This requirement poses barriers to LGBTQ asylum seekers, like our TGNC clients
21 and community members. As we previously explained, our clients arrive asking for asylum at
22 different stages of their gender and sexual self-discovery journey. The mandatory waiver of
23 “particular social group” claims directly injures our clients’ and members’ ability to rely on their
24 truth to advocate for relief.

25 36. Every one of our TGNC clients and members comes to an understanding of who
26 they are at different points in their lives. Moreover, they often arrive to the United States with
27 definitions of gender and sexuality that are different from those that we have in the United States.
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1 In their country of origin, society may conflate sexuality and gender identity. This rule will deny
2 them the ability to use their authentic life journey to properly support their claim through to later
3 stages in their proceedings. It will also deny them the opportunity to apply the definitions expected
4 under prevalent United States notions once they are made aware of any potential differences that
5 may apply.

6 37. Our TGNC clients and members already have a difficult time existing as their true
7 self in their country of origin out of fear of persecution, and so they may arrive not yet fully
8 identifying as their true self, be it transgender, nonbinary, gender nonconforming, or queer. Thus,
9 a new definition for their “particular social group” may not be readily identified until later in the
10 proceeding. As such, this rule will irreparably harm the client and deny them the ability to have
11 their “particular social group” statement accurately represent any additional or alternative
12 definition of the “particular social group” they belong to or may be imputed to belong in.

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14 38. In addition, individuals have been represented with counsel who themselves do not
15 understand the difference between gender identity and sexual identity, and then we will be blocked
16 from correcting errors made from this ineffective assistance of counsel on appeal or with a motion
17 to reopen. Similarly, clients who had to self-represent without the knowledge to properly define
18 their own identity will be negatively impacted to better define their “particular social group” on
19 appeal or with a motion to reopen.

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21 ***Exclusion of Evidence of Prevalent Cultural Attitudes and Norms***

22 39. The Final Rule prohibits the introduction of “evidence offered in support of such
23 an application which promotes cultural stereotypes about a country, its inhabitants, or an alleged
24 persecutor,” in support of an asylum application. 8 C.F.R. §§ 208.1(g), 1208.1(g) (proposed). But
25 not only does the Final Rule fail to define what it considers “cultural stereotypes,” it also ignores
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1 that evidence of cultural attitudes toward LGBTQ people in their country of origin is highly
2 relevant and has been widely accepted as reliable.

3 40. This provision of the Final Rule creates confusion where there was none. It is thus
4 highly problematic for LGBTQ asylum applicants, including TGNC people likes our clients and
5 community members, because many, if not most, of these asylum applications do present evidence
6 of cultural attitudes toward LGBTQ people in their country of origin.

7 41. The Final Rule offers no basis for excluding this important evidence, or any cogent
8 guidance for how to prevent acceptable evidence of relevant and prevalent cultural attitudes in a
9 particular country towards LGBTQ people from being excluded. Moreover, this provision of the
10 Final Rule could be taken as preventing submission of crucial country conditions evidence many
11 LGBTQ asylum seekers, such as our TGNC clients and members, need to establish their claim and
12 to show why they cannot safely relocate to another part of their country.
13

14 ***Discretionary Factors Related to Manner of Entry and Third Country Transit***

15 42. Under the Final Rule, a “significant adverse discretionary factor” will be applied if
16 the applicant unlawfully entered the United States, transited through a third country and failed to
17 apply for asylum (unless one of three narrow exceptions apply), or used fraudulent documents or
18 entered unlawfully after transiting through a third country. Additionally, the Final Rule mandates
19 that an asylum application “will not” be favorably adjudicated as a matter of discretion if an
20 applicant stayed for more than 14 days in a transit country or if an applicant traveled through more
21 than one transit country. There are limited exceptions to this use of negative discretion.
22

23 43. A large portion of our TGNC clients and community members would be impacted
24 greatly by this adversary discretionary factors because a majority of our clients and community
25 members cannot reasonably be expected to settle or apply for asylum in countries where they
26 would be subjected to the same kind of persecution with impunity as their countries of origin.
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1 44. Many of our TGNC clients and community members are faced with the same levels
2 of gender discrimination, violence, and persecution when traveling through a third country as in
3 their countries of origin because of a culture of “machismo.” Our TGNC clients and community
4 members are chased down the streets, catcalled, verbally abused, and assaulted in these other
5 countries through which they must cross to make it to the United States.

6 45. For example, many of our TGNC clients and community members had to cross
7 through Mexico and some of them had to spend more than a few weeks in Mexico as a result of
8 our burdened immigration system in order to enter the United States. And indeed, some of our
9 clients and community members have presented themselves at the border and they are told they
10 must wait for their number to be called.

12 46. Our TGNC clients and community members have shared with us the atrocities that
13 some Mexican nationals have subjected them to at the border during these wait periods because of
14 their gender identities or gender expression. Due to these atrocities a lot of our clients and
15 community members refuse to present themselves through a formal asylum process in Mexico, as
16 they do not feel safe in Mexico. This adverse discretionary factor would create hurdles that would
17 either burden or prevent our TGNC clients and community members from being able to obtain
18 asylum.

20 47. The Coalition and its Legal Services Project will face substantial harm if such a
21 large percentage of our clients are subject to these “significant adverse discretionary factors” and
22 unfavorable adjudication due of their manner of entry into the United States.

24 48. Finally, while some of our clients and community members fit into the trafficking
25 exemption, they often times do not have the necessary REAL ID compliant proof to back their
26 claims. Some of our clients and community members are trafficked through third countries and
27 are forced into sex work or as drug mules because of their gender identity or expressions. A few
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1 of our clients and community members desperately try to report their aggressors and they are often
2 dismissed or even arrested by the Mexican authorities. Many of our clients and community
3 members fear even disclosing their traumatic pasts because of the fact that they fear repercussions
4 of the work that they did under duress.

5 ***Expansion of Firm Resettlement Bar***

6 49. The Final Rule radically expands the statutory firm resettlement bar. 8 U.S.C.
7 1158(b)(2)(A)(vi) (proposed). The Final Rule deems many LGBTQ asylum seekers who merely
8 pass through or reside briefly in third countries to be “firmly resettled” in such countries and thus
9 barred from seeking asylum, in contravention to established standards and the lived experiences
10 of many LGBTQ asylum seekers.

12 50. As noted above, many LGBTQ asylum seekers, such as TGNC migrants like those
13 we represent, must cross and sometimes briefly live in other countries in order to make it to the
14 United States. For one, they may simply not have the resources to just fly directly to the United
15 States, assuming that it is at all possible from their country of origin. For another, the countries
16 through which they must pass through or briefly reside in (including Mexico and other Latin
17 American countries) are ones in which they may suffer persecution. And LGBTQ asylum seekers
18 like our TGNC clients may need to spend time in said countries through no fault of their own, such
19 as when they have been told to do so at the border or because they need to obtain the needed funds
20 and resources to complete their journey to the United States.

22 51. Simply put, the Final Rule’s expansion of the firm resettlement bar is divorced from
23 the lived experiences of TGNC asylum seekers like our clients and will lead to the denial of the
24 applications of many of our clients and community members.

1 ***Shifting the Burden of Proof Regarding Internal Relocation***

2 52. The Final Rule sets a new standard for assessing the reasonableness of internal
3 relocation that virtually no refugee, including LGBTQ asylum seekers, can meet. It shifts the
4 burden of proof to the applicant regarding the reasonableness of relocation if the persecution was
5 committed by private actors. Whereas previously, once our clients and members showed they had
6 been persecuted on account of their TGNC identity, it was the government’s burden to show that
7 relocation was reasonable, our clients and members will now have to prove that relocation is not
8 reasonable if they were persecuted by non-state actors.
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10 53. LGBTQ refugees are particularly vulnerable to this regulatory change because such
11 applicants often experience harm that is systematically underreported in many countries, leading
12 to a paucity of reliable and available evidence of country-wide targeting. This may be because the
13 police often are the ones who abused them, or because those abused by cartel or gang members
14 are fearful that police might actually identify them to those groups, thereby placing them in
15 additional danger. And as noted above, LGBTQ people know, based on their prior experience, that
16 local police often turn a blind eye to such abuse, and/or ridicule LGBTQ individuals who come
17 forward, rendering any attempts to report abuse a futile, and humiliating, act.
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19 54. What is more, the Final Rule also categorically excludes forms of evidence
20 necessary to show why internal relocation would be unreasonable. It is hard to fathom how to
21 distinguish impermissible evidence of “cultural stereotypes” from evidence of pervasive cultural
22 bias in a country. For LGBTQ applicants fleeing private actor persecution, like our TGNC clients
23 and members, it creates an impossible scenario: Prove why no other part of the country was safe,
24 without using evidence of cultural norms and persistent abuse, and without referencing their own
25 individual experience.
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1 ***Pretermission of Certain Claims***

2 55. The Final Rule requires adjudicators to irrevocably “pretermite and deny” all
3 requests for relief from deportation if the refugee fails to establish a “prima facie claim for relief”
4 in their initial application.

5 56. Again, this provision will have a disproportionate and negative impact on LGBTQ
6 asylum seekers, including our TGNC clients and community members, as it ignores the lived
7 experiences and reality of LGBTQ people. For example, LGBTQ individuals, including TGNC
8 people like those we represent, often do not immediately identify as LGBTQ or have not come to
9 terms with their identity when they arrive at the United States. Further, based on our experience,
10 LGBTQ refugees often do not feel safe disclosing that they are LGBTQ the first time they
11 encounter a government official based on their past experiences, which often includes violence
12 perpetrated or ignored by police. Thirdly, oft times, LGBTQ people, like our TGNC clients, may
13 not understand that their LGBTQ identity (and the related persecution from which they are trying
14 to escape) provides a basis for seeking asylum. Lastly, the Final Rule ignores that many asylum
15 applicants are *pro se* or begin that way, and they may not have the necessary language skills or
16 knowledge of our already-complicated immigration system to know how to assert sufficient
17 “prima facie claim of relief” in their initial application.

18 57. Because we are not always able to represent our TGNC clients before they first file
19 their applications, the Final Rule would thus prevent us from correcting errors and advocating on
20 behalf of clients based on their true, lived experiences.

21 58. The Final Rule’s pretermission provisions will lead to the denial of otherwise
22 meritorious asylum claims from LGBTQ refugees and run afoul of nonrefoulement principles.
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1 *Expansion of Asylum Records Disclosure*

2 59. Finally, under the Final Rule, the contents of our TGNC clients' and members'
3 asylum applications will be subject to broader disclosure and be available to employees of the
4 Department of Homeland Security and the Department of Justice for law enforcement purposes.
5 This will have a chilling effect on our clients and members and place them in danger from people
6 in their home countries and even within the United States who might retaliate against them on
7 account of their LGBTQ identity.

8
9 60. Indeed, it is widely established that a person's TGNC identity is a matter of deeply
10 personal nature, and that the decision to disclose it and to whom is a deeply personal, intimate
11 decision. That is because TGNC people, including our clients and members, may not be "out" to
12 everyone in their lives.


13 61. Some of our clients have only felt comfortable coming forward and telling their
14 stories of trauma and persecution only after being assured that the information they conveyed
15 would be subject to strict confidentiality. And asylum officers routinely remind our clients during
16 their asylum interviews that their communications will be confidential and not shared with others,
17 which makes our clients feel comfortable to testify about the persecution they have suffered and
18 to name their abusers.

19
20 62. The Final Rule eliminates these confidentiality expectations and undermines our
21 clients' faith in the process. Fear and lack of understanding of the parameters of confidentiality,
22 combined with a distrust of authority arising out of their experiences in their countries of origin,
23 will lead to LGBTQ people, particularly TGNC people like those we represent and serve, to avoid
24 seeking asylum all together.

25
26 [Signature on next page.]

1 I hereby declare under penalty of perjury under the laws of the United States of America
2 that the foregoing is true and correct.

3 Executed this Seventeenth day of December 2020 in Los Angeles, California.

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6 _____
7 Madison Blu Fairchild
8 Director of Legal Services
9 The TransLatin@ Coalition
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1 **ATTESTATION PURSUANT TO L.R. 5-1(I)**

2 In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this
3 document has been obtained from any other signatory to this document.

4 By: /s/ Austin Manes

5 Austin Manes
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