

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 OLA OSAZE,
DIRECTOR OF THE BLACK LGBTQIA+
MIGRANT PROJECT, IN SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY
RESTRAINING ORDER, PRELIMINARY
INJUNCTION, AND STAY UNDER 5 U.S.C. §
705.**

1 I, Ola Osaze, upon my personal knowledge, hereby declare as follows:

2 1. I am the Director and co-founder of the Black LGBTQIA+ Migrant Project
3 (“BLMP”), 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 most asylum applicants to obtain asylum
11 or other form of relief from life-threatening persecution. As such, the Final Rule will irreparably
12 harm BLMP and its members.

13 3. BLMP was founded in December 2017 as a fiscally sponsored project. Our
14 headquarters are in Oakland, California.

15 4. As Director, I oversee all of BLMP’s operations and activities, including
16 programming and development. I coordinate with our staff, consultants, and our steering
17 committee on BLMP’s services on community building, political education, creating access to
18 direct services, and organizing across borders. As Director, I am also involved in BLMP’s
19 fundraising and grant management. I was previously the National Organizer for BLMP.

20 5. The Final Rule frustrates BLMP’s mission, imposes significant burdens on our
21 work and activities, and will cause us irreparable harm. We will have to divert significant resources
22 and risk losing funds because of these new regulations. The Final Rule will be disastrous to BLMP,
23 our members, and to other Black LGBTQIA+ migrants, causing additional trauma and harm to our
24 community.
25
26
27
28

1 6. The Black LGBTQIA+ Migrant Project was formed in response to the
2 invisibilization of Black LGBTQIA+ migrants' experiences of being undocumented, queer, and
3 Black within migrant narratives, immigration justice, and racial justice movements. BLMP
4 recognizes that our community lives in a space where racism, xenophobia, misogyny, transphobia,
5 homophobia, policing, detention and deportation, and criminalization uniquely target the daily life,
6 wellness, and safety of queer and trans Black migrants. We envision a world where all Black
7 LGBTQIA+ migrants and their loved ones have housing, bodily autonomy, health, and the ability
8 to travel freely with dignity and safety.
9

10 7. BLMP works at the local, regional, and national level to address the multifaceted
11 and intensifying attacks on our communities, we organize community and movement building
12 events around the country to reduce isolation, create support systems for trans and queer Black
13 migrants, provide support and resources for detained Black migrants, and build leadership and
14 local power to defend Black LGBTQIA+ communities.
15

16 8. BLMP engages hundreds of community members across the United States and has
17 multiple local/regional networks, including in Oakland, California; New York City, New York;
18 the Upper Midwest (Minneapolis-Saint Paul, Minnesota, Chicago, Illinois, and Detroit, Michigan);
19 Washington DC, Maryland, and Virginia (DMV); and the South. BLMP has a full-time staff of 4,
20 2 part-time staff, and 5 consultants. BLMP also has a steering committee of 11 members, who have
21 been directly impacted by the immigration system and includes current asylum seekers.
22

23 9. Since 2019, BLMP has provided services and assistance to more than 400
24 individuals. One-hundred percent (100%) of our members identify as LGBTQIA+ and 60% are
25 asylum seekers or have been granted asylum. BLMP provides services to community members
26 who are seeking asylum or other forms of immigration relief in the United States because they fear
27
28

1 that, if deported, they will be persecuted or tortured because of their sexual orientation, gender
2 identity, gender expression, or HIV status.

3 10. Our membership is comprised of directly impacted individuals who are
4 disproportionately low-income, have experienced homelessness and unstable housing, trauma
5 history, and discrimination and stigmatization because of their race, immigration status, sexual
6 orientation, gender identity, gender expression, or HIV status. BLMP membership include asylum
7 seekers who have either received asylum, have filed petitions for asylum or other immigration
8 relief, and some are in detention facilities. Many of our members have been detained in detention
9 facilities or are currently in detention facilities. Our members are uniquely vulnerable because
10 many members are unable to work in formal economies due to lack of a work permit, they have
11 trauma from persecution in their countries of origin, and unbelievable conditions in shelters and
12 detention facilities that are horrible and tortuous. Our members have unaddressed health issues,
13 lack of medical and mental health treatment, and have little to no family connections for support.
14 For these reasons, BLMP's services and programs are vital to the survival of our community
15 members.
16
17

18 11. We have over 250 members who are located across the United States. To become
19 a member, they regularly attend our regional and national community events, become an active
20 participant in our regional networks as well as programs, and/or undergo an orientation process
21 that consists of new member presentations while getting connected to BLMP leaders in their cities.
22

23 12. Members have access to BLMP's programs and for those in need, they also receive
24 financial assistance. People learn about BLMP from other community members, other immigrant
25 and LGBTQ organizations, community advocates, social media and our information is available
26 in detention facilities. We have an intake process for people who are interested in joining our
27
28

1 membership which includes attending membership orientations as well as one on one
2 conversations with our staff.

3 13. BLMP has led trainings and community gatherings throughout the United States
4 focused on transformative community organizing, healing practices to address trauma, and know
5 your rights trainings when dealing with police and the immigration system, asylum law, and
6 working with traumatized populations. Our services include organizing campaigns in support of
7 detained community members for their release and to help them connect with local support when
8 they are released; cash assistance and mutual aid for necessities such as housing, food, medical
9 care, and clothing. We provide direct support to detained members including connecting them with
10 immigration legal services. BLMP provides resources for our members that includes access to cash
11 assistance for commissary – through our mutual aid intake process and by adding funds to their
12 commissary accounts, interpretation support by connecting their attorneys to interpreters, and
13 providing expert witnesses for their asylum cases by connecting their attorneys to advocates who
14 have expertise in different countries of origin. We also provide information on what detained
15 members can do *pro se* – via facilitating conversations between the detained person and a
16 competent attorney who can offer legal advice. Other resources for our non-detained members
17 include webinars and trainings on policies that impact their lives and immigration cases,
18 connection to legal consultations on their cases, mutual aid assistance via our intake process,
19 access to wellness services, and connections to mental health professionals.
20
21

22 14. BLMP has launched the *Queer Black Migrant Survey* to collect qualitative and
23 quantitative data on our community’s experiences. BLMP’s policy work includes Congressional
24 briefings on LGBTQ Migrants in detention and Black migrant experiences in the midst of the
25 COVID-19 pandemic. BLMP submitted a complaint to DHS detailing medical neglect of 20
26 LGBTQ+ and HIV+ migrants in detention centers, demanding the release of all LGBTQ and HIV+
27
28

1 migrants, and calling for accountability for private detention centers. The complaint was
2 introduced as testimony during two congressional hearings on detention conditions, which
3 highlighted for members of Congress how anti-Blackness, homophobia and transphobia, ableism,
4 and HIV stigma render LGBTQ migrants in detention more vulnerable to human rights abuses.
5 BLMP has also worked with community advocates in California to address the conditions of Black
6 migrants subjected to solitary confinement in California detention centers. In Houston, BLMP has
7 worked with local community organizations to successfully push for a Houston Legal Defense
8 Fund which makes it possible for migrants at risk of detention and deportation to receive competent
9 and pro bono legal representation. Along with other Black migrant organizations, we submitted
10 immigration-focused policy recommendations to the Joe Biden and Kamala Harris Presidential
11 Campaign.
12

13 15. BLMP receives more than 90% of its funding through foundations. Over 70% of
14 these grants are in support of our services to immigrants in detention centers and/or at risk of
15 detention or deportation. Most of these grants mandate specific numbers of services provided and
16 people served that we must meet or risk losing funding. In 2021, we anticipate providing mutual
17 aid assistance to 400+ community members, offering support to 100 community members across
18 the country in detention and/or at risk of detention or deportation, growing our membership of
19 Black LGBTQIA+ migrants by 50%, and facilitating their accesses to services and resources. The
20 Final Rule could cause the loss of an incredible amount of funding due to BLMP's work shifting
21 to prioritize cash assistance for our members and community.
22

23
24 16. Until early 2020, we had a Memorandum of Understanding (MOU) with a non-
25 profit immigration organization that provided legal representation to our members with asylum
26 claims. Although the MOU has expired, we continue to connect our members with the organization
27 for legal services. Our members need legal services ranging from representation during their
28

1 asylum cases, appeal processes, bond requests, to legal advice on their immigration pathway
2 options. Over 90% of detention cases are asylum-related and/or focused on preventing their
3 deportations.

4 17. BLMP provides cash assistance (in the amount of \$250 and higher) to hundreds of
5 community members especially asylum seekers, asylees and detained members, provides funds
6 for bonds, and works in partnership with other organizations that provide mutual aid for basic
7 needs such as housing, food, and clothing for Black LGBTQIA+ migrants.
8

9 18. Since its founding, BLMP has served on average 20 – 30 cases per year and has
10 coordinated 5 – 7 multi-year campaigns on behalf of individuals who are in detention centers. We
11 define a case as ongoing support and interventions for individuals in detention, who are facing
12 deportation. These individuals have no other avenues of support. Our campaigns are to build
13 support and awareness about Black LGBTQIA+ migrants who are in detention facilities who need
14 community support, and often it is to provide community support for their asylum case. This
15 support includes advocating at the detention and ICE level for their release, recruiting elected
16 officials to intervene on their behalf, connecting them to legal representation, payment of bonds,
17 financial support for commissary items, and sponsorship and housing for when the individual is
18 released. The cases and campaigns are in addition to the direct services and supports to other
19 community members.
20

21 19. BLMP members are survivors of detention facilities that tortured them by placing
22 them in solitary confinement, instead of addressing the violence perpetrated against them based on
23 their sexual orientation, gender identity, and/or HIV status. Solitary confinement is torture. Our
24 member “Zsa Zsa” endured violence and persecution in Jamaica, her country of origin, which
25 drove her to seek asylum and refuge in the United States. Being both Black and migrant, she was
26 criminalized and suffered imprisonment for almost 10 years in detention. As a Black transgender
27
28

1 woman, she was subjected to solitary confinement, targeting and harassment from guards, placed
2 in men’s facilities, and experienced a host of other atrocities. BLMP launched a campaign to
3 support Zsa Zsa and demand her release.

4 20. BLMP members are survivors of trauma. We launched a campaign in support of
5 “Tayo,” a gay asylum seeker from Nigeria, who had been detained at Adelanto Detention facility
6 in California since 2016 when he surrendered himself after a traumatic trek through South and
7 Central America. He had been diagnosed with a severe mental illness and had attempted to take
8 his life due to the trauma. We organized to demand that he be released on parole so that he could
9 access desperately needed treatment for his condition.
10

11 21. Under the Final Rule, LGBTQIA+ migrants who would be otherwise be granted
12 asylum, will be denied asylum. Many of these refugees will also end up in detention. The Final
13 Rule thus adversely impacts BLMP by necessitating the diversion and reallocation of resources
14 and money to address the increase in the numbers of requests for assistance as a result of the rule.
15 As a result of the Final Rule’s impact on LGBTQIA+ migrants, BLMP will be flooded with referral
16 requests for support including financial support that BLMP does not have sufficient resources to
17 provide.
18

19 22. BLMP will also have more difficulty finding local support including immigration
20 legal services for its members. Increased demand for BLMP’s services, driven by increased fear
21 of and confusion about the impact of the Final Rule on LGBTQIA+ asylum seekers, would stretch
22 BLMP’s resources and may interfere with its ability to meet grant requirements. BLMP may not
23 be able to meet the increased demand and sustain the additional financial burdens resulting from
24 an increase in community members who need support.
25

26 23. The operational and financial pressures BLMP will likely experience due to
27 increased demand for our support as a result of the Final Rule, comes amid the COVID-19
28

1 pandemic. The COVID-19 pandemic has devastated our membership and the community that we
2 serve. Since the beginning of the COVID-19 pandemic, BLMP has given around \$215,000 in
3 financial support to over 400 LGBTQIA+ migrants who need assistance for housing, food, health
4 care, and other services. Almost all the recipients of mutual aid were ineligible for federal stimulus
5 funds. And over 50% are asylum seekers.

6 24. The Final Rule would dramatically impede BLMP's ability to obtain additional or
7 new funding to continue our services and to provide mutual aid. If we lose funding due to the Final
8 Rule, we would have to use money that we ordinarily use for mutual aid, to fund other services
9 which would decrease our ability to advocate and organize in support of Black LGBTQIA+
10 migrants to meet our grant requirements. We will also have to use more resources to pay bonds for
11 eligible asylum seekers to the extent that a bond remains an option. We will have to increase our
12 use of resources and money for mobilizing support for asylum seekers. Our budget will be
13 exhausted if we are to maintain the same level of support, despite the increased need for our
14 services and programs.
15

16 25. The Final Rule would force us to use more of our resources to connect asylum
17 seekers with legal services and to attorneys with specialized practice on asylum. We help to
18 connect our members with attorneys, but the Final Rule would shrink the number of available
19 attorneys with the required experience to understand the changes that make it almost impossible
20 for asylum seekers to be granted asylum.
21

22 26. The Final Rule makes it even more difficult or impossible to be granted asylum,
23 which upends asylum seekers lives. Our community members are at risk for loss of employment,
24 loss of money, and loss of resources. For some, this may mean remaining in the United States
25 without a lawful, documented presence, which will limit their opportunities, or leaving the United
26 States and facing a risk of persecution. Some may even decide to end their lives because of the
27
28

1 trauma they have suffered due to the persecution they have suffered and the brutality of the
2 subsequent and difficult asylum process.

3 27. The emotional impact of the Final Rule would harm all our members, which would
4 make them lose their ability to support each other – which is a core principle of our organization.
5 Because of the toll of the COVID-19 pandemic and the harm of the asylum process and other
6 collateral damage faced by our members who have been in detention facilities, BLMP has
7 contracted with a therapist for our members. BLMP pays for 3-6 sessions per member. The
8 increased fear and trauma caused by the Final Rule would make it impossible for us to provide this
9 service at the necessary level to address our member’s needs.
10

11 28. The Final Rule would force asylum seekers to show that a country’s law or policy
12 that criminalizes a group, including LGBTQIA+ people, will be enforced against them to support
13 an asylum claim. Our members and the people that we serve come from countries that criminalize
14 same-sex relationships and people based on sexual orientation or gender identity, such as most
15 African countries and Caribbean nations. It will be difficult for many, if not all, of our members
16 who have not been arrested or prosecuted under such laws, to show this despite the trauma and
17 harm that such laws have caused. No person should have to risk harm or death in order to show
18 that laws criminalizing their identity are enforced. Our members and the people that we serve are
19 stigmatized and face discrimination due to these laws and policies. They come from these countries
20 having experienced direct violence from these laws and the fear of prosecution being used against
21 them. We have members who, in their countries of origin, have been kidnapped and tortured;
22 subjected to conversion therapy by their families; arrested, beaten, and extorted by the police; shot
23 at, stabbed, and faced mob violence; and watched their partners be killed by angry mobs or the
24 police, all because of their sexual orientation and/or gender identity. We have supported members
25
26
27
28

1 who have been traumatized by the fear of prosecution or threats of blackmail related to publicly
2 disclosing their sexual orientation, gender identity, and/or HIV status.

3 29. The Final Rule is a devastating attack on asylum seekers. We formed BLMP to
4 support our members who were going through the asylum process, many having waited for months
5 and years for their application and appeals to be processed. But our members believe that their
6 applications would not be denied outright because the rules were not stacked against them and did
7 not make asylum an impossibility for most. Our members fled countries where their identities were
8 criminalized because of their sexual orientation, gender identity, and/or HIV status, to come to the
9 United States to live their lives with hope of being safe from dangers. This Final Rule crushes that
10 hope and invites adjudicators to close the asylum process off to them and others seeking refuge.
11 For BLMP, our services and programs are vital to the support and survival of our members who
12 are in detention. As result of the Final Rule, these services and programs would be exhausted and
13 we will be forced to divert our resource to fight the impossible fight of meeting the increased needs
14 of our community.
15
16

17 *[Signature on next page.]*
18
19
20
21
22
23
24
25
26
27
28

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

3 Dated this 20th day of December, 2020.

4
5 

6
7 _____
8 Ola Osaze
9 Director
10 Black LGBTQIA+ Migrant Project

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
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28