

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 CAROLINE
KORNFIELD ROBERTS, EXECUTIVE
DIRECTOR OF OASIS LEGAL SERVICES,
IN SUPPORT OF PLAINTIFFS' MOTION
FOR TEMPORARY RESTRAINING
ORDER, PRELIMINARY INJUNCTION,
AND STAY UNDER 5 U.S.C. § 705.**

1 I, Caroline Kornfield Roberts, upon my personal knowledge, hereby declare as follows:

2 1. I am the Executive Director and co-founder of Oasis Legal Services, a Plaintiff in
3 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 Oasis Legal Services and its clients.

13 3. Oasis Legal Services ("Oasis") is a 501(c)(3) non-profit corporation founded in
14 May 2017. We are located in Berkeley, California and have a paid staff of 10.

15 4. As Oasis's Executive Director, I oversee all of Oasis's operations and activities,
16 including programming and development. I am in constant, regular communication with my staff
17 who provide legal representation to LGBTQ+ immigrants and consult with *pro bono* attorneys and
18 law students working on our cases. I coordinate partnerships with other non-profits who also
19 provide legal and social services to the immigrant and LGBTQ+ communities. I have represented
20 hundreds of asylum seekers before the United States Citizenship and Immigration Service
21 ("USCIS") and Executive Office for Immigration Review ("EOIR").
22
23

24 ***Oasis's Mission and Clients***

25 5. Oasis's mission is to provide direct legal services and holistic case management to
26 LGBTQ+ asylum seekers living within the jurisdiction of the USCIS San Francisco Asylum Office.
27
28

1 Given California’s proximity to Mexico and Central America, over 95% of our clients are Latinx.
2 We also serve clients from Asia, Africa, the Middle East, and the Caribbean.

3 6. Oasis clients are undocumented immigrants, low-income people of color, and
4 victims of hate crimes. All of our clients have endured horrific violence because of their sexual
5 orientation, gender identity, and/or HIV-positive status in their countries of origin. Our clients
6 suffer from the psychological impact of trauma experienced – and the continued oppression faced
7 – as undocumented LGBTQ+ immigrants. Many Oasis clients are also HIV-positive, making them
8 even more vulnerable.
9

10 7. We have a 99% success rate in helping our clients win asylum in the United States.
11 Because of our limited resources, we cannot take on every potential client that comes to us, and
12 we carefully select our clients through a lengthy and in-depth intake process to make sure every
13 case we represent has a very high chance of winning asylum. We also want to use our limited
14 resources to make sure we are serving those who have suffered extreme persecution in their home
15 countries due to their LGBTQ+ identities.
16

17 8. In addition to intake, case preparation, application submission, and representation
18 in front of USCIS, Oasis provides individualized case management services to our clients. We
19 assist our clients in applying for social security numbers, Medi-Cal, Real IDs, and other benefits
20 for which they are eligible and educate our clients on workplace, housing, and public benefits. We
21 connect clients to newcomer programs for asylees, mental health services and support groups,
22 affordable health care, HIV treatment, emergency housing, cash assistance, job training, assistance
23 with legal name and gender changes, and legal representation for employment discrimination.
24

25 9. Oasis regularly hosts Continuing Legal Education trainings for the legal community
26 on asylum law, the nuances of LGBTQ+ asylum, culturally sensitive representation, and working
27 with traumatized populations. We also host trainings for other professionals supporting LGBTQ+
28

1 asylum seekers, including psychologists providing client evaluations. Through our online resource
2 portal, we distribute country condition research, case materials, and guides about asylum law
3 which we make available to lawyers around the country who are representing LGBTQ+ asylum
4 seekers.

5 10. In our office, Oasis staff attorneys and paralegals provide direct legal representation
6 in collaboration with committed pro bono attorneys and interns. Each year, dozens of volunteer
7 attorneys and law student interns receive training on representing LGBTQ+ asylum seekers and
8 then go on to represent clients through the different stages of their asylum case. This allows our
9 small staff to take on a high volume of cases.

10 11. Since its inception in May 2017, Oasis has filed over 600 affirmative asylum
11 applications for clients and taken on the representation of over 400 other clients who had already
12 filed for asylum but had not yet had their asylum interview. Almost 80% of the asylum clients we
13 represent do not file their asylum case within one year after their last arrival to the United States
14 because they meet the extraordinary circumstance exception to the one-year filing deadline under
15 the Immigration and Nationality Act.¹ Over two-thirds of our clients entered the United States
16 without inspection because of fleeing persecution related to their LGBTQ+ identity and nearly 15%
17 of our clients transited through at least one third country before entering the United States.

18 12. As of December 15, 2020, Oasis has over 550 clients whose asylum cases are still
19 pending with no decision; over half of these clients have been waiting more than three years to
20 receive a decision in their case from USCIS. Some of our pending asylum clients have been waiting
21 since 2014 for their asylum interview and decision.²

22
23
24
25
26
27
28

¹ INA § 208(a)(2)(D); *see also* 8 CFR §§ 208.4(a)(4),(5).

² In January 2018, USCIS changed its policy from “First In, First Out” (“FIFO”) to “Last In, First Out” (“LIFO”) with the aim of reducing the backlog by hearing all newly-filed cases within the requisite 45 days of filing. However, because USCIS did not increase the number of asylum

1 ***Impact of the Final Rule on Oasis***

2 13. The Final Rule frustrates Oasis’s mission, imposes a significant burden on our work,
3 and has already begun to cause us irreparable harm. We have had to divert and will continue to
4 divert significant resources because of these new regulations.

5 14. The regulations represent a profound change to existing law and as a result, a
6 significant amount of staff time and resources will have to be devoted to changing how our
7 organization conducts client intakes, makes case acceptance decisions, counsels clients about the
8 merits of their asylum case, and trains our pro bono volunteers and the wider legal community.
9 We will have to make fundamental changes – which will take more time and resources – in how
10 we present our clients’ cases and how we advocate for them in front of USCIS.

12 15. Since the new regulations were published, Oasis staff have spent an extra one to
13 two hours a day on the phone counseling clients who express fear about how the new rules will
14 affect their eligibility for asylum.

15 16. Our legal staff have been forced to spend time distilling the new rules into easily
16 understandable talking points and have begun the herculean task of communicating this
17 information to our more than 540 pending asylum clients and the 46 clients whose cases we have
18 accepted but not yet filed.

19 20 17. Due to the new regulations, we will have to significantly retrain our staff on how
21 to determine whether someone is eligible for asylum and how to advise potential clients about the
22 strengths and weaknesses of their asylum case so that they can make an informed decision about
23 whether to apply.
24

25
26
27 _____
28 officers available to hear cases, the “LIFO” policy has therefore created a second backlog of
cases filed between January 2018 and the present date that are still waiting for interviews.

1 18. We currently work with over twenty-five pro bono attorneys and law students.
2 These volunteers work with clients to prepare their asylum applications and represent clients at
3 their asylum interviews. We also present quarterly certified continuing legal education trainings to
4 the wider legal community on asylum law and representing LGBTQ+ asylum seekers. Due to the
5 new regulations, our Pro Bono Coordinator will have to devote time and organizational resources
6 to retraining our volunteers and revising our continuing legal education trainings, including
7 reapplying for certification from the California Bar.
8

9 19. Through our online resource portal, we distribute country condition research, case
10 materials, and guides about asylum law which we make available to lawyers around the country
11 who are representing LGBTQ+ asylum seekers. The new regulations will force our Legal Program
12 Director and Pro Bono Coordinator to spend a significant amount of time and resources on revising
13 these materials.
14

15 20. In the 30 days between when the new asylum regulations were published on
16 December 11, 2020 and its effective date of January 11, 2021, we will have shifted significant
17 resources and staff time to file as many of our pending asylum cases as we can. Before the new
18 regulations were published, we had planned to begin fifteen new asylum cases in December 2020
19 with the goal of filing them by January 31, 2021. Instead, we now will have to file at least 31 new
20 asylum applications in the period of December 11, 2020 to January 10, 2021, in addition to the 15
21 we had already planned on filing, in order to assure that every individual who we have accepted
22 as a client will not be subjected to the new regulations. This is over a 200% increase in staff time
23 and organizational resources.
24

25 21. Because of this sudden and dramatic shift in priorities, we have currently stopped
26 accepting and filing new citizenship and family petition cases and reduced the number of lawful
27 permanent residency cases we can accept a month by 25%. This means our clients who have won
28

1 asylum cannot receive our assistance in helping them petition for family members who are still out
2 of the United States thereby extending family separation. Some clients who are eligible to apply
3 for a green card based on their asylum status will now have to wait longer before they become
4 lawful permanent residents, the benefits of which include being able to travel outside of the United
5 States and petition for spouses. Our clients who are eligible to apply for citizenship will be delayed
6 in receiving the significant benefits that come with being a United States citizen, including voting
7 in federal and state elections and the ability to petition for additional family members such as
8 parents, adult children, and siblings.
9

10 22. In addition to filing more asylum cases during these 30 days, each case is taking us
11 longer to work on because of the need to advise these clients about the possibility that the new
12 rules could affect their asylum case. The rules' lack of clarity about whether certain parts of the
13 rules are retroactive or prospective is causing each case to take about an hour longer to prepare
14 resulting in 46 hours of extra work that will be performed by our staff over the next 30 days.
15

16 23. The shift in priorities also has forced us to cut back on the case management
17 services we are providing during these 30 days. We can no longer meet individually with clients
18 to assess their needs and make individualized referrals. Instead, our attorney in charge of case
19 management services is asking clients to fill out a form indicating what help they want and
20 emailing or texting general resources.
21

22 24. Oasis functions on a low bono/pro bono model and we charge client fees using a
23 sliding scale based on a client's income. Due to the profound changes the new regulations make
24 to asylum law, we will not be able to accept new clients for at least a month after the regulation's
25 effective date in order to be able to adequately train our staff and pro bono volunteers on the new
26 asylum framework. Not being able to accept new cases until we can competently advise clients
27 will cause Oasis to lose income and affect our budget.
28

1 25. By making it more difficult to qualify for asylum, the new regulations will also
2 affect our revenue and funding stream. In addition to revenue from clients, we also receive funding
3 from foundations, individual donors, and governmental contracts. Some of these grants condition
4 funding on filing a certain number of affirmative asylum cases a year and others pay a set amount
5 per case that we file. If fewer of the potential clients who come to us have cognizable asylum cases
6 because of the new regulations, we will file fewer cases and our funding will decrease. Less
7 funding means cutting our affirmative asylum program and staff in the short term and having less
8 clients to represent in residency and citizenship cases in the long term.

9
10 26. For the reasons outlined below, the new regulations will also result in more of our
11 clients having their affirmative asylum applications referred to Immigration Court and be put in
12 removal proceedings. We currently do not have the capacity to represent clients in defensive
13 asylum proceedings in Immigration Court and we handle defensive cases only in the very rare
14 occurrence that one of our affirmative clients has their asylum case referred. In our more than three
15 years of existence we have had only one client referred to Immigration Court and we were able to
16 secure asylum for her in front of the Immigration Judge.

17
18 27. Being forced to change from an affirmative asylum-based model to representing a
19 significant number of clients in Immigration Court would be extremely resource intensive. Oasis
20 would have to develop an entire new program, staff it with trained and experienced removal
21 defense attorneys, develop new case materials, and recruit new pro bono attorneys who have the
22 background and experience in defending clients in Immigration Court. Shifting to defensive
23 asylum work would severely limit our ability to use in-house trained volunteer attorneys and law
24 students to represent clients in these proceedings because of the nature of the representation and
25 the need for increased supervision. For example, unlike in affirmative asylum proceedings where
26
27
28

1 a law student can appear by themselves with the client, in removal proceedings the attorney
2 supervisor must physically appear with the law student.

3 ***Impact of the Final Rule’s Individual Provisions***

4 28. Many of the new regulations will have an especially devastating impact on LGBTQ+
5 affirmative asylum seekers like our clients. The regulations that narrow the one-year filing
6 deadline exception, limit the definitions of “persecution,” “nexus,” and “political opinion,”
7 increase the burden of proof when persecution is committed by private actors, bar the use of
8 “cultural stereotypes” as evidence, seek to limit asylum based on an applicant’s method and
9 manner of entry into the United States, and permit the disclosure of asylum records will be
10 specifically burdensome and harmful to our clients and other LGBTQ+ asylum seekers.
11

12 ***De Facto Elimination of the One Year Filing Exceptions***

13 29. LGBTQ+ asylum seekers often times face severe mental health challenges,³ which
14 affect their ability to apply for asylum. Years of trauma in their home countries and the unique
15 challenges faced by LGBTQ+ immigrants in the U.S. mean that Oasis clients and LGBTQ+ asylum
16 seekers in general experience high rates of mental health disorders like Post Traumatic Stress
17 Disorder, recurrent depression, and anxiety and panic disorders.
18

19 30. Most of our clients arrive in the United States deep in the closet and afraid to be
20 open about their gender identity and sexual orientation because of the danger that exists in their
21 home countries to be LGBTQ+. Due to a lifetime of persecution, the majority of our clients are
22
23
24

25 ³ See Ariel Shidlo and Joanne Ahola, “Mental health challenges of LGBT forced migrants,”
26 *Forced Migration Review* (April 2013), available at: <http://www.fmreview.org/sogi/shidlo-ahola.html>; see also Victoria Neilson & Aaron Morris, “The Gay Bar: The Effect of the One Year
27 Filing Deadline on Lesbian, Gay, Bisexual, Transgender, and HIV-Positive Foreign Nationals
28 Seeking Asylum or Withholding of Removal,” 8 N.Y. CITY L. REV. 233, 264 (2005).

1 unable to come out or begin the transition to affirm their gender one year after their arrival to the
2 United States.

3 31. Mental health disorders and the fear of expressing their LGBTQ+ identities prevent
4 approximately 80% of Oasis’s clients from applying for asylum within one year of entering the
5 U.S. Under the current regulatory framework, however, over 99% of these clients go on to qualify
6 for asylum because they are found to have met either the extraordinary or changed circumstance
7 exceptions to the one-year filing deadline.
8

9 32. Under the new regulations, if an Oasis client has accrued more than one year of
10 unlawful presence, their asylum application has a very high likelihood of being denied even if the
11 delay in filing was directly caused by the persecution they experienced for being LGBTQ+.

12 33. Having 80% of our clients referred to Immigration Court or even more likely,
13 having to advise 80% of our potential clients to not apply for asylum because of the high chance
14 of being denied, will harm our organization for the reasons outlined above.
15

16 ***Narrowing the Definition of Persecution***

17 34. Under the new regulations a finding of persecution will require “an intent [by the
18 perpetrator] to target a belief or characteristic.” This is very problematic for LGBTQ+ asylum
19 seekers like our clients.

20 35. Oasis has assisted hundreds of applicants who have been whipped, medically
21 treated against their will, and sexually assaulted by persecutors who targeted them for their sexual
22 orientation or gender identity not out of animus or an attempt to overcome their status, but in an
23 exhibition of the persecutor’s own self-identity as straight and cis-gender or because of purported
24
25
26
27
28

1 good intentions toward those applicants. For example, our client “Jaqueline,”⁴ a lesbian asylee
2 from Uganda, was hung by her legs from a tree and beaten by her parents with tree branches
3 because they believed she had a demon in her that was causing her to be attracted to women.
4 Jacqueline’s parents were not intending to punish her but instead believed they were doing
5 something necessary to help Jaqueline be safe from what they perceived to be a real threat.
6 Jaqueline lawfully won asylum because the protected ground of her sexual orientation was one
7 central reason for the harm she experienced. Another of our clients, “Rosa” from Mexico, was
8 raped by her uncle because of his stated belief that he could make her like men if she just
9 experienced what having sex with a man was like.
10

11 36. If the harm that “Jaqueline” and “Rosa” experienced is not seen as persecution, the
12 majority of the asylum cases we file will fail causing harm to us as an organization and also to our
13 clients.

14 37. The regulations also add a new evidentiary requirement that a law or policy that
15 criminalizes a group cannot support a claim unless an applicant can show that the law will be
16 personally enforced against them.
17

18 38. This requirement will be extremely harmful to our clients and other LGBTQ+
19 asylum seekers who come from countries where same sex relationships and transgender identities
20 are criminalized. Oasis has represented many LGBTQ+ clients from African countries where there
21 are laws on the books that make being gay a crime. The threatened prosecution – along with the
22 impunity for social violence against LGBTQ+ individuals that such criminal codes engender –
23 create a repressive environment in which actual enforcement through criminal proceedings is
24
25

26 ⁴ Any Oasis clients named in this declaration and in the Complaint filed in connection with the
27 above-captioned action on December 21, 2020 (the “Complaint”) are referred to by pseudonyms
28 to protect his safety and preserve confidentiality.

1 unnecessary to achieve the intended result. Even when the presence of these laws do not lead to
2 criminal prosecution against our clients, they still exert the same level of violence in the form of a
3 form of a silent and dehumanizing cudgel that deters an individual from seeking protection,
4 provides impunity for violence by local government authorities, and humiliates LGBTQ+
5 individuals for their very existence.

6 ***Narrowing Nexus and Excluding Claims based on Gender***

7
8 39. The new regulations will prohibit asylum claims based on “interpersonal animus or
9 retribution,” especially if the “alleged persecutor has not targeted, or manifested an animus against,
10 other members of an alleged particular social group.”

11 40. For LGBTQ+ asylum seekers like our clients, it is not uncommon to experience
12 harm that is both motivated by their sexual orientation and/or gender identity and a non-protected
13 reason. For example, our gay male clients are often physically assaulted or beaten as children while
14 being called “faggot” and other homophobic slurs by their family members. In the same breath
15 these family members might also call them “lazy” and “worthless.” This doesn’t mean the violence
16 wasn’t motivated by homophobia. Additionally, most of the time our clients do not have evidence
17 of their persecutors’ actions against other members of the LGBTQ+ community, especially if the
18 persecution happened when they were a child, because they come from places where it is not safe
19 to be openly LGBTQ+. The client is most likely the only LGBTQ+ person the persecutor knows.

20
21 41. On its face, the new regulations’ prohibition on a grant of asylum based on “gender”
22 will bar the majority of our clients from qualifying for asylum. For LGBTQ+ applicants, gender
23 language is often present throughout their claims. Oasis has assisted hundreds of applicants who
24 have been persecuted by individuals centrally motivated to commit persecutory acts on account of
25 perceived gender norm violations. The gender norm violation is the thing which identifies our
26 client to the persecutor as a member of a cognizable particular social group relating to their sexual
27
28

1 minority status. Our transgender women clients especially – who survive physical and sexual
2 violence targeted at them because of their gender identity – have the word “gender” appearing in
3 multiple ways in their claims.

4 42. Even if this prohibition on gender is not meant to prohibit LGBTQ+ asylum claims
5 as a whole, the confusion created by the regulations’ lack of clarity as to what “gender” covers
6 will cause Oasis harm because it will make it impossible for us to competently advise our clients
7 about how their asylum claims will be adjudicated under this regulation.
8

9 ***Raising the Burden of Proof when the Persecution is Committed by Private Actors***

10 43. The new regulations shift the burden of proof to the applicant in regards to
11 reasonableness of relocation if the persecution was committed by private actors. Whereas
12 previously, once our clients showed they had been persecuted on account of the LGBTQ+ identity,
13 it was the government’s burden to show that relocation was reasonable, our clients will now have
14 to prove that relocation is not reasonable if they were persecuted by non-state actors.
15

16 44. LGBTQIA+ applicants are particularly vulnerable to this change in the rules
17 because such applicants often experience harm that is systematically underreported in many
18 countries, leading to a paucity of reliable and available evidence of country-wide targeting. Oasis
19 has assisted hundreds of applicants who survived unspeakably severe past persecution in countries
20 where there is an under reporting of violence against the LGBTQ+ community for various reasons,
21 including a lack of access to reporting structures and a risk of being harmed for reporting. We have
22 seen in our clients’ experiences many instances in which victims of abuse do not report their abuse
23 to government authorities. This may be because the police were the ones who abused them, or
24 because those abused by cartel or gang members are fearful that police might actually identify
25 them to those groups, thereby placing them in additional danger. In other instances, victims know,
26 based on their prior experience, that local police turn a blind eye to such abuse, and/or ridicule
27
28

1 LGBTQ+ individuals who come forward, rendering any attempts to report abuse a futile, and
2 humiliating, act.

3 ***Barring the Use of Cultural Stereotypes as Evidence***

4 45. The new regulations mandate the exclusion of evidence of social and cultural norms
5 (“cultural stereotypes”) in a country of origin but evidence of cultural norms is often at the crux of
6 LGBTQ+ asylum claims, especially when an individual applicant’s violation of gender norms is
7 what places them in danger. For example, evidence of cultural norms is important to explain why
8 our male clients from Northern Triangle countries are beaten by their parents for trying on their
9 mother’s clothes and why our female clients from Mexico have been raped for wearing a school
10 uniform meant for boys. Evidence of social and cultural norms is indispensable to our clients’
11 claims that they were persecuted on account of protected grounds. This new ban on “cultural
12 stereotypes” will lead adjudicators to exclude relevant evidence regarding cultural norms in our
13 clients’ countries of origin and prohibit the very evidence that explains why our clients as
14 LGBTQ+ individuals are at risk in a particular country. Our clients’ asylum cases will be denied
15 because we will be prohibited from presenting the evidence needed to prove their membership in
16 a cognizable particular social group, their persecution due to that membership, and their well-
17 founded fear of returning to their home country.

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

21 46. Under the new regulations, a “significant adverse discretionary factor” will be
22 applied if the applicant unlawfully entered the United States, transited through a third country and
23 failed to apply for asylum (unless one of three narrow exceptions apply), or used fraudulent
24 documents or entered unlawfully after transiting through a third country. Additionally, the new
25 regulations mandate that an asylum application “will not” be favorably adjudicated as a matter of
26 discretion if an applicant stayed for more than 14 days in a transit country or if an applicant traveled
27
28

1 through more than one transit country. There are limited exceptions to this use of negative
2 discretion.

3 47. Two thirds of our clients have entered the country without inspection, nearly 15%
4 transited through a third country without applying for asylum, and over 10% used fraudulent
5 documents to enter the United States or entered unlawfully after transiting a third country. We are
6 well known in the immigrant LGTBQ+ community; most of our clients come to us through word
7 of mouth or through referrals from community health clinics, LGBTQ+ support groups, private
8 immigration attorneys, and other non-profits. Because we don't anticipate our referral structure to
9 change, it is unlikely that our client population will change, and we can expect that in the future it
10 is likely a large percentage of our clients will be subject to one of these "significant adverse
11 discretionary" factors without meeting any of the exceptions as they are so narrow.
12

13 48. Our clients from the Northern Triangle, who make up the majority of our clients
14 who have transited through third countries, first apply for asylum in the United States and not in
15 Mexico or other Northern Triangle countries because it is their only option for safety. Country
16 conditions show it is not safe to be LGBTQIA+ in Mexico or in the Northern Triangle. Last year
17 was the deadliest year for LGBTQIA+ individuals in Mexico since 2015 and there was a 27%
18 increase in the number of killings of LGBTQIA+ people from the year prior.⁵ Many of our clients
19 also choose to come to the United States because they have family or community support structures
20 here, or for language or cultural reasons.
21
22
23
24

25 ⁵ See Oscar Lopez, "Mexico sees deadliest year for LGBTQ+ people in five years," Thomson
26 Reuters Found. News (May 15, 2020), available at: <https://news.trust.org/item/20200515195934-guohu/>. See also, U.S. Dep't of State, 2019 Country Reports on Human Rights Practices for
27 Mexico, Guatemala, El Salvador, and Honduras, available at: <https://www.state.gov/reports-bureau-of-democracy-human-rights-and-labor/country-reports-on-human-rights-practices/>.

1 49. Oasis will face substantial harm if such a large percentage of our clients are subject
2 to “significant adverse discretionary” factor[s]” and unfavorable adjudication due of their manner
3 of entry into the United States.

4 ***Expansion of Asylum Records Disclosure***

5 50. Under the new regulations, the contents of our clients’ asylum applications will be
6 subject to broader disclosure and be available to employees of the Department of Homeland
7 Security and the Department of Justice for law enforcement purposes. This will have a chilling
8 effect on our clients and place them in danger from people in their home countries and even within
9 the United States who might retaliate against them for being LGBTQ+.

11 51. Oasis has represented hundreds of LGBTQ+ applicants who felt comfortable
12 coming forward and telling their stories of trauma and persecution only after being assured that
13 the information they conveyed would be subject to strict confidentiality. Asylum officers routinely
14 remind our clients during their asylum interviews that their communications will be confidential
15 and not shared with others and this makes them comfortable to testify about the persecution they
16 have suffered and to name their abusers. The new rule eliminates that key element of the asylum
17 interview and will undermine our clients’ faith in the process. Fear and lack of understanding of
18 the parameters of confidentiality, combined with a distrust of authority from their experiences in
19 their home countries, will lead our clients who are in need of protection to avoid seeking asylum
20 all together.
21

22 ***Inadequacy of 30-Day Comment Period***

23 52. The Notice of Proposed Rule Making was released on June 15, 2020 and public comments
24 were due by July 15, 2020. The NPRM was 161 pages long and proposed fundamental changes to
25 way asylum, withholding, and Convention Against Torture cases will be adjudicated. Oasis was
26 harmed by this thirty-day comment period because we did not have enough time to adequately
27
28

1 respond to the NPRM. Thirty days was insufficient for us to adequately research this complex and
2 expansive rule, and therefore limited the effectiveness with which we could address its many
3 aspects in our comment.
4
5

6 [Signature on next page.]
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 16 day of December, 2020 in Oakland, California.

4
5 
6 _____
7 Caroline Kornfield Roberts
8 Executive Director
9 Oasis Legal Services
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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