

Shannon Minter (SBN 168907)
Amy Whelan (SBN 215675)
Julie Wilensky (SBN 271765)
NATIONAL CENTER FOR
LESBIAN RIGHTS
870 Market Street, Suite 370
San Francisco, CA 94102
Tel.: (415) 392-6257
Fax: (415) 392-8442
sminter@nclrights.org
awhelan@nclrights.org
jwilensky@nclrights.org

*Attorneys for Amici Curiae
National Center for Lesbian
Rights et al.*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EAST BAY SANCTUARY
COVENANT, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

Case No. 18-cv-06810-JST

**MOTION FOR LEAVE TO FILE BRIEF
OF AMICI CURIAE NATIONAL
CENTER FOR LESBIAN RIGHTS ET AL.
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

Date: December 19, 2018

Time: 9:30 a.m.

Dep't: Courtroom 9

Judge: Hon. Jon S. Tigar

1 National Center for Lesbian Rights, joined by Centro Legal de la Raza, El/La Para
 2 Translatinas, GLBTQ Legal Advocates & Defenders, Immigration Equality, Lambda Legal
 3 Defense & Education Fund, Inc., and Transgender Law Center (“Amici”) seek leave to file an
 4 amici curiae brief in support of Plaintiffs’ motion for a preliminary injunction.¹ The proposed
 5 brief, which is nine pages, is attached as Exhibit A, and a proposed order is attached as Exhibit
 6 B.

7 **IDENTITIES AND INTERESTS OF AMICI CURIAE**

8 The National Center for Lesbian Rights (“NCLR”) is a national nonprofit
 9 legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual,
 10 transgender, and queer people and their families through litigation, public policy advocacy, and
 11 public education. Since its founding in 1977, NCLR has played a leading role in securing fair
 12 and equal treatment for LGBTQ people and their families in cases across the country involving
 13 constitutional and civil rights. NCLR’s Immigration Project has provided free legal assistance
 14 since 1994 to thousands of LGBTQ immigrants nationwide through, among other services, direct
 15 representation in impact cases and individual asylum cases, as well as advocacy for immigration
 16 and asylum policy reform.

17 NCLR is joined by additional amici Centro Legal de la Raza, El/La Para Translatinas,
 18 GLBTQ Legal Advocates & Defenders, Immigration Equality, Lambda Legal Defense &
 19 Education Fund, Inc., and Transgender Law Center. Statements of interest of each amicus are in
 20 the Appendix to the proposed brief.

21 Amici have a unique understanding of the harm to lesbian, gay, bisexual, transgender,
 22 and queer (“LGBTQ”) asylum seekers that will result from the interim final rule barring asylum
 23 for individuals who enter the country while covered by a presidential proclamation suspending
 24 entry at the southern border (“the Rule”), and the President’s proclamation suspending the entry
 25

26
 27 ¹ Plaintiffs consent to Amici filing an amicus brief. Defendants also consent to Amici’s filing of
 28 an amicus brief provided that the brief complies with the Court’s order addressing amicus filings
 and is no longer than half the length of the parties’ briefs.

1 of individuals who cross between ports at the southern border (“the Proclamation”). *See* Aliens
2 Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection
3 Claims, 83 Fed. Reg. 55,934 (Nov. 9, 2018); Addressing Mass Migration Through the Southern
4 Border of the United States, 83 Fed. Reg. 57,661 (Nov. 9, 2018).

5 ARGUMENT

6 Amici offer an important perspective on the issues before the Court. A district court has
7 “broad discretion to appoint amici curiae.” *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir.
8 1982), *overruled on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995). “District courts
9 frequently welcome amicus briefs from non-parties concerning legal issues that have potential
10 ramifications beyond the parties directly involved or if the amicus has ‘unique information or
11 perspective that can help the court beyond the help that the lawyers for the parties are able to
12 provide.’” *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1068 (N.D.
13 Cal. 2005) (citation omitted).

14 The proposed brief seeks to assist the Court in analyzing the harms to Plaintiffs’ clients
15 and the public interest by highlighting the acute vulnerability of LGBTQ asylum seekers and the
16 serious harms the Rule and Proclamation would inflict on this group. The proposed brief
17 explains that although asylum seekers come to the southern border from all over the world, many
18 LGBTQ people are fleeing persecution based on their sexual orientation or gender identity in
19 their home countries of Honduras, El Salvador, Guatemala, and Mexico. In addition to facing
20 violence and other persecution in their countries of origin, LGBTQ asylum seekers, especially
21 those who are transgender or gender-nonconforming, risk violence and other serious harms at the
22 southern border due to their gender identity or sexual orientation, and it is unsafe for them to
23 remain in Mexico while they await processing and entry into the United States. The effect of the
24 Rule and Proclamation is to foreclose a path to asylum for many LGBTQ refugees with
25 meritorious claims, and to place an already vulnerable group at a significantly higher risk of
26 violence and other harm.

CONCLUSION

For the reasons above, Amici request that the Court grant leave to file the proposed brief.

Dated: December 5, 2018

Respectfully submitted,

NATIONAL CENTER FOR
LESBIAN RIGHTS

By: /s Julie Wilensky

Shannon Minter
Amy Whelan
Julie Wilensky
NATIONAL CENTER FOR
LESBIAN RIGHTS
870 Market Street, Suite 370
San Francisco, CA 94102
Tel.: (415) 392-6257
Fax: (415) 392-8442

*Attorneys for Amici Curiae
National Center for Lesbian
Rights et al.*