Lawsuit Is Filed Against Trump Ban on LGBT and HIV-Positive Asylum Seekers

If the asylum ban goes forward, “the U.S. will deport countless LGBTQ and HIV-positive refugees back to persecution, torture and death.”

December 23, 2020 By Trent Straube

A new rule by the Trump administration slated to take effect January 11 makes it “virtually impossible for LGBTQ and people living with HIV fleeing persecution to secure asylum in the United States,” according to Lambda Legal, the advocacy group that, along with Immigration Equality, is spearheading a federal lawsuit to halt the rule.

> BREAKING: We just filed a lawsuit w/ @LambdaLegal against a new Trump administration rule that we’re calling the “death to asylum” ban. It eviscerates the U.S. asylum system and will cost the lives of LGBTQ and HIV-positive refugees. We must #SaveAsylum pic.twitter.com/go2uQrilbM
>
> — Immigration Equality (@IEquality) December 21, 2020

The rule does more than target those with HIV. As a Lambda Legal press release explains, “the new rule eliminates eligibility for asylum to anyone with a gender-based claim. Further, even if a judge finds that someone is eligible for asylum, the new rule declares that most refugees should be denied protection because they don’t deserve it.”

“This rule will cost hundreds of thousands of lives, including those of LGBTQ and HIV-positive people,” said Bridget Crawford, legal director for Immigration Equality, in the press release. “If the ban is allowed to go forward, the U.S. will deport countless LGBTQ and HIV-positive refugees back

to persecution, torture and death."

Although President-elect Joe Biden, who will be inaugurated January 20, can overturn the rule, the process would be time-consuming. Therefore, it's vital to prevent the rule from taking effect.

Bamby Salcedo is a transgender immigrant and activist living with HIV (you might know her from the POZ profile "Creating Change" and the 2019 POZ 100). As the president and CEO of the TransLatin@ Coalition, she's speaking out against the Trump rule. "Many transgender and gender-nonconforming Latinx people face unimaginable violence, persecution and torture around the world," she explains in the Lambda Legal statement.

"Today, Lambda Legal, Immigration Equality, and co-counsel Kramer Levin Naftalis & Frankel LLP, filed a federal lawsuit,...

Posted by TransLatina Coalition on Monday, December 21, 2020

"The majority of transgender women who seek refuge in the United States from these serious threats have nowhere else to go," Salcedo continued. "The safety and survival of so many people depend on their ability to find a safe haven in this country. I was lucky to receive support from people when I fled Mexico because I feared for my life. The TransLatin@ Coalition was founded by trans Latin@ immigrants to improve the lives of trans Latin@s. While the Trump administration has turned its back on its commitment to LGBTQ refugees, we will not!"

According to Lambda Legal, if the Trump rule is enacted, the United States will deny asylum to people who:

- Apply for asylum based on fear of persecution due to their gender, which may be interpreted by authorities as including LGBTQ asylum seekers
- Didn't apply for asylum in a transit country, regardless of whether that nation is safe
- Stayed in a transit country for more than 14 days, even if they were trapped in that country

- Lived in the United States for more than one year without permission, even if they qualify for an exception to the one-year filing deadline

- Are LGBTQ and HIV-positive people with otherwise strong claims of persecution but are unable to prove that government officials participated in the abuse (in other words, violence by private actors, such as civilians who perpetrate mob violence or so-called corrective rape, will not count as evidence toward an asylum claim)

- Are unable to explain the particular social group they are a part of, requiring LGBTQ and HIV-positive people to disclose their identity and intimate details about their personal lives in their first interaction with immigration judges.

Filed with cocounsel Kramer Levin Naftalis & Frankel LLP on behalf of plaintiffs Immigration Equality, Oasis Legal Services, The TransLatin@ Coalition, Black LGBTQIA+ Migrant Project and Transgender Law Center, the lawsuit is titled Immigration Equality v. U.S. Department of Homeland Security.

Last October/November's POZ cover story examined the challenges and nuances surrounding immigration and HIV. For that article, click "Yearning to Breathe Free." For more on this topic, click the hashtag #Immigration and you'll find articles like "Speaking With a Collective Voice," which offers a look at new grassroots network for Latinx people living with HIV," "Meet Immigrant Activist and HIV Changemaker Teresa Bedzigui," "R.I.P. Lorena Borjas, a Transgender Activist Lost to COVID-19" and "Justice Prevails for Departed HIV-Positive Gay Mexican! [VIDEO]."

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