

**In the United States Court of Appeals  
for the Fifth Circuit**

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GARLAND,  
in his official capacity as the Attorney General of the United States  
*Respondent-Appellee.*

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On Petition for Review of an Order of  
the Board of Immigration Appeals

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**BRIEF OF AMICI CURIAE IMMIGRATION EQUALITY, OASIS LE-  
GAL SERVICES, LAMBDA LEGAL DEFENSE AND EDUCATION  
FUND, INC., THE TAHIRIH JUSTICE CENTER, THE TRANSLATIN@  
COALITION, THE LOS ANGELES LGBT CENTER, LAGG, AND  
TRANSGENDER LAW CENTER IN SUPPORT OF PETITIONER**

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## **CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. Amici curiae certify that they have no outstanding shares or debt securities in the hands of the public, and they have no parent companies. No publicly held company has a 10% or greater ownership interest in any of the amici curiae. Amici curiae are unaware of any persons with any interest in the outcome of this litigation other than the signatories to this brief and their counsel, and those identified in the party and amicus briefs filed in this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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### OTHER AUTHORITIES

Associated Press, <i>Trans women in Mexico fight for justice as murders go unpunished</i> , NBC NEWS (Sept. 10, 2019), <a href="https://www.nbcnews.com/feature/nbc-out/trans-women-mexico-fight-justice-murders-go-unpunished-n105188">https://www.nbcnews.com/feature/nbc-out/trans-women- mexico-fight-justice-murders-go-unpunished-n105188</a> .....	21
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Vic Gerardo Balderas, <i>Trans woman shot to death in Mexico State</i> , LA SILLA ROTA (Mar. 16, 2023), <a href="https://lasillarota.com/metropoli/2023/3/16/asesinan-balazosmujer-trans-en-el-estado-de-mexico-419693.html">https://lasillarota.com/metropoli/2023/3/16/asesinan- balazosmujer-trans-en-el-estado-de-mexico-419693.html</a> .....	22
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## Other Authorities—continued:

- Flávia Biroli, *The backlash against gender equality in Latin America: Temporality, Religious Patterns, and the erosion of Democracy*, 51 *LASA FORUM* 22 (2020) .....26
- Marshall K. Cheney et al., *Living Outside the Gender Box in Mexico: Testimony of Transgender Mexican Asylum Seekers*, 107 *AM. J. PUB. HEALTH* 1646 (2017).....14, 17, 27
- Nick Duffy, *Transgender beauty queen’s burnt body found in suspected hate crime murder*, *PINK NEWS* (July 27, 2016), <https://www.thepinknews.com/2016/07/27/transgender-beauty-queens-burnt-body-found-in-suspected-hate-crime-murder/> .....20
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- Oscar Lopez, *Mexico sees deadliest year for LGBT+ people in five years*, *REUTERS* (May 15, 2020).....13
- Mexico No. 2 in LatAm in hate crimes vs. LGBT community despite legal progress*, *LA PRENSA LATINA* (May 18, 2023), <https://www.laprensalatina.com/mexico-no-2-in-latam-in-hate-crimes-vs-lgbt-community-despite-legal-progress/> .....11, 13
- More than 200 members of LGBT community killed in Mexico over three-year period*, *AL DÍA* (May 17, 2017), <https://aldianews.com/en/politics/policy/more-200-members> .....20
- Julia Neusner & Emem Maurus, *To Protect the Lives of LGBTQ Asylum Seekers, the Biden Administration Must Fully End Title 42*, *HUMAN RIGHTS FIRST* (July 21, 2021), <https://humanrightsfirst.org/library/to-protect-the-lives-of-lgbtq-asylum-seekers-the-biden-administration-must-fully-end-title-42/>.....17, 18

## Other Authorities—continued:

- María Ruiz & Daniela Pastrana, *Trans activist Natalia Lane stabbed in Mexico City*, PIE DE PÁGINA (Jan. 21, 2022), <https://piedepagina.mx/trans-activist-natalia-lane-stabbed-in-mexico-city/> .....21
- Sickening murder and mutilation of trans woman*, OUTNEWSGLOBAL (May 22, 2020), <https://outnewsglobal.com/sickening-murder-and-mutilation-of-trans-woman/> .....21
- U.N. Human Rights Council, *Report of The Special Rapporteur on the Situation of Human Rights Defenders on His Mission to Mexico* (Feb. 12, 2018), <https://ohchr.org/EN/Issues/SRHRDefenders/Pages/CountryVisits.aspx> .....15
- U.S. Dep’t of State, Bureau of Democracy, *Human Rights and Labor, Country Reports on Human Rights Practices, Mexico (2022)* ..... *passim*
- Michele Zipkin, *Brazil, Mexico, USA saw most trans murders in 2020*, PHILA. GAY NEWS (Dec. 30, 2020), <https://epgn.com/2020/12/30/brazil-mexico-usa-saw-most-trans-murders-in-2020/> .....13

## INTEREST OF *AMICI CURIAE*<sup>1</sup>

**Immigration Equality** is a leading national nonprofit organization providing free legal services and advocacy for indigent lesbian, gay, bisexual, transgender, queer, (“LGBTQ”) and HIV-positive immigrants. Through its in-house attorneys and nationwide network of pro bono partners, Immigration Equality represents approximately 750 LGBTQ and HIV-positive individuals annually in affirmative and defensive asylum, withholding of removal, and Convention Against Torture (“CAT”) proceedings, as well as related applications and claims. Clients in Immigration Equality’s pro bono program are generally successful in obtaining immigration relief, winning their cases approximately 99% of the time. Most pertinent here, since 2010, Immigration Equality has represented over 140 LGBTQ and HIV-positive clients from Mexico. Among adjudicated asylum, withholding of removal, and Convention Against Torture cases, Immigration Equality clients have maintained a 100% success rate. This figure includes 50 transgender people who won relief.

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<sup>1</sup> Counsel for the parties have not authored this brief. The parties and counsel for the parties have not contributed money intended to fund the preparation or submission of the brief. No person other than amici contributed money intended to fund preparing or submitting this brief. All parties have consented to the filing of this brief.



In addition to providing representation to LGBTQ and HIV-positive asylum seekers, Immigration Equality offers assistance, support, and training to other attorneys; publishes a comprehensive manual on the preparation of asylum claims related to sexual orientation and gender identity; and provides training on the adjudication of LGBTQ asylum cases to Asylum Officers within the Department of Homeland Security. For these reasons, Immigration Equality has an urgent and direct interest in the outcome of this case. Immigration Equality also seeks to offer its unique perspective—as an LGBTQ immigrants’ advocacy organization—on the persecution of transgender women.

**Oasis Legal Services (“Oasis”)** is a leading nonprofit legal service provider to the LGBTQ+ immigrant community living on the West Coast, serving over 700 LGBTQ+ immigrants each year. Since opening in 2017, Oasis has represented over 1,500 LGBTQ+ asylum seekers, including almost 900 clients whose asylum cases are still pending. Given California’s proximity to Mexico, over two thirds of Oasis’s clients are Mexican citizens who have fled to the United States to escape horrific violence because of their sexual orientation, gender identity, gender expression, or HIV-positive status. Since 2017, Oasis has won asylum for approximately 425 clients from Mexico, including 51 transgender woman clients, with a 100% success rate. In addition to direct

legal services, Oasis also provides case management and wrap-around services to meet the needs of its clients holistically and provides training, sample documentation and briefs, and direct mentorship to lawyers locally and nationally who represent LGBTQ+ asylum seekers.

For these reasons, Oasis has an urgent and direct interest in the outcome of this case. Oasis also seeks to offer its unique perspective—as an organization that represents over 1,052 Mexican LGBTQ+ asylum seekers, including 123 Mexican transgender women—on the persecution of transgender women in Mexico.

**Lambda Legal Defense and Education Fund, Inc.** is the nation's oldest and largest legal organization whose mission is to achieve full recognition of the civil rights of LGBTQ people and everyone living with HIV through impact litigation, education, and public policy work. Lambda Legal has striven to ensure fairness for LGBTQ immigrants by serving as counsel of record or amicus curiae in litigation involving the rights of LGBTQ immigrants and asylum seekers, and its work has helped shape immigration jurisprudence. *See, e.g., Bringas-Rodriguez v. Sessions*, 850 F.3d 1051 (9th Cir. 2017) (en banc) (amicus); *Pitcherskaia v. I.N.S.*, 118 F.3d 641 (9th Cir. 1997) (counsel).

**The Tahirih Justice Center** is the largest multi-city direct services and policy advocacy organization specializing in assisting immigrant survivors of gender-based violence. In five cities across the country, Tahirih offers legal and social services to immigrants fleeing all forms of gender-based violence, including human trafficking, forced labor, forced marriage, domestic violence, rape and sexual assault, and female genital mutilation/cutting. Since its beginning in 1997, Tahirih has provided free legal assistance to more than 32,000 individuals, many of whom have experienced the significant and ongoing psychological and neurobiological effects of trauma. Through direct legal and social services, policy advocacy, and training and education, Tahirih promotes a world where immigrant survivors can live in safety and with dignity.

**The TransLatin@ Coalition** is a nationwide nonprofit membership organization that advocates for the interests of transgender and gender nonconforming individuals, particularly Latinx immigrants, and provides direct services to the transgender community, such as leadership development, legal services, educational services, and employment services. The TransLatin@ Coalition's Legal Services Project serves individuals who are transgender, nonbinary, and gender nonconforming, particularly undocumented immigrants, by, inter alia, representing them in affirmative and defensive asylum

cases, referring cases to pro bono attorneys, and helping immigrants obtain green cards and citizenship through naturalization. Recently, the Trans-Latin@ Coalition served as one of the organizational plaintiffs in *Immigration Equality v. U.S. Department of Homeland Security*, No. 20-CV-09258-JD, 2021 WL 75756 (N.D. Cal. Jan. 8, 2021), which enjoined a final rule that would have made sweeping changes to the United States' asylum system and made it nearly impossible for LGBTQ people to obtain asylum in the United States.

**The Los Angeles LGBT Center** is a non-profit organization that has been committed to providing holistic services and support to LGBTQ communities for over 50 years. The Center's Immigration Law Project was founded in 2016 and provides full-scope direct legal services for LGBTQ people from over 70 countries. The Immigration Law Project assists hundreds of immigrant people each year and focuses on supporting LGBTQ asylum seekers who are also seniors, youth, unhoused, and survivors of violence. The Project provides full-scope direct legal services for LGBTQIA+ people from over 70 countries. The Immigration Law Project has trained asylum officers and immigration judges and staff on supporting LGBTQ refugees and survivors.

**L4GG** is a community of 125,000 lawyers, law students, and activists fighting to ensure equal rights, equal opportunities, and equal justice under

the law. L4GG coordinates large scale pro bono programs and issue advocacy efforts, seeking not only to establish and enforce equality under the law, but to also create the social and economic conditions that lead to true equity. L4GG's immigrants' rights initiative, Project Corazon, defends the human rights of asylum seekers and vulnerable migrants at the border and throughout the United States. L4GG provides (1) direct, pro bono legal assistance to asylum seekers at the U.S. southern border in the Rio Grande Valley; (2) additional legal services to asylum seekers and other migrants throughout the United States; and (3) support for the national movement for asylum rights through coalition and advocacy work informed by our direct legal assistance. Since 2019, L4GG has provided legal assistance to 12,000+ asylum seekers, including securing entry into the United States for thousands of particularly vulnerable individuals in need of medical or humanitarian assistance.

**Transgender Law Center (“TLC”)** is the largest national trans-led organization advocating self-determination for all people. Grounded in legal expertise and committed to racial justice, TLC employs a variety of community-driven strategies to keep transgender and gender nonconforming (“TGNC”) people alive, thriving, and fighting for liberation. TLC believes that TGNC people hold the resilience, brilliance, and power to transform society at its root,

and that the people most impacted by the systems TLC fights must lead this work. TLC builds power within TGNC communities, particularly communities of color and those most marginalized, and lays the groundwork for a society in which all people can live safely, freely, and authentically regardless of gender identity or expression.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Amici submit this brief to assist the Court in evaluating country conditions related to the persecution of transgender women in Mexico. Mexico has the second highest index of transphobic hate crimes in Latin America. Being openly transgender there can be, and all too often is, fatal. Transgender people—who have a gender identity that does not align with their sex assigned at birth—are singled out for hate crimes, physical violence, and even murder because of who they are. They often face violence at rates that far exceed the violence directed at other members of the LGBTQ+ community, which itself exceeds the violence directed at non-LGBTQ+ people. Despite this rampant violence, law enforcement and other government authorities routinely fail to protect transgender people because of their own biases. In fact, those authorities often perpetrate the anti-transgender violence themselves.

Here, the BIA ignored the undisputable dangers that transgender people face in Mexico. The BIA accepted without analysis the IJ’s conclusion that Petitioner Karina Arteaga Ibarra<sup>2</sup> (“Karina”) failed to demonstrate a pattern or practice of persecution of members of the LGBTQ+ community in Mexico,

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<sup>2</sup> Consistent with Petitioner’s brief, amici use “Karina” and she/her pronouns to refer to Petitioner.

and that the Mexican government is unable or unwilling to control the private individuals who abused her. ROA.3. But the BIA's finding is contrary to the substantial record evidence, including Karina's own testimony and the voluminous reports, which provides overwhelming evidence that the conditions in Mexico have actually worsened for transgender women like Karina. Moreover, the record here establishes that Mexican police are directly involved in this violence, both by failing to act to prevent it (as they did with Karina herself) and by perpetrating anti-transgender violence themselves. As set forth by amici in detail below, despite the nominal passage of pro-LGBTQ+ reforms, the conditions in Mexico remain extremely dangerous for transgender people like Karina, and like the hundreds of transgender individuals represented and served by amici. The passage of these reforms has not changed the religious and cultural background of Mexico, which remains a staunchly anti-LGBTQ+ country. And such legal reforms are often accompanied by a backlash that leads to an increase in anti-LGBTQ+ violence—particularly when authorities refuse to enforce these hollow laws, or to investigate anti-LGBTQ+ crimes due to their own biases.



Amici’s extensive experience representing transgender individuals for years shows that the country conditions in Mexico remain exceptionally dangerous for transgender women, and are only getting worse. These factors establish a pattern and practice of persecution of violence against transgender women, and also render Mexico unable or unwilling to protect transgender women like Karina from their abusers. The BIA’s decision should be reversed.

## **ARGUMENT**

### **I. Transgender Women in Mexico Currently Face Particularized Danger of Violence, Murder, and State-Sponsored Abuse.**

The record here reflects the realities facing transgender individuals in Mexico, including the transgender clients of amici. LGBTQ+ people in Mexico “face brutal violence on a regular basis,” including “hate crimes, insults, aggression, abuse, and human rights violations.” ROA.345. And transgender people face a danger separate from and in addition to that faced by the broader LGBTQ+ community in Mexico. They are especially subject to abuse and violence; as courts have recently acknowledged, conditions in Mexico “indicate[] that transgender women *specifically* are frequent targets of violence, including murder, in Mexico and that crimes against them are unlikely to be investigated.” *De La Luz Ramos v. Garland*, 861 F. App’x 145, 149 (9th Cir. 2021) (reversing denial of CAT protection to transgender woman from Mexico). The

violence against the transgender community has only increased in recent years. “Transgender women continue to experience pervasive discrimination in public and in their private lives,” ROA.446, and they are targeted with particularly brutal violence.

The Mexican government not only refuses to investigate the crimes committed against transgender women, it also directly perpetrates crimes against them. “Country conditions evidence shows that police specifically target the transgender community for extortion and sexual favors, and that Mexico suffers from an epidemic of unsolved violent crimes against transgender persons.” *Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1081 (9th Cir. 2015). The government’s indifference to and participation in anti-transgender violence is effectively a state sanctioning of violence against transgender individuals.

**A. The Frequent, Violent Hate Crimes Against Transgender Women in Mexico Continue to Increase.**

Broadly speaking, “LGBTQ individuals are at risk throughout Mexico.” *Xochihua-Jaimes v. Barr*, 962 F.3d 1175, 1187 (9th Cir. 2020). They are nine times more likely to suffer violence than non-LGBTQ individuals. Anna Langner, *LGBTI community, nine times more exposed to violence*, LA JOR-

DANA (Dec. 8, 2019), <https://www.jornada.com.mx/2019/12/08/politica/013n2pol>. “Mexico has the second-highest index of crimes motivated by transphobia in Latin America, behind Brazil,” ROA.449, and the number of hate-motivated murders against LGBTQ+ people in Mexico increased by over 11% from 2021 to 2022. *Mexico No. 2 in LatAm in hate crimes vs. LGBT community despite legal progress*, LA PRENSA LATINA (May 18, 2023), <https://www.laprensa-latina.com/mexico-no-2-in-latam-in-hate-crimes-vs-lgbt-community-despite-legal-progress/>. In 2022, the U.S. Department of State concluded that “[s]ignificant human rights issues” exist in Mexico, including “credible reports of . . . crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, queer, or intersex persons.” U.S. Dep’t of State, Bureau of Democracy, *Human Rights and Labor, Country Reports on Human Rights Practices, Mexico*, at 1–2 (2022) (“2022 Mexico Country Report”).

Transgender women have borne the brunt of this abuse. “While conditions related to LGBT Mexicans generally may be relevant, adjudicators must address evidence that specifically relates to persecution of the particular social group at issue, transgender women in Mexico.” ROA.459. Transgender people—and transgender women, in particular—are subject to particularized

dangers in Mexico, and the “unique . . . vulnerabilities of transgender individuals must be considered in evaluating a transgender applicant’s asylum, withholding of removal, or CAT claim.” *Avendano-Hernandez*, 800 F.3d at 1082. Transgender women in Mexico are more likely to be targeted for abuse than other members of the LGBTQ+ community, ROA.459, and “significant evidence suggests that transgender persons [in Mexico] are often especially visible, and vulnerable, to harassment and persecution.” *Avendano-Hernandez*, 800 F.3d at 1081. As such, “legal advocates and individuals living in both Mexico and the U.S. report that rates of violence against transgender women are higher than ever.” ROA.438. Reports of hate crimes, especially transphobic murders, have continued to increase—notably, in Mexico City, the only city in Mexico with legal protections against gender-identity discrimination. ROA.438. In 2022, the Department of State on Mexico recognized that out of all individuals in the LGBTQ+ community, “transgender women were most likely to be victims of a hate crime,” and that at least 55 transgender women in Mexico were killed in 2021. 2022 Mexico Country Report, at 34.

The danger remains pronounced still today, and, as recent immigration decisions have noted, there is “overwhelming record evidence of ineffective police protection of transgender persons,” and “transgender persons are

caught in the crosshairs of both generalized homophobia and transgender-specific violence and discrimination.” *Avendano-Hernandez*, 800 F.3d at 1082, 1081; *see also De La Luz Ramos*, 861 F. App’x at 149; *Moreno v. Lynch*, 624 F. App’x 531, 531 (9th Cir. 2015) (the BIA “erred in assuming that recent anti-discrimination laws in Mexico have made life safer for transgender individuals while ignoring significant record evidence of violence targeting them”) (internal quotations omitted); *Lorenzo-Lopez v. Whitaker*, 747 F. App’x 587, 588 (9th Cir. 2019) (IJs and the BIA must consider “the record evidence submitted in this case concerning the conditions faced by transgender persons in Mexico”); *Molina Mendoza v. Sessions*, 712 F. App’x 240, 245 (4th Cir. 2018) (“The record contained evidence that significantly undermined the Immigration Judge’s finding that LGBTQ individuals in Mexico do not face a pattern or practice of harm.”).

The data bear out that transgender women in Mexico are subject to a heightened risk of violence, including murder, which has sharply increased as compared to the general population: “while the number of murder victims was up 2.5% in 2019, the number of gay and trans people killed was 27% higher than in 2018,” and “[m]ore than half the victims were transgender women.” Oscar Lopez, *Mexico sees deadliest year for LGBT+ people in five years*,

REUTERS (May 15, 2020), <https://www.reuters.com/article/us-mexico-lgbt-murders-trfn/mexico-sees-deadliest-year-for-lgbt-people-in-five-years-idUSKBN22R37Y>. In 2020, Mexico again reported the second-highest number of transgender murders in the world, after only Brazil. Michele Zipkin, *Brazil, Mexico, USA saw most trans murders in 2020*, PHILA. GAY NEWS (Dec. 30, 2020), <https://epgn.com/2020/12/30/brazil-mexico-usa-saw-most-trans-murders-in-2020/>. In 2022, Mexico continued to have the second-highest number of transgender murders in the world. LA PRENSA LATINA, *supra*.

**B. The Mexican Government Fails to Prevent and Directly Perpetrates the Violence Committed Against Transgender Women.**

The government does not prevent the pervasive persecution of transgender women in Mexico. Worse still, Mexican police and military officials themselves often perpetuate the anti-transgender violence. As the Ninth Circuit recently found in reversing the denial of CAT protection for a transgender woman from Mexico, “the record compels the conclusion that the Mexican government acquiesce[s] in [anti-transgender] torture.” *De La Luz Ramos*, 861 F. App’x at 147.

The same is true here. In Mexico, transgender women often experience verbal, physical, and sexual abuse from a young age, including by police and

other authority figures. Marshall K. Cheney et al., *Living Outside the Gender Box in Mexico: Testimony of Transgender Mexican Asylum Seekers*, 107 AM. J. PUB. HEALTH 1646, 1647 (2017). Those same authority figures also fail to act to prevent even the most horrific abuses committed against transgender women. “It is clear that the Mexican government is unable to effectively protect transgender women,” who “regularly experience harassment and hate crimes at the hands of members of the public.” ROA.448–49. The vast majority of crimes against transgender women are never solved, often because police refuse to adequately investigate or charge the crimes, and instead dismiss homophobic and transphobic offenses as “crimes of passion.” ROA.449. Often, this occurs because of “[p]rejudices based on sexual orientation and gender identity” on the part of state officials and police, which “reduce[s] the effectiveness of investigations.” U.N. Human Rights Council, *Report of The Special Rapporteur on the Situation of Human Rights Defenders on His Mission to Mexico* (Feb. 12, 2018), at 10, <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/CountryVisits.aspx>. This lack of accountability means that the vast majority of crimes against transgender women can be committed with impunity. This has not changed in recent years, with the Department of State

noting that “the government did not always investigate and punish those complicit in abuses against LGBTQI+ persons.” 2022 Mexico Country Report, at 33.

Karina experienced firsthand Mexican authorities’ unwillingness to protect her.<sup>3</sup> After escaping the beatings and abuse by her brothers at her home, she moved in with Wilfrido, her abuser. ROA.125–26. Shortly thereafter, Wilfrido began abusing her frequently, breaking her teeth and causing her to bleed profusely. ROA.126–27. This abuse continued for months, and worsened over time: in one instance, Wilfrido and one of his friends tied her up for over an hour and burned her with cigarettes, laughing while they were doing it. ROA.127, 130. After suffering these assaults for months, Karina turned to the Mexican police for help. ROA.128. They detained Wilfrido briefly, and then “let him go after 2 to 3 hours” with no other action. ROA.128. Karina kept seeking help from Mexican authorities after her beatings, calling the police “five or six times.” ROA.138. But instead of helping Karina, they blamed

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<sup>3</sup> The IJ found that Karina’s testimony was credible and that she answered “answered all questions regarding her prior experiences candidly and thoroughly.” ROA.58.



her for the abuse, claiming that “transgender women were always more aggressive, problematic, or dramatic.” ROA.138. They also told her she “had to behave with him” and “treat him well” so that the beatings would not happen again. ROA.138. Wilfrido knew that the police would not protect Karina—he told her that “the police wouldn’t do anything.” ROA.128. He was right.

Mexican law enforcement not only fails to protect transgender women from the routine violence they face; it also directly perpetrates that violence. Mexican police “are often the perpetrators of violence against transgender people.” ROA.445. There is a “well-documented culture of violence with impunity,” as “crimes against transgender (and LGB) persons [are] committed by police, military, and security forces.” Nielan Barnes, *Within the asylum-advocacy nexus: An analysis of Mexican transgender asylum seekers in the United States*, 2 *SEXUALITY, GENDER & POL’Y* 5, 9 (2019). Police officers and the military target, pretextually arrest, and physically abuse transgender women. ROA.452. Transgender women are specifically targeted for extortion and sexual favors by Mexican police, *Avendano-Hernandez*, 800 F.3d at 1081, and describe Mexican police officers assaulting them, forcing them to perform oral sex, and raping them, Cheney et al., *supra*, at 1649–50; Barnes, *supra*, at 10. Mexican police “routinely subject[] LGBTQI+ persons to mistreatment

while in custody.” 2022 Mexico Country Report, at 34. A common example of this is a practice in which officers place a transgender woman under false or pretextual arrest, holding her in a cell where she is physically and sexually assaulted by both other arrestees or the officers themselves, often at gunpoint. Cheney et al., *supra*, at 1649–50.

Vile acts like these cannot be viewed as things of the past. In early 2021, Mexican police in Tijuana raped a transgender woman who had been trafficked for sexual exploitation in Guatemala. Julia Neusner & Emem Maurus, *To Protect the Lives of LGBTQ Asylum Seekers, the Biden Administration Must Fully End Title 42*, HUMAN RIGHTS FIRST (July 21, 2021), <https://human-rightsfirst.org/library/to-protect-the-lives-of-lgbtq-asylum-seekers-the-biden-administration-must-fully-end-title-42/>. And in May 2022, Mexican “police reportedly beat lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) protesters demanding marriage equality.” 2022 Mexico Country Report, at 18.

The failure of police to protect transgender individuals, and the participation of police in violence, leads to rampant underreporting of hate crimes and violence. The available data greatly underestimate the number of anti-LGBTQ+ crimes that occur in Mexico because the vast majority of the attacks

on transgender women are never reported at all. ROA.446 (“Transgender women often do not report hate crimes or police abuse because the authorities rarely investigate these crimes.”). Moreover, the failures of police and military officials to protect transgender women create a culture of mistrust: “In spite of the gravity of the aggressions suffered, the majority (over 80%) of victims prefer to keep silent about what happens because police, military, and public security forces are the perpetrators in 20%–30% of cases[.]” Barnes, *supra*, at 10. Consequently, the “vast majority . . . of hate crimes and murders are committed with impunity and remain unsolved.” *Id.* The Department of State agrees, concluding in its 2022 report that “[i]mpunity and extremely low rates of prosecution remained a problem for all crimes, including human rights abuses and corruption.” 2022 Mexico Country Report, at 1.

The incidents of anti-trans violence that *do* get reported are appalling. “The nature of hate crimes and violence against transgender individuals in particular is extreme: The bodies of victims often show signs of torture, of being shot, beaten, dismembered.” Barnes, *supra*, at 10; ROA.349. Amici submit here 12 representative examples of the brutal violence regularly perpetrated against transgender women in Mexico between 2010 and 2023, all of which postdate the legalization of marriage for same-sex couples in certain

Mexican states. These examples make plain that transgender women in Mexico still face grave, anti-transgender violence and persecution.

1. Transgender rights advocates Fernanda Valle and Agnes Torres were both tortured prior to their deaths; Ms. Valle was found “tied up and tortured with two bullets in the head,” ROA.451, while Ms. Torres’s tortured body was found in a ravine, Barnes, *supra*, at 9.
2. “[A] group of men kidnapped two transgender women in Hotel Carmen. Days later, the dismembered bodies of these women were found in a van.” ROA.449.
3. Ms. Lezama was killed by strangulation “with a cord and [] blunt force trauma to her head.” ROA.451.
4. “[I]n Mexico City, the body of a transgender woman was dismembered. Her remains were found abandoned in different neighborhoods in the Benito Juarez district.” ROA.449.
5. In a suburb of Mexico City, a transgender woman was found dead on the street, after being “beaten horribly and then decapitated.” ROA.450.
6. “[A] youth dressed as a woman was found dead in Puebla with extensive skull injuries and torture marks on his body.” Barnes, *supra*, at 9.

7. The body of a transsexual woman was found wrapped in a Mexican flag in Chihuahua, with her body bearing signs of torture prior to being shot. *More than 200 members of LGBT community killed in Mexico over three-year period*, AL DÍA (May 17, 2017), <https://aldianews.com/en/politics/policy/more-200-members>.
8. Paulett Gonzalez, a transgender beauty queen, was found dead in Celaya, Guanajuato after weeks of searching; her “charred remains . . . were so disfigured that genetic testing had to be used to confirm her identity.” Nick Duffy, *Transgender beauty queen’s burnt body found in suspected hate crime murder*, PINK NEWS (July 27, 2016), <https://www.thepinknews.com/2016/07/27/transgender-beauty-queens-burnt-body-found-in-suspected-hate-crime-murder/>.
9. Transgender victims from 2018 “include a woman found in a trash bin with her face pummeled beyond recognition by a rock. One was tortured to death by captors while her family heard her last moments over the phone. Another was found naked and strangled in her bedroom.” The Associated Press, *Trans women in Mexico fight for justice as murders go unpunished*, NBC NEWS (Sept. 10, 2019), <https://www.nbcnews.com/>

feature/nbc-out/trans-women-mexico-fight-justice-murders-go-unpunished-n1051886.

10. In 2020, Jesusa Fidel Ventura Reyes’s “severed head was placed on the steps of the town hall with her body being discovered on a nearby street.” *Sickening murder and mutilation of trans woman*, OUTNEWS-GLOBAL (May 22, 2020), <https://outnewsglobal.com/sickening-murder-and-mutilation-of-trans-woman/>.
11. In 2022, a transgender woman was found in Puebla beaten and strangled to death. María Ruiz & Daniela Pastrana, *Trans activist Natalia Lane stabbed in Mexico City*, PIE DE PÁGINA (Jan. 21, 2022), <https://piedepagina.mx/trans-activist-natalia-lane-stabbed-in-mexico-city/>.
12. Most recently, in 2023, a transgender woman was shot to death in her home after her father tried (and failed) to protect her from the unknown assailants. Vic Gerardo Balderas, *Trans woman shot to death in Mexico State*, LA SILLA ROTA (Mar. 16, 2023), <https://lasillarota.com/metropoli/2023/3/16/asesinan-balazosmujer-trans-en-el-estado-de-mexico-419693.html>.

As these examples make clear, the pattern of brutal and sadistic violence committed against transgender women is pervasive across Mexico. This violence also establishes that the Mexican government is unable and unwilling to protect transgender women from persecution. Transgender individuals from Mexico face a unique risk of persecution, torture, and death if they are returned to Mexico.

**C. Immigration Judges and USCIS Routinely Grant Relief on Similar Facts.**

As a result of the incontrovertible facts above regarding the Mexican authorities' participation in or inability and unwillingness to control anti-transgender violence, Immigration Equality and Oasis have represented hundreds of LGBTQ+ clients from Mexico over the past decade with a 100% success rate on adjudicated cases for over 100 transgender individuals. Throughout this representation, Immigration Equality and Oasis have recorded hundreds of credible incidents that demonstrate the pattern and practice of persecution and the reality that the government is unable and unwilling to protect transgender individuals. Every transgender individual that has had their case adjudicated has won; in other words, the BIA and immigration courts have found that all of these transgender asylum seekers had a well-founded fear of persecution, despite nominal pro-LGBTQ+ legal reforms. Notably, all of

these cases took place following the legalization of same-sex marriage in certain Mexican states in 2010. The BIA’s decision below is a marked outlier. Consistent with Karina’s experience, these clients faced horrific abuse and violence in Mexico, oftentimes perpetrated or facilitated by the Mexican government. These examples are exemplary of the cases that amici routinely see during their representation of transgender individuals.

For example, Kenya<sup>4</sup> is a transgender woman from Aguascalientes, Mexico. Her family began beating her when she was a child because she dressed in feminine clothing. Twice, she was sent to the hospital from her injuries. When she was 14 years old, she was beaten and raped by four men from her town. Then, when she was 15 years old, she was arrested by the police, who drove her to a deserted location, raped her, and then beat her. She moved to Mexico City, hoping to escape the abuse, but that did not keep her safe. She was brutally beaten by gang members, who broke her nose and eye socket. When she tried to report the attack to the police, they refused to accept her report and insisted that Kenya “must have done something” to provoke the attack because “that’s what happens to those of your kind.” Shortly

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<sup>4</sup> All client names in this brief are pseudonyms; details of each case are on file with amici.



thereafter, Kenya fled to the United States, and was granted asylum in April 2022.

Areli is a transgender woman from Sinaloa, Mexico. Her physical and sexual abuse started as a child, with her brother and cousin beating her and raping her frequently. She moved to Tecate, where she suffered substantial violence at the hands of police. They called her transphobic slurs and detained her for days at a time while depriving her of food and water. She then moved to Monterrey, where she was sexually assaulted and beaten by a police officer who arrested her for being transgender and dressing as a woman. After moving back to Tecate, she was assaulted in a public park and sought a police officer for assistance. Instead of helping her, they jailed her, told her the assault was her fault and that “she probably wanted the man to abuse her,” and threatened to arrest her for prostitution. She fled Mexico and was granted asylum in October 2018.

Fatima is a transgender woman from Nayarit, Mexico. She suffered insults, and physical and sexual violence starting at a young age. Her mother beat her as a child for not following masculine gender norms. At school, she was taunted for dressing like a girl and was sexually assaulted by two of her

teachers. At the age of 12, she was raped by her older cousin. Her grandmother reported the rape to police, who arrested the cousin. After a few days, the cousin's father paid off the police, who released the cousin from jail. The cousin continued to rape Fatima and was never arrested again. Her abuse did not stop while she was an adult. When she was in her early twenties, she was frequently stopped by police, who told her it was illegal to dress as a woman in public. They would sometimes force Fatima to give them oral sex at gunpoint. This continued until Fatima left Mexico. She was granted asylum in February 2020.

## **II. Recent Legal Reforms Have Not Reduced the Violence Against LGBTQ+ People in Mexico.**

Recent progressive reforms in Mexico have not lessened the risks that transgender individuals face in the country. On the contrary, these reforms have intensified opposition to LGBTQ+ individuals, and have led to more violence against them.

### **A. Expansion of LGBTQ+ Rights Often Provokes Violent Backlash.**

The mere passage of laws offering LGBTQ+ protections at the national level does not guarantee that the reality on the ground changes for LGBTQ+

people. In fact, the opposite is often true: as the rights of the LGBTQ+ community advance through nationwide policy, LGBTQ+ persons individually pay the price.

“Intense backlash” due to the expansion of LGBTQ+ rights has been observed for decades, largely because greater LGBTQ+ rights “challenge the coherence of national identity.” Phillip M. Ayoub, *Perils of success: Backlash and resistance to LGBT rights in domestic and international politics*, in CONTRACTING HUMAN RIGHTS CRISIS, ACCOUNTABILITY, AND OPPORTUNITY 89 (2018). This backlash is greater when religion plays a role “as a symbol of the nation.” *Id.* at 90. And this concern is especially significant in Latin America, as “[t]he legal framework that rules over family and sexual rights is profoundly rooted in the Catholic Church’s worldview.” Flávia Biroli, *The backlash against gender equality in Latin America: Temporality, Religious Patterns, and the erosion of Democracy*, 51 LASA FORUM 22, 23 (2020). In particular, Mexico remains a heavily Catholic country that is deeply homophobic and transphobic, and these views are pervasive throughout the entire country. ROA.362.

Concerns about backlash and national identity are even stronger in Mexico because of its strong cultural focus on machismo. For many Mexican residents, machismo defines what a man is and how he should behave. ROA.347. According to those individuals, men should be strong, have no female behaviors or characteristics, and not show any signs of femininity. ROA.347. Transgender women, who embrace femininity, serve as a challenge to deeply ingrained cultural and religious notions surrounding gender in traditional Mexican society. ROA.347. Transgender women “are the most marginalized members of the LGBT community and violate traditional gender social norms the most.” Cheney et al., *supra*, at 1646.

Recent LGBTQ+ legislative victories in Mexico, such as the legalization of marriage for same-sex couples, have therefore come at great individual cost for members of the LGBTQ+ community. *Id.* “[V]iolence against the LGBT community has actually increased since the recognition of same-sex marriage throughout Mexico because of backlash of these progressive changes in the law.” ROA.438; *see also* Cheney et al., *supra*, 1646 (finding that recent reforms have fostered a rise in harassment and discrimination). These laws only “create the appearance of tolerance and change;” in reality, they actually provoke

“more violence because they antagonize[] those who seek to persecute LGBT individuals.” ROA.362.

Mexico’s religious and cultural biases against transgender individuals have not been cured by the passage of laws. Violence in Mexico against transgender individuals continues unabated, despite nominal legal reforms. *See supra* 9–22. The passage of these reforms without actual follow-through causes more harm to LGBT individuals, not less, and exemplifies Mexico’s unwillingness and inability to protect transgender women. Mexico remains a highly dangerous place for Karina and other transgender women like her.

**B. The Passage of National Pro-LGBTQ+ Legislation Has Not Prevented Courts from Finding Patterns or Practices of Persecution in Other Countries.**

The simple presence of nominal legal protections is not enough to extinguish otherwise-valid claims for asylum, withholding, and CAT protection. On the contrary, IJs and the BIA must “consider the difference between a country’s enactment of remedial laws and the eradication of persecutory practices, often long ingrained in a country’s culture.” *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1072 (9th Cir. 2017) (en banc). Here, the IJ and BIA failed to do so, with the IJ finding that it “cannot ignore the multitude of legal protec-

tions by both the federal and state governments of Mexico in an effort to protect transgender individuals and their rights.” ROA.69. This was error. Legal protections without meaningful enforcement do more harm than good.

Violence and hatred towards LGBTQ+ individuals are not unique to Mexico. The same issue of the nominal passage of laws protecting LGBTQ+ rights in other countries did not prevent the Tenth Circuit from finding a pattern and practice of persecution against LGBTQ+ individuals in Honduras. There, Kelly Aguilar was assigned male at birth but “displayed many feminine qualities” at a young age, leading to violent abuse by her uncle. *Aguilar v. Garland*, 29 F.4th 1208, 1210–11 (10th Cir. 2022). She eventually fled Honduras for Mexico, where she suffered further abuse, and made her way to the United States. *Id.* at 1211. Her petition for asylum was denied, in part, because the IJ found “that Kelly had not demonstrated a pattern or practice of persecution against transgender individuals in Honduras.” *Id.* at 1213. The IJ based this conclusion on the passage of “anti-discrimination laws” as well

as some prosecutions of “individuals who had committed crimes against lesbian, gay, bisexual, and transgender individuals,” and the BIA upheld that conclusion. *Id.*

The Tenth Circuit disagreed and granted Aguilar’s petition, holding that “[t]he acts of violence are so widespread that any reasonable adjudicator would find a pattern or practice of persecution against transgender women in Honduras.” *Id.* The “extensive evidence of widespread violence against transgender individuals” that brought the Tenth Circuit to that conclusion is remarkably similar to the evidence regarding Mexico. *See id.* at 1214. The expert declaration cited evidence discussing the brutal, grotesque murders of LGBTQ+ individuals in Honduras. *Id.* The same issues exist in Mexico. *See supra* 19–22. The court noted that those killings “tend to go unpunished” because they “are tainted from the start by discriminatory stereotypes based on victim’s sexual orientation or gender identity.” *Aguilar*, 29 F.4th at 1214. The same discriminatory stereotypes exist in Mexico, and crimes are routinely committed with the same type of impunity. *See supra* 14–18. And the Court noted that the Department of State reported that there were “human rights problems” of “violence and harassment” against LGBTQ+ individuals in Hon-

duras. *Aguilar*, 29 F.4th at 1214. Here, too, the Department of State recognized that the same issues of violence and harassment are widespread in Mexico. 2022 Mexico Country Report, at 1–2.

Critically, the *Aguilar* court reached its conclusion despite “Honduras’s passage of laws designed to prevent discrimination against transgender individuals.” *Id.* at 1216. Emphasizing that the “effectiveness of the measures” should be considered rather than their mere enactment, the Tenth Circuit concluded that the record established “that the Honduran government had been ineffective in enforcing the statutory protections for individuals who are lesbian, gay, bisexual, or transgender.” *Id.* Reports from the State Department and other groups found that the lack of effective enforcement led to impunity and corruption amongst the police, leaving LGBTQ+ individuals at risk for violence. *Id.* The same inaction by police exists in Mexico. *See supra* 14–18.

In sum, a country’s laws are not “a basis to deny a pattern or practice of persecution” in the face of a “continued onslaught against transgender women” if the government is ineffective at enforcing those laws. *Aguilar*, 29 F.4th at 1216. Like the Tenth Circuit did for Honduras on similar evidence, this Court should conclude that Mexico has a pattern or practice of persecuting



LGBTQ+ individuals, notwithstanding the nominal legal protections that it has enacted but refuses to effectively enforce.

\* \* \*

Transgender women in Mexico face grave danger every day. The substantial record evidence shows this, the evidence described above shows this, the extensive experience amici have representing transgender women shows this, and Karina’s experience itself shows this. The passage of nominally pro-LGBTQ+ reforms has not affected this reality. “[I]t is well recognized that a country’s laws are not always reflective of actual country conditions. It is not unusual that a country’s *de jure* commitments to [LGBTQ] protection do not align with the *de facto* reality of whether the State is able and willing to provide protection.” *Bringas-Rodriguez*, 850 F.3d at 1072 (internal quotations omitted). That is exactly the case here. The conditions in Mexico following the passage of nominal LGTBQ+ reforms are getting worse, not better. The Mexican government’s failure to enforce them renders them an empty shell. *See supra* 9–18. The effectiveness of these laws is what must be considered, not the simple fact of their existence. Furthermore, the Mexican government is perpetrating and facilitating the abuses against the LGBTQ+ community rather than combatting them, as the representative examples from amici and

Karina’s own experience show. *See supra* 14–25; *see also De La Luz Ramos*, 861 F. App’x at 148 (granting CAT protection where transgender petitioner “repeatedly sought help from the police but the police repeatedly refused to investigate”). Accordingly, the BIA’s decision should be reversed and remanded.

## CONCLUSION

Amici respectfully submit that the Court should grant the petition for review.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE  
WITH TYPEFACE AND WORD-COUNT LIMITATIONS**

I, Michael Mestitz, counsel for amicus curiae Immigration Equality and a member of the Bar of this Court, certify, pursuant to Federal Rule of Appellate Procedure 32(a)(7)(B), that the attached Brief for Amici Curiae Immigration Equality, Oasis Legal Services, Lambda Legal Defense and Education Fund, Inc., The Tahirih Justice Center, The TransLatin@ Coalition, The Los Angeles LGBT Center, L4GG, and Transgender Law Center in Support of Petitioner is proportionately spaced, has a typeface of 14 points or more, and contains 6,493 words.

/s/ Michael J. Mestitz  
MICHAEL J. MESTITZ

AUGUST 21, 2023

## CERTIFICATE OF SERVICE

I, Michael Mestitz, counsel for amici curiae Immigration Equality, Oasis Legal Services, Lambda Legal Defense and Education Fund, Inc., The Tahirih Justice Center, The TransLatin@ Coalition, The Los Angeles LGBT Center, L4GG, and Transgender Law Center and a member of the Bar of this Court, certify that, on August 21, 2023, a copy of the attached Brief for Amici Curiae Immigration Equality, Oasis Legal Services, Lambda Legal Defense and Education Fund, Inc., The Tahirih Justice Center, The TransLatin@ Coalition, The Los Angeles LGBT Center, L4GG, and Transgender Law Center in Support of Petitioner was filed with the Clerk and served on the parties through the Court's electronic filing system. I further certify that all parties required to be served have been served.

/s/ Michael J. Mestitz  
MICHAEL J. MESTITZ

AUGUST 21, 2023