

**United States Court of Appeals
for the Ninth Circuit**

GERMAN LOPEZ BERERA,
AKA KAROLINA LOPEZ BARERA,
PETITIONER,

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL,
RESPONDENT.

*ON PETITION FOR REVIEW FROM THE
BOARD OF IMMIGRATION APPEALS
AGENCY No. A200-602-649*

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* LAMBDA LEGAL
DEFENSE AND EDUCATION FUND, AMERICAN CIVIL LIBERTIES UNION,
HIV AND AIDS LEGAL SERVICES ALLIANCE, HIV LAW PROJECT, AIDS
LEGAL COUNCIL OF CHICAGO, ASIAN PACIFIC AIDS INTERVENTION
TEAM, EAST BAY COMMUNITY LAW CENTER, AND THE HEALTH AND
HUMAN RIGHTS CLINIC AT INDIANA UNIVERSITY SCHOOL OF LAW-
INDIANAPOLIS**

LAMBDA LEGAL
IVÁN ESPINOZA-MADRIGAL
120 Wall Street
19th Floor
New York, New York 10005
(212) 809-8585

WINSTON & STRAWN LLP
PETER E. PERKOWSKI
333 South Grand Avenue
38th Floor
Los Angeles, California 90071
(213) 615-1700

Attorneys for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Under Federal Rule of Appellate Procedure 26.1 and Circuit Rule 27.4, *Amici* state that they are 501(c)(3) non-profit organizations. None of the *Amici* have a parent corporation. No publicly owned corporation holds ten percent or more of the stock of any *Amici*, as none of the *Amici* issue any stock.

MOTION

Under Rule 27 and 29(b) of the Federal Rule of Appellate Procedure, Lambda Legal Defense and Education Fund, American Civil Liberties Union, the HIV and AIDS Legal Services Alliance, HIV Law Project, AIDS Legal Council of Chicago, Asian Pacific AIDS Intervention Team, East Bay Community Law Center, and the Health and Human Rights Clinic at Indiana University School of Law-Indianapolis (collectively, “*Amici*”) respectfully move for leave to file the accompanying brief as *Amici Curiae* in support of Petitioner German Lopez Berera. Under Circuit Rule 27.4, counsel for *Amici* notified counsel for the parties of this motion. Counsel for Petitioner consented to this motion and to *Amici*’s participation in this case. Counsel for Respondent stated that the government took no position on the filing of an *amici curiae* brief.

I. INTEREST AND IDENTITY OF *AMICI CURIAE*

Amici are leading public interest organizations that represent the interests of—and provide services to—people living with HIV/AIDS. *Amici* have an interest in the fair, predictable, and even-handed interpretation and enforcement of federal immigration laws, and in the availability to individuals of immigration relief for persecution on the basis of HIV status. With expertise in HIV legal and policy issues, and in the application of immigration laws, as well as knowledge of

the interests of HIV-affected immigrant communities, *Amici* are uniquely well-suited to assist the Court in addressing central questions raised in this case.

In particular, as set forth in the brief, the denial of asylum to a Mexican transgender woman with HIV/AIDS is a matter of great concern to *Amici* and their constituents, particularly because the denial here is based on findings that are squarely at odds with the reality of Mexican culture and behavior, the treatment of transgender people with HIV/AIDS in Mexico, and the psychological impact of an HIV/AIDS diagnosis on those individuals. These matters fall squarely within *Amici*'s expertise. Because *Amici* represent the interests of the broader immigrant community whose well-being could be adversely affected by this Court's decision, *Amici* seek to respectfully assist the Court in its consideration of the important questions presented here.

II. DESIRABILITY AND RELEVANCE OF THE PROPOSED BRIEF

Petitioner, a transgender woman from Mexico, is living with HIV. She seeks asylum on the basis of her sexual orientation, transgender identity, and HIV status. The interplay between her transgender identity and HIV status plays a decisive role in this case. The outcome—where an HIV-affected transgender woman may be forcibly removed to a country where she will inevitably be persecuted on account of her HIV status—could have broad effects on the persons who *Amici* strive to protect, support, and advocate for.

Amici do not duplicate arguments made in Petitioner’s Opening Brief. Rather, *Amici* seek to raise additional arguments addressing the Board of Immigration Appeals’ erroneous interpretation of immigration law and treatment of Petitioner’s HIV diagnosis. *See, e.g., Funbus Sys., Inc. v. Cal. Pub. Util. Comm’n*, 801 F.2d 1120, 1125 (9th Cir. 1986) (“*amici* fulfill the classic role of *amicus curiae* by assisting in a case of general public interest, supplementing the assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court’s attention to law that might otherwise escape consideration”) (*citing Miller-Wohl Co. v. Comm’n of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982)); *see also Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 133 (3d Cir. 2002) (Alito, J.) (“A restrictive policy with respect to granting leave to file may also create at least the perception of viewpoint discrimination. Unless a court follows a policy of either granting or denying motions for leave to file in virtually all cases, instances of seemingly disparate treatment are predictable. A restrictive policy may also convey an unfortunate message about the openness of the court.”).

Based on their work and experience in representing HIV-affected immigrants, *Amici* have an interest in this matter as well as information and a unique perspective that would assist the Court in its consideration of complex issues presented in the case.

ACCORDINGLY, *Amici* respectfully move this Court for leave to appear as *amici curiae* in this matter, and to file the brief accompanying this motion.

Dated: November 29, 2011

Respectfully submitted,

By: /s/ Peter Perkowski
Peter E. Perkowski

LAMBDA LEGAL
IVAN ESPINOZA-MADRIGAL
120 Wall Street
19th Floor
New York, NY 10005
(212) 809-8585

WINSTON & STRAWN LLP
PETER E. PERKOWSKI
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