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**UNITED STATES DEPARTMENT OF JUSTICE**

**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

**ELIZABETH IMMIGRATION COURT**

**625 EVANS STREET**

**ELIZABETH, NEW JERSEY**

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In the Matter of: )

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DOE, Jane                       ) File No A # XXX-XXX-XXX

The Respondent         )

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In Removal Proceedings )

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**Immigration Judge: Hon. Gabriel Videla Next Hearing: June XX, 201X at X:00 pm**

**THE RESPONDENT’S MOTION FOR IN-PERSON APPEARANCE AT INDIVIDUAL HEARING**

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**THE RESPONDENT’S MOTION FOR IN-PERSON APPEARANCE AT INDIVIDUAL HEARING**

The Respondent, Ms. Jane Doe (A # XXX-XXX-XXX), by and through her attorney Mr. Clement Lee, Esq. of Immigration Equality and Mr. Hunter Vanaria, law student at Columbia Law School, Sexuality & Gender Law Clinic, qualified to represent the Respondent pursuant to 8 C.F.R. § 1292.1(a)(2)(ii), hereby submits this Motion for In-Person Appearance for her Individual Hearing to be held on Tuesday June XX, 201X at X:00 pm.

For her Individual Hearing, the Respondent seeks to be transferred from Delaney Hall Detention Facility, 451 Doremus Avenue, Newark, New Jersey 07105, where she is currently detained, to Elizabeth Immigration Court, 625 Evans Street, Elizabeth, New Jersey 07201.

1. **Summary Of Facts As Known To Counsel**

The Respondent is a lesbian from Nigeria. *See* *Exhibit A* (Form I-589, Application for Asylum and for Withholding of Removal); *Exhibit B* (The Respondent’s Statement in Support of Motion for In-Person Appearance); *Exhibit C* (Photographs of the Respondent with her Partner Ms. Roe).

The Respondent is applying for relief in the forms of asylum, withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, and both withholding of removal and deferral of removal under Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988).

In November 2015, the Respondent and her partner Ms. Roe attended a private gathering in Delta State for members of the lesbian, gay, bisexual and transgender (LGBT) community. The gathering was raided by local police. Although the Respondent narrowly escaped, the police arrested many attendees, including her partner Ms. Roe, for violating Nigerian laws that criminalize being LGBT. The Respondent is devastated because she has had no direct contact with her partner since that night, and she fears that the police are torturing her partner and may kill her because she is LGBT. After returning to Lagos, the police came to the Respondent’s housing complex looking for her, but the Respondent escaped because her neighbor warned her when she heard the police approaching. The Respondent fled to her church where she hid with the help of her pastor for two weeks until she and her brother, a Permanent Resident of Canada, were able to arrange for her travel out of Nigeria. *See Exhibit A* (Form I-589, Application for Asylum and for Withholding of Removal).

In Nigeria, the Respondent’s partner, friends and acquaintances have experienced abuse and mistreatment by the Nigerian government and Nigerian community members for being LGBT, which the Respondent believes may include torture and murder. When two of the Respondent’s siblings first learned about her sexual attraction to women, they strongly pressured her to pretend to be heterosexual in order to avoid family and community rejection and physical harm. The Respondent saw little choice but to attempt relationships with men in an unsuccessful effort to suppress and conceal her attraction to women. One boyfriend, John, physically and sexually assaulted the Respondent on multiple occasions, in part because he suspected that the Respondent was a lesbian. John threatened to report the Respondent to the police and her community if she did not do what he demanded. As a result of one of these sexual assaults, the Respondent became pregnant and was required to undergo an abortion. The Respondent has also been subject to female genital mutilation. *See Exhibit A* (Form I-589, Application for Asylum and for Withholding of Removal).

The Respondent fears that if she is returned to Nigeria she will be arrested by the Nigerian police who are searching for her and that she will be imprisoned and tortured for being LGBT. The Respondent also fears that LGBT-phobic Nigerian community members will torture or kill her as a part of a ritual sacrifice according to custom, because she is a lesbian, or that after torturing her, they will deliver her back to the police who will imprison her for up to fourteen years under Nigerian law because she is a lesbian. *See Exhibit A* (Form I-589, Application for Asylum and for Withholding of Removal).

1. **Argument**
2. ***The Respondent’s Right To Safety As Recognized Under the Prison Rape Elimination Act of 2003, Requires That The Respondent’s Hearing Be Held In Person***

LGBT detainees are especially vulnerable to heightened risks of sexual harassment, sexual assault and physical abuse in immigration detention. In March of 2014, the Department of Homeland Security issued regulations implementing the Prison Rape Elimination Act of 2003 (PREA) to prevent, detect and respond to sexual abuse and assault in DHS confinement facilities. Although these regulations apply to DHS detention facilities and are not directly binding on this Court, videoteleconference hearings constructively extend the courtroom to include the detention center from which a Respondent testifies.

The DHS PREA regulations require that all detainees be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused. *See* 28 C.F.R. § 115.41(a). An intake screening must consider whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender non-conforming; whether the inmate has previously experienced sexual victimization; the inmate’s own perception of vulnerability; and whether the inmate is detained solely for civil immigration purposes. *See* 28 C.F.R.§§ 115.41(d)(7)–(10). The Respondent is 1) a lesbian, 2) who has previously experienced sexual victimization, 3) perceives herself as vulnerable, and 4) is an arriving alien detained solely for civil immigration purposes. Given these factors, she faces a heightened risk of sexual abuse in detention, and this Court should grant this motion to mitigate the risk of harm to her.

The Respondent fears that she may be abused or harmed if her LGBT identity is disclosed without her consent to other detainees at Delaney Hall Detention Facility, and she fears providing testimony via video conference puts her at risk of revealing her LGBT identity. The Respondent is extremely concerned that the video conference room at Delaney Hall Detention Facility is not fully soundproofed and, therefore, other detainees may be able to hear her testimony even if they are outside of the room. The Respondent fears in particular that the other detainees may include Nigerians, who could be brought into the Delaney Hall Detention Facility at any time, which would put her at risk of the same LGBT-phobic violence that the Respondent fears if she is forced to return to Nigeria. *See Exhibit B* (The Respondent’s Statement in Support of Motion for In-Person Appearance). The Respondent’s fear of sexual abuse and harm on account of her LGBT status is exacerbated by the previous persecution, including sexual violence,that she has suffered on account of her LGBT identity in Nigeria. *See Exhibit A* (Form I-589, Application for Asylum and for Withholding of Removal).

Allowing the Respondent to testify to this court in person will therefore mitigate the risk of from abuse and harm to the Respondent on account of her LGBT identity, and safeguard the Department’s ability to comply with its obligations under PREA.

1. ***Holding The Respondent’s Hearing In Person Will Protect Her Right To Present Evidence By Allowing The Respondent To Testify Candidly***

The Respondent’s rights during proceedings includes that the Respondent is entitled to “a reasonable opportunity to examine the evidence against [her], and to present evidence on [her] own behalf.” *See* 8 U.S.C. § 1229a(b)(4).

In construing the Respondent’s entitlement to a “reasonable opportunity … to present evidence,” this court must take into account that the Respondent can present optimal evidence regarding her LGBT identity, which is central to her claim, only if she can testify in person.

The Respondent experiences shame, fear, and discomfort when discussing deeply personal and intimate information regarding her sexual orientation and the harm she has suffered on account of her LGBT identity, due to extreme danger and stigma associated with being LGBT in Nigeria. *See Exhibit B* (The Respondent’s Statement in Support of Motion for In-Person Appearance).

The Respondent’s fear in this regard is heightened because she is in immigration detention. As noted in Part A above, the Respondent fears may be abused or harmed if her LGBT identity is disclosed without her consent to other detainees at Delaney Hall Detention Facility, and she fears that other detainees may be able to hear her testimony even if they are outside the room because the room is not fully soundproofed. Being overly concerned about putting herself at risk of violence and harm is likely to distract the Respondent while she is testifying during her Individual Hearing.

Therefore, the Respondent’s ability to present evidence for her claim may be compromised if it is delivered via videoteleconference from immigration detention and not in person. If the Respondent presents her evidence via videoteleconference, this may affect the Respondent’s ability to testify candidly about her fear of persecution on account of being a lesbian. Allowing the Respondent to testify to this court in person will best allow the Respondent to testify comprehensively about her sexual orientation and the harm she has suffered, consistent with the Respondent’s right to a reasonable opportunity to present evidence on her behalf pursuant to 8 U.S.C. § 1229a(b)(4).

1. ***Holding The Respondent’s Individual Hearing In Person Is Necessary to Protect The Respondent’s Right To Due Process Under The Constitution***

Although 8 U.S.C. § 1229a(b)(2)(iii) authorizes certain removal proceedings to be held by video conference, the totality of the circumstances weigh in favor of holding removal proceedings in person when video conference hearings risk unduly prejudicing the Respondent’s rights to substantive and procedural Due Process under the Constitution. Counsel submits that holding the Respondent’s hearing by video conference while she is detained at Delaney Hall Detention Facility jeopardizes her fundamental rights to life and liberty. The Respondent has submitted a Statement in support of this Motion indicating that she fears that she will not be fully able to speak candidly about her sexual orientation and past sexual harm unless she testifies in person. *See Exhibit B* (The Respondent’s Statement in Support of Motion for In-Person Appearance). Because the Respondent’s applications for relief revolve centrally on the danger to fundamental life and liberty interests that lie at the heart of Fifth Amendment Due Process guarantees, this court should allow the Respondent to testify in person rather than by video conference to safeguard the Respondent’s Constitutional rights.[[1]](#footnote-1)

In these proceedings, the Respondent faces possible removal to Nigeria, a country where she faces a real risk of being tortured and murdered on account of her LGBT identity. There exists a well-documented pattern of the systematic violence against LGBT people in Nigeria. As noted by the U.S. Department of State in its publication, *Country Reports on Human Rights Practices—2014: Nigeria*, “On January 7 [2014], President Jonathan enacted the Same-Sex Marriage (Prohibition) Act (SSMPA), which effectively renders illegal all forms of activity supporting or promoting lesbian, gay, bisexual, and transgender (LGBT) rights.”[[2]](#footnote-2) The Report further notes that “[f]ollowing the passage of the SSMPA, LGBT persons reported increased harassment and threats against them based on their perceived sexual orientation or gender identity.”[[3]](#footnote-3) Similarly, the United Kingdom Home Office’s Country Information and Guidance on Nigeria dated March 2015 instructs that: “Nigeria is a religiously and culturally conservative country where homophobic attitudes … are widely held” and “LGBT persons have experienced societal discrimination and violence, including incidents of mob attacks, intimidation and harassment, blackmail and extortion.”[[4]](#footnote-4)

Because the Respondent risks being tortured and murdered if she is removed to Nigeria, the Respondent should be allowed to present the strongest evidence available in support of her claim for relief to avoid irreparable injury to the Respondent’s Constitutional right to life and liberty.

1. **Conclusion**

Counsel requests on the Respondent’s behalf that she be transferred from Delaney Hall Detention Facility to the Elizabeth Immigration Court for her Individual Hearing in order to protect her safety in detention, allow her to testify candidly and avoid unduly prejudicing her ability to obtain relief from removal, and to protect her fundamental right to Due Process under the Constitution.

Respectfully Submitted,

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**Mr. Clement Lee, Esq.**

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**RESPONDENT’S EXHIBIT LIST ACCOMPANYING MOTION FOR IN-PERSON APPEARANCE AT INDIVIDUAL HEARING**

In the Matter of:

DOE, Jane

File No A # 208-485-XXX

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| **Exhibit** | **Document** | **Page** |
| A | Form I-589, Application for Asylum and for Withholding of Removal. |  |
| B | The Respondent’s Statement in Support of Motion for In-Person Appearance. |  |
| C | Photographs of the Respondent with her Partner Ms. Roe. |  |

1. *Matthews v. Diaz*, 42 U.S. 67, 77 (1976) (“There are literally millions of aliens within the jurisdiction of the United States. The Fifth Amendment, as well as the Fourteenth Amendment, protects every one of these persons from deprivation of life, liberty, or property without due process of law.”). [↑](#footnote-ref-1)
2. U.S. Dep’t of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices—2014: Nigeria41–42 (2014), *available at* http://www.state.gov/documents/organization/236604.pdf. [↑](#footnote-ref-2)
3. *Id.* at 42. [↑](#footnote-ref-3)
4. U.K. Home Office, Country Information and Guidance, Nigeria: Sexual Orientation and Gender Identity §§ 1.3.8–1.3.9 (Mar. 2015), *available at* https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/414681/NGA\_CIG\_SOGI\_15\_3\_19\_v\_1\_0.pdf. [↑](#footnote-ref-4)