Case No. [redacted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

[redacted]

Petitioner,

v.

WILLIAM P. BARR, Attorney General of the United States,

Respondent.

Petition from the Board of Immigration Appeals
(Immigration File No. A203-800-501)

PETITIONER'S EMERGENCY MOTION FOR STAY OF REMOVAL PENDING APPEAL

[redacted]

Counsel for Petitioner

[redacted] *v. U.S. Attorney General*, No. 20-13419

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The following listed persons and entities as described in the Eleventh Circuit Rule 26.1-2(a) have an interest in the outcome of this case:

- Barr, William P. (Respondent)
- Clark, Jeffrey Bossert (Counsel for Respondent)
- Fischer, Katherine S. (Counsel for Respondent)
- Julius, Derek (Counsel for Respondent)
- Martin, Gary (Immigration and Customs Enforcement Counsel)
- Matsuno, Ryan (Immigration and Customs Enforcement Counsel)
- Pepper, S. Kathleen (Board of Immigration Appeals; Judge (Temporary))
- [redacted]
- [redacted]
- Rothschild, Jerome M., Jr. (Immigration Judge)
- [redacted]
- Wallace, Jessica C. (Immigration and Customs Enforcement Counsel)

[redacted] *v. U.S. Attorney General*, No. 20-13419

There are no publicly traded companies or corporations that have an interest in the outcome of this case or appeal.

Dated: September 25, 2020 Respectfully submitted,

[redacted]

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

STATUTORY AUTHORITIES

RULES AND REGULATIONS

INTRODUCTION

Pursuant to Fed. R. App. P. 18 and 27 and 11th Cir. R. 18-1 and 27-1, Petitioner [redacted] moves for a stay of his imminent removal from the United States,[1] pending this Court's review of the order issued by the Board of Immigration Appeals ("Board") on August 13, 2020. ("Board's Order," Ex. A). The Board's Order affirmed the Immigration Judge's ("IJ") denial of [redacted] claims for relief ("IJ's Order," Ex. B) and denied [redacted] motion to remand. On September 11, 2020, [redacted] filed a Petition for Review in this Court.

As a result of [redacted] imminent deportation, past physical attacks, and likely persecution if removed to Haiti, he respectfully requests that the Court grant a stay of removal pending the disposition of his Petition for Review that appeals the Board's Order. The risk to [redacted] life as a gay man in Haiti if he is removed is very substantial, as evidenced by: repeated physical attacks directed at him, including at a place where others were murdered; a group pursuing [redacted] to his home, where they attacked his family and made death threats against them; and

[1] This Motion meets the requirements for an emergency motion because, upon information and belief, [redacted] faces a substantial likelihood of removal on or around Monday, September 28, 2020, meaning that the Motion will be moot within seven days if not granted. The Motion also satisfies the requirements of Fed. R. App. P. 18. On September 24, 2020, [redacted] filed an emergency motion requesting a stay with the Board, but it would be impracticable to wait for a decision from the Board given the imminent removal.

a group further threatening [redacted] brother only a few months ago to tell them [redacted] whereabouts. Given these extreme facts and the legal errors discussed below, a stay of removal is warranted here.

This Motion satisfies the standard for an emergency stay of removal.

First, [redacted] is likely to succeed on the merits of his Petition for Review. In the Board's Order, the Board failed to apply the proper standards of review in both its past and future persecution analyses. Rather than applying *de novo* review, as unquestionably required by the case law, the Board applied clear error in deciding whether the facts constituted past and future persecution. This application of the wrong legal standard requires that the Order be reversed or vacated. In addition, the Board's finding that the Haitian authorities were not unable or unwilling to protect [redacted] has no support in the IJ's Order, and thus is an improper factual finding, which further supports a grant of the Petition and corresponding relief. Moreover, the Board materially mischaracterized the evidence (*e.g.*, stating that evidence was absent from the record, when it was present) and in its motion to remand held incorrectly that supplemental evidence would be "cumulative" even though it conflicted with the IJ's findings.

Second, [redacted] would suffer irreparable harm if deported to Haiti. [redacted] has already suffered or escaped three severe attacks, including one where other people at the gathering were murdered and another where his mother was

beaten in her home and threatened with death, and spent months living in hiding. The people who would harm or kill [redacted] still are threatening in an attempt to find [redacted] three years since he left Haiti. Thus, removal would force him to continue living in hiding and/or suffer physical violence or death, and it would also risk depriving him of the Board's further consideration of his Motion to Reconsider.

Third, it is in the public interest that the Court grant a stay of removal. There is a strong interest in staying removal where, as here, the order of removal rests on clear errors, the petitioner faces a substantial likelihood of harm if he is removed, and there is no government showing of a need for immediate removal that would preempt this Court's ability to assess the merits of the issues.

STATEMENT OF FACTS

A. [redacted] Is A Gay Man from Haiti Who Suffered Anti-Gay Attacks

[redacted] a 38-year-old gay man from Haiti, has suffered and escaped numerous acts of discrimination, physical violence, and attempted murder in Haiti due to his sexual orientation. *E.g.*, Transcript of Hearing 32:14-34:4, Ex. C., 46:8-15; I.J. at 2-4. [redacted] testified that, before 2015, gay men "were often persecuted against" and in 2015 "things got even harder for us" due to political

conditions in Haiti, elaborated below. Declaration of [redacted] at 1,[2] Ex. D. [redacted] was targeted as a gay man and subjected to severe physical violence as a homosexual on at least *three* different occasions—February 14, 2015; May 18, 2017; and May 19, 2017.

On February 14, 2015, [redacted] attended a party "organized … for us, the gays" that "ended up being a nightmare." *Id.* As [redacted] explained, "[w]e were attacked by armed bandits. They had no pity towards us. They shot many rounds, 2 people died, and there were a lot of people who got hurt." *Id.*

After this 2015 attack, "the government could not control those people" who "are numerous and they treat [the gay community] like demons." *Id.* Following the murders at the party and other attacks, such persecutors "started to burn all our goods, the houses we have, and they shot many among us, and burned the bodies." *Id.* [redacted] then entered a period in his life where "I did not have a choice but to stay in my house if not I could lose my life." *Id.* at 2.

In 2016, following a change in the Haitian government, gay men were no longer safe even in their homes. Ex. C. 37:3-16. "People started entering all the gays' homes to beat us to death." Ex. D. at 2; *accord* Ex. C. 37:3-16.

[2] Unless otherwise indicated, page citations refer to the pagination in any English translation.

On May 18, 2017, M[redacted] went to a concert, where he was attacked and suffered significant injuries. Ex. D. at 2; Ex. C. 37:17-25. [redacted] explained specifically that "they hit me with a stick so hard, that bone was popping" and he had to receive treatments for "three to four months." Ex. C. 50:19-51:12.

On May 19, 2017, [redacted] was targeted and in danger again for a third time. Ex. C. 38:5-17. Consistent with the pattern of gay men being attacked in their homes in Haiti, [redacted] was not home when his persecutors from the concert later tried to find him because he "knew they were coming" and made sure he was "not home" when "they went to my house." Ex. D. at 2. Although [redacted] escaped this third, targeted attack, his brother [redacted] and mother [redacted] were home and they were physically attacked, with his mother receiving death threats. *Id.*; Ex. C. 38:18-22. These attackers told [redacted] "mother that they will find [him] except if [he] leave[s] the country." Ex. D. at 2.

[redacted] was unable to receive treatment in a hospital. He elaborated that, after the May 2017 beatings and attacks, he "was forced … to get access to my country's traditional medicine since I could not go to the hospital, if I did it would be too risky for my life." Ex. D. at 2.

In addition to the "two physical brutal attack[s]" against him and the third attack on May 19, 2017, [redacted] articulated regular assaults as well, including that "I would be walking down the street and they throw a rock at me" and "I'm

sitting somewhere and then they took a bucket of water and throw it on me, telling me that people like me should not be in this area." Ex. C 54:20-25. "I was a victim of several attacks and people beat me up." Ex. D. at 1. He explained that if he was deported, "[t]he minute I return I will expose my life." Credible Fear Interview at 6, Ex. E.

B. [redacted] Fears He Will Be Murdered For Being Gay If Deported to Haiti

[redacted] fears that he will be murdered for being gay if he returns to Haiti. *E.g.*, Ex. C 16:17-22; 56:23-25. "I fear returning to Haiti because the Haitian population will persecute me, they will beat [me] to death because of my sexual orientation. Because I am homosexual, the Haitian people do not accept homosexuality." I-589 (English) at 5, Ex. F.

These fears are based on the persecutory actions described above, as well as others. M[redacted] testified that gay men were being taken from their homes shortly before he fled. Ex. E at 5. [redacted] elaborated: "I frankly tell you I'm afraid, I'm afraid for my life to go back to Haiti. I cannot go back, and I cannot change who I am, and the society in Haiti, they rejected people like me. For what they're doing to people like myself in Haiti, I don't know how I can protect myself. I don't see who is going to protect me, Your Honor." Ex. C. 56:16-20.

He specified harms and the failure of the police to address them. "*They, they burn people like myself alive in Haiti in broad daylight, and the police is there.* Their

logic is it's fine, they can do that because you're a homosexual." Ex. C. 56:23-25 (emphasis added). "The police will not protect me because what happen is they themselves, they will stand by and not do anything"; "[i]f anything, they will sell me out to other to do the dirty work for them." Ex. C. 57:4-8.

Following the merits hearing in January 2020, [redacted] and his brother (Obed) received additional threats, confirming that [redacted] life is at risk. On June 1, 2020, Obed was at a soccer game where he "heard some fans saying here's the faggot's brother. And they started to threaten me so that I would [tell] them where Luckson is" and Obed declared that these are "people who want Luckson dead at any cost." Second Obed Decl. at 1, Ex. G. Obed explained that people "threw objects on the soccer field and the whole public was turning against me" and "I escaped … because the crowd was too big [and] the fear totally overwhelmed me." *Id.*

C. [redacted] Imminent Deportation to Haiti

On September 23, 2020, counsel for [redacted] was informed through friends of [redacted] that he had been transferred from the Stewart Detention Center in Lumpkin, Georgia, to the Alexandria Staging Facility in Alexandria, Louisiana. [redacted] deportation is imminent. *E.g.*, Human Rights First, Infographic, Ex. H (explaining that this staging facility serves "as a 72 hour staging facility near the Alexandria airport for detainees being placed on flights for

deportation"). Based on information and belief, Petitioner's removal is likely to occur on or around Monday, September 28, 2020. Emergency relief is therefore necessary.

The undersigned counsel has requested the Government's position on this Motion. At the time of this filing, the undersigned has not received a position.

PROCEDURAL BACKGROUND

On January 30, 2020, the IJ found that [redacted] (a) is a member of the particular social group of gay men in Haiti, and (b) has a subjective fear of future persecution. I.J. at 4, 6. However, the IJ held that [redacted] did not establish past persecution or an objectively reasonable fear of future persecution and was thus not eligible for asylum, withholding of removal, or protection under the Convention Against Torture. I.J. at 8.

On June 22, 2020, [redacted] appealed to the Board and included a motion for remand. On August 13, 2020, the Board denied [redacted] appeal and motion for remand. Ex. A. In its past persecution analysis, the Board held that it found "no clear error in his determination that the two attacks the respondent suffered … did not rise to the level of persecution." *Id.* at 1-2. In so holding, the Board did not address the third attack, other harassment, or country condition evidence. *Id.* In its future persecution analysis, although the Board agreed that [redacted] has a subjectively genuine fear of future persecution, the Board said that

the IJ "was not clearly erroneous" in holding that [redacted] fear was not objectively reasonable because "[t]here were only two attacks that were about two years apart" and "he remained unharmed in Haiti for five or six months thereafter before he left his country." *Id.* The Board also held that "there was insufficient evidence of government involvement in the harm and he has not demonstrated the government of Haiti is unwilling or unable to protect him." *Id.*

On September 11, 2020, [redacted] filed a Petition for Review in this Court seeking review of the Board's Order. On September 14, 2020, [redacted] filed with the Board a Motion to Reconsider the Board's Order.

STANDARD OF REVIEW

There are four factors in determining whether an order of removal should be stayed: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009). Here, all factors favor a stay.

ARGUMENT

[redacted] respectfully submits that the Court should exercise its discretion to grant a stay of removal pending disposition of the Petition for Review and any resultant proceedings. [redacted] has a strong likelihood of success on the merits,

will suffer irreparable harm if he is removed to Haiti, and the public interest against wrongful removal is particularly strong here, and weighs heavily in favor of a stay.

I. [redacted] IS LIKELY TO SUCCEED ON THE MERITS OF HIS ASYLUM CLAIM

The Board's denial of the asylum claim (1) improperly applied the clearly erroneous standard in both its past and future persecution analyses, (2) erred in limiting its assessment of the past persecution analysis to two incidents, (3) erred in making a factual finding as to whether the Haitian authorities were unable or unwilling to protect [redacted] and (4) erred in relying on a period when [redacted] was in hiding as evidence of his ability to live safely in Haiti.

A. The Board Applied The Wrong Standard Of Review To Both Its Past And Future Persecution Analyses

The Court is likely to grant the Petition because the Board applied the wrong standard of review to its past and future persecution analyses. Whether facts rise to the standard of past and future persecution are mixed questions of law and fact that the Board must review *de novo*. 8 C.F.R. § 1003.1; *Matter of Delivrancia Jean Francois*, 2010 WL 3027559, at *1 (BIA June 30, 2010). In particular, as this Court recently held: "whether a fact pattern constitutes persecution is a question of law, subject to de novo review." *Medina v. U.S. Attorney Gen.*, 800 F. App'x 851, 855 (11th Cir. 2020); *see also, e.g.*, *Zhou Hua Zhu v. U.S. Atty. Gen.*, 703 F.3d 1303, 1312 (11th Cir. 2013) ("[T]he IJ will make a series of factual findings that form the

factual basis for the decision under review—which the BIA may review only for clear error—and that the final step, determining whether a given set of facts rises to the level of a well-founded fear of persecution, is reviewed de novo.") (quotation marks omitted).

Here, the Board improperly applied the clearly erroneous standard instead of the *de novo* standard in deciding whether the facts constitute past persecution. In the past persecution analysis, the Board held the following: "we concur with the Immigration Judge and find no clear error in his determination that the two attacks the respondent suffered in 2015 and 2017, did not rise to the level of persecution." Ex. A at 1. However, as discussed above, it is well established that the Board must review *de novo*, not just for clear error, whether the facts "rise to the level of persecution." This error alone requires reversal.

Likewise, in its future persecution analysis, the Board held that "the [IJ's] determination was not clearly erroneous that the respondent did not demonstrate a well-founded fear of future persecution should he return to Haiti." Ex. A at 1. However, whether the record evidence "demonstrate[s] a well-founded fear of future persecution" is subject to *de novo* review. Thus, the Board erred in reviewing the future persecution analysis under the "clearly erroneous" standard, which also requires reversal.

B. The Board Erred In Limiting Its Past Persecution Analysis To Two Incidents

The Board erred in excluding from its past persecution analysis a third attack on [redacted] and other record evidence of persecutory incidents. "[T]he BIA is required to consider all the evidence submitted by the applicant. *A remand is necessary* when the record suggests that the Board failed to consider important evidence in that record." *Seck v. U.S. Att'y Gen.*, 663 F.3d 1356, 1368 (11th Cir. 2011) (emphasis added) (citations and internal quotations omitted).

In its Order, the Board conveyed that it limited its analysis to the two instances where [redacted] suffered physical harm. That approach is contrary to law. *De Santamaria v. U.S. Att'y Gen.*, 525 F.3d 999, 1008 (11th Cir. 2008) ("reject[ing] a rigid requirement of physical injury, making clear … that 'attempted murder is persecution,' regardless of whether the petitioner was injured") (citation omitted). By neglecting to consider the full and cumulative effects of harm to [redacted] including the attack on May 19, 2017 at [redacted] house where his family was harmed and threatened, testimony regarding other threats to [redacted] in Haiti, and evidence of country conditions—the Board erred in failing to conclude that the

record evidence of harm constituted past persecution. *E.g.*, *Shi v. U.S. Att'y Gen.*, 707 F.3d 1231, 1235-36 (11th Cir. 2013); *De Santamaria*, 525 F.3d at 1008.[3]

Here, the persecutory incidents that [redacted] suffered rise well past the level of past persecution. He suffered two severe physical attacks, including escaping a party where others were murdered (Feb. 14, 2015) and being severely beaten at a party where his "bone was popping out" (the May 18, 2017 attack). Ex. C. 50:23-51:6. Moreover, a mere *one day later*, he also escaped a targeted attack on him *in his home* (May 19, 2017), and he suffered other assaults and threats including rocks thrown at him as he walked down the street. *Id.* 54:20-25. Courts generally have recognized that the same type of repeated threats and physical attacks that [redacted] suffered here constitute persecution. For instance, in *Delgado v. U.S. Att'y General*, this Court held that "based on the cumulative effect of the two attacks, the continued threatening calls, and the [other] incidents," the applicants "suffered past persecution" even though "each of the incidents taken separately would not establish persecution." 487 F.3d 855, 861-62 (11th Cir. 2007) (analyzing past persecution in the context of withholding of removal); *see also Mezvrishvili v. U.S. Att'y Gen.*, 467 F.3d 1292, 1294 (11th Cir. 2006) (remanding a past persecution case involving two beatings and one additional attack).

[3] The Board also erred in failing to hold that the IJ must consider evidence beyond the two referenced attacks. *Forgue v. U.S. Att'y Gen.*, 401 F.3d 1282, 1287 (11th Cir. 2005) ("IJ must … consider *all* evidence introduced by the applicant").

C. The Board Erred In Making An Impermissible Factual Finding

The Board further erred by engaging in improper fact-finding. Generally, the Board must not make findings of fact that have not been found by an IJ. 8 C.F.R. § 1003.1(d)(3)(iv); *see also Munoz Erazo v. United States*, 506 F. App'x 938, 942 (11th Cir. 2013) (holding that the "BIA cannot 'engage in factfinding in the course of deciding appeals'" but that "the BIA did exactly that" when it "spun the limited evidence it chose to discuss") (citation omitted). Here, the Board found that [redacted] "has not demonstrated that the government of Haiti is unwilling or unable to protect him." Ex. A. at 2. However, the IJ never decided the fact of whether the Haitian authorities were unwilling or unable to protect [redacted] *E.g.*, Ex. B. at 5. Accordingly, the Board erred in deciding this factual issue in the absence of any finding by the IJ.

The Board's factual finding on this issue also conflicts with the record evidence and the law. [redacted] presented substantial evidence of the authorities being unable or unwilling to protect him. For example, [redacted] testified, "they burn people like myself alive in Haiti in broad daylight, and the police is there. Their logic is it's fine, they can do that because you're a homosexual." Ex. C. 56:23-25. He further explained that his life would be in further danger if he reported incidents to the police and that, even if he did, they would not protect him. *E.g.*, Ex. C. 70:19-21.

The Board compounded its error by failing to reverse the IJ's implicit holding that an asylum applicant is required to report persecution to authorities. The law contains no such requirement. Asylum may be based on persecution caused exclusively by private actors. *E.g.*, *Azurdia-Hernandez v. U.S. Att'y Gen.*, 812 F. App'x 935, 939 (11th Cir. 2020). And asylum applicants do not need to report their persecution to the authorities in order to be eligible for asylum. *Castillo Munoz v. U.S. Att'y Gen.*, 786 F. App'x 988, 992 n.3 (11th Cir. 2019); *accord Ayala v. U.S. Att'y Gen.*, 605 F.3d 941, 950 (11th Cir. 2010) ("This Court has never held that an applicant for asylum who alleges that he was persecuted by an official of the government must report the persecution"). The IJ, despite settled law, implicitly held that [redacted] was required to report his persecution to the police in order to demonstrate past persecution. *E.g.*, Ex. B. at 2-3. Thus, the Board erred in making a factual finding that the IJ (based on an erroneous view of the law) never reached.

D. The Board Erred In Holding That [redacted] Months Of Living In Hiding After His Second Severe Attack Demonstrates That He Can Live Safely In Haiti

The Board erred as a matter of law in concluding that a period of time in which [redacted] was in hiding following an attack is evidence of him being able to live safely in Haiti. It is improper for a court to hold that an applicant can live safely in an area when that safety results from that individual living in hiding. *Ortez-Cruz v. Barr*, 951 F.3d 190, 201 (4th Cir. 2020) ("Nor does the eight-month period when

[the applicant] lived safely with her sisters show that she can safely relocate."); *Singh v. Sessions*, 898 F.3d 518, 522 (5th Cir. 2018) (collecting cases).

Despite this clear law, the Board concluded that [redacted] can exist safely in Haiti based on the five months he spent in Haiti following an attack while ignoring evidence that [redacted] spent that time in hiding, recuperating from his injuries, and waiting for a U.S. visa determination. *Compare* Ex. B. at 6, *with* Ex. C. 49:5-11; 51:2-6; 58:20-21; Ex. A. at 1. This was error.

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For the foregoing reasons, [redacted] is likely to succeed on the merits that the Board improperly denied his asylum claim.

II. REMOVAL WILL CAUSE IRREPARABLE HARM

As discussed above, [redacted] removal to Haiti will occur imminently in the absence of a stay. Upon removal to Haiti, [redacted] faces probable threats to his physical welfare, risk that the Board will cease considering his motion for reconsideration despite his right to such reconsideration, and no guarantee of return to the United States in light of the COVID-19-related travel restrictions and physical and life-threatening injuries he is likely to suffer in Haiti.

The irreparable harm inquiry should include consideration of the likelihood of physical danger, including apart from the merits issues. *See Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011). Here, the harm faced by [redacted] if removed

is heightened given the three attacks [redacted] has already suffered, including the attack where people were murdered, the attack where [redacted] suffered severe injuries, and the third attack which he escaped. *See supra* at 5. And the current nature of the threat is established by the recent threats conveyed to [redacted] brother only a few months ago. *See supra* at 7.

Failure to grant the stay would also cause other irreparable harms. While, under some circumstances, a deportee "who prevail[s] can be afforded effective relief by facilitation of [his] return," *Nken*, 556 U.S. at 435, that is not the case here given the absence of any established mechanism for returning [redacted] to the United States once removed, particularly in light of COVID-19 travel restrictions—and the very real risk of death or months (if not years) of being forced to live in hiding upon removal. Moreover, there is a requirement that an applicant be "physically present" in the United States to claim asylum. *See* 8 U.S.C. § 1158(a)(1). Although this Court has invalidated the post-departure rule with respect to motions to reopen, *Lin v. U.S. Att'y Gen.*, 681 F.3d 1236 (11th Cir. 2012), it has not spoken clearly on the physical presence issue for motions to reconsider (a motion that [redacted] filed with the Board), among other avenues for relief. [4]

The Court should grant a stay of removal to avoid these irreparable harms.

[4] [redacted] does not concede that removal would bar him from eligibility for asylum or to continue his pending motion for reconsideration before the Board, among other things.

III. A STAY SERVES THE PUBLIC INTEREST

The public interest supports a stay. *Cf. Nken*, 556 U.S. at 435 (inquiries into "the harm to the opposing party" and "the public interest" "merge when the Government is the opposing party"). As the Supreme Court noted, "there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *Id.* at 436. That is plainly present here given the wrongful nature of any removal following the extensive harms that [redacted] suffered and the meritorious arguments for reversal of the Board's Order. Any interest the Government has in executing a removal order is outweighed by the aforementioned interests. *See id.*

CONCLUSION

For these reasons, [redacted] requests that the Court stay his removal pending resolution of his Petition for Review and any resultant proceedings.

Dated: [redacted] Respectfully submitted,

[redacted]

Pro Bono Counsel to Petitioner

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Times New Roman, a proportionally spaced font.

I further certify that this filing complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 4,442 words, excluding the parts of the filing exempted under Fed. R. App. P. 32(f), according to the count of Microsoft Word.

Dated: [redacted] Respectfully submitted,

[redacted]

CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d), I hereby certify that on September 25, 2020, I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system. Counsel for Respondent is a registered CM/ECF user, and service will be accomplished by the CM/ECF system.

Dated: September [redacted], 2020 Respectfully submitted,

[redacted]