

NOT DETAINED

Pro Bono Counsel for the Respondent

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
[CITY, STATE]**

In the Matter of:

[REDACTED]

File No.:

A

[REDACTED]

In Removal Proceedings

Immigration Judge:

[REDACTED]

Next Individual Hearing:

[REDACTED]

2014 at

[REDACTED]

**MEMORANDUM OF LAW
IN SUPPORT OF RESPONDENT'S APPLICATIONS
FOR ASYLUM AND HUMANITARIAN ASYLUM**

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**MEMORANDUM OF LAW
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FOR ASYLUM AND HUMANITARIAN ASYLUM**

Mr. ██████████ is a 47-year-old native citizen of Liberia, who currently resides in ██████████, Maryland. Mr. ██████████ seeks asylum pursuant to section § 208(a) of the Immigration and Nationality Act (INA) or humanitarian asylum pursuant to 8 C.F.R. §208.13(b)(1)(iii). In the alternative, he withholding of removal pursuant to INA § 241(b)(3)(B) and relief under the Convention Against Torture (CAT) according to 8 C.F.R. § 1208.¹ Mr. ██████████ is eligible for asylum because he is a refugee, as stated in INA §101(a)(42)(A), and there are no bars to his asylum eligibility. Mr. ██████████ is unable and unwilling to return to Liberia because he has a well-founded fear that he will be subject to future persecution in Liberia. Mr. ██████████ fears persecution on account of his membership in a particular social group, specifically Mr. ██████████ identity as a gay man. His fears are subjectively genuine, given his credible and detailed testimony. Due to well-documented, harsh country conditions in Liberia towards this particular social group, including threats, harassment, violent beatings, imprisonment, and even torture at the hands of both the Liberian government and groups that the government is unable and unwilling to control, his fears also are objectively

¹ Please note that these alternative forms of relief are not included in this legal memorandum.

reasonable.

Even though Mr. [REDACTED] did not apply for asylum within one year of his arrival in the United States as required by INA §208(a)(2)(B), he falls squarely within the exceptions to the one year deadline found in 8 C.F.R. §§208.4(a)(4)-(5). Most importantly, Mr. [REDACTED] came out as a gay man in the summer of 2013 and filed his amended application for asylum on November 19, 2013, within a reasonable time of his changed personal circumstances that are material to his asylum claim.

Lastly, Mr. [REDACTED] merits a favorable exercise of the Court's discretion because of his deep ties to the United States, his ailing U.S. citizen parents' reliance on his care, and his commitment to being an exemplary member of society. For these reasons, Mr. [REDACTED] should be granted asylum or humanitarian asylum.

1. Statement of Facts²

a. Mr. [REDACTED]'s Life in Liberia

Mr. [REDACTED] lived in [REDACTED] Liberia until the age of 25. He lived a decent life, doing what a normal boy his age was expected to do. However, there was one subject that had always been a taboo with his family and with the rest of Liberian society – homosexuality. This had a significant impact on Mr. [REDACTED]'s development and ability to know and accept his own sexual identity. Mr. [REDACTED] had an uncle, [REDACTED], who was gay. Everyone in his family knew or at least suspected that his uncle was gay. Mr. [REDACTED]'s uncle was beaten and bullied throughout his life because he was perceived to be gay by Liberian society, despite having a daughter. There were times that he was incarcerated solely

² Unless otherwise noted, all facts in this section can be found in Mr. [REDACTED]'s sworn affidavit. *See* Resp't Exh. G – Sworn Statement by Mr. [REDACTED].

for being gay.³ This is how Mr. [REDACTED] grew up to understand the subject of homosexuality: a topic that needed to be left aside and never spoken about unless one was prepared to incur Liberian society's prejudicial views and violent punishment. Mr. [REDACTED]'s early life was shaped by the negative perceptions of Liberian society towards gays and the horrible events of the Liberian Civil War.

The coup d'état that gave rise to the First Liberian Civil War started in 1989. At that time, Mr. [REDACTED] was enrolled in a local university but had to quit his studies, and quickly go into hiding after he found out that the Government was persecuting his family. According to the testimony of Mr. [REDACTED]'s mother, Mrs. [REDACTED]:

The [REDACTED] family name was respected and well-known in [REDACTED]. Our family members held some high positions within the government of President William Tolbert, Jr. My husband was one of the vice-presidents for the [REDACTED], my brother-in-law [REDACTED] was an Ambassador, and my cousin [REDACTED] was the [REDACTED] during the Tolbert administration... [Samuel Doe's] soldiers went against anyone who was perceived to be helping the opposition movements or any families that they thought had money or influence.⁴

Because of the danger presented by the civil war, Mr. [REDACTED], along with his family, left their home. Weeks after the whole family went into hiding, soldiers stormed into their home and destroyed everything. Days later, soldiers showed up in his cousin's neighborhood where the family was in hiding at Mr. [REDACTED]'s cousin's home and found the [REDACTED] family. These soldiers ordered Mrs. [REDACTED] and all other women present to step to the side while Mr. [REDACTED] and three other men were forced to remain standing by a wall.⁵ The soldiers yelled into Mr. [REDACTED]'s ear that he would be executed for betraying his government. Mr. [REDACTED] pleaded for his life, trying to explain that he was not with the opposition. This only resulted in him being beaten on his back with the soldier's rifle.

³ See Resp't Exh. S – Sworn Statement of Mrs. [REDACTED].

⁴ See Resp't Exh. S.

⁵ See Resp't Exh. S.

Fortunately, just as the soldiers had lined up the men to execute them, some [REDACTED] peacekeeping troops came in and rescued the family from near-execution.⁶

That night, Mr. [REDACTED] knew that he had to flee Liberia one way or another. He couldn't bear to risk his life one more day, and so the family soon fled to the neighboring country of [REDACTED]. While in [REDACTED], Mr. [REDACTED] kept a very low profile for fear of being found by the Liberian government while he anxiously awaited the arrival of his U.S. tourist visa. Mr. [REDACTED] lived months of anguish, not knowing whether he would be alive the next day, or whether he would become a prisoner or victim of a senseless war.⁷ Luckily, his passport finally arrived, and he was able to board a plane headed to [REDACTED] NY. He arrived in the United States on [REDACTED] 1991.

b. Mr. [REDACTED]'s arrival in the U.S. and the start of his immigration procedures

Mr. [REDACTED] first arrived in the U.S. on [REDACTED] 1991. He entered in B2 status, along with his brother. Mr. [REDACTED]'s older brother and older sister were residing here in the U.S. as legal permanent residents at the time. Upon his arrival, Mr. [REDACTED] was suffering from symptoms of PTSD.⁸ Mr. [REDACTED] did not realize he had a disorder that required long-term treatment, and instead, attempted to deal with his symptoms on his own. He did not seek professional help until much later.⁹ Mr. [REDACTED] continued to have the intrusive negative thoughts, flashbacks of the civil war, fear of figures in uniform, exaggerated startle response, recurring nightmares, and a strong desire to avoid remembering or recounting what had happened to him and his family in Liberia.¹⁰ These symptoms did not cease until much

⁶ See Resp't Exh. S.

⁷ See Resp't Exh. G.

⁸ See Resp't Exh. P – Expert Report and Initial Diagnostic Evaluation by Dr. [REDACTED] M.D.

⁹ See Resp't Exh. T – Letter from then attorney, [REDACTED] See also Resp't Exhs. G, P.

¹⁰ See Resp't Exh. O – Expert Report and Initial Diagnostic Evaluation by Dr. [REDACTED] M.D. See also Resp't Exhs. G, P.

later.¹¹

In 1997, Mr. [REDACTED]'s symptoms of PTSD had finally decreased in intensity and he was finally able to confront his immigration status and the memories required in order to do so. He applied on his own for Temporary Protected Status (TPS) at the suggestion of one of his cousins, but unfortunately, his application was wrongfully denied due to the immigration agency's mistaken belief that his Liberian birth certificate was fake.¹² In 1999, through previous counsel, Mr. [REDACTED] filed an asylum application based on the past persecution he suffered on account of his perceived political affiliations in Liberia.¹³ This application was administratively closed by the immigration court in 2004, following the approval of Mr. [REDACTED]'s subsequent TPS application. Mr. [REDACTED] had resubmitted his TPS application in 2000 using his same birth certificate, and finally, his application was approved. Mr. [REDACTED] held lawful TPS status until 2007, when TPS for Liberian nationals was terminated.¹⁴ Mr. [REDACTED] then obtained Deferred Enforced Departure (DED) status, which he currently maintains.¹⁵

c. Confronting His Own Sexual Orientation

Mr. [REDACTED] has struggled his whole life with accepting his own sexuality. He grew up in a very conservative society that highly condemned homosexuality and those who were associated with or supportive of it. Even within his own family, homosexuality was a "tabooed" subject. After observing the violent harassment and beatings of his own gay uncle, as well as other gay men in society, Mr. [REDACTED] did not consider it an option to be gay. He never had the courage to accept who he really was inside, because for him, being gay meant

¹¹ See Resp't Exhs. G, O – P.

¹² See Notice to Appear issued on [REDACTED] 1997.

¹³ See Resp't Exh. T.

¹⁴ See Resp't Exh. Q – Timeline of events for Mr. [REDACTED].

¹⁵ See Resp't Exh. D – Copy of current Employment Authorization Document.

being beaten and jailed. As a result, Mr. [REDACTED] tried to convince himself that he was not really gay and suppressed his true identity for decades.

Mr. [REDACTED]'s coming out was an internal struggle that pitted his own identity against the values of Liberian society and his own family.¹⁶ He was never seen around women, nor did he ever bring girlfriends home to introduce to his family. This led to frequent questions from those who knew about his private life about why he never had girlfriends. Mr. [REDACTED] [REDACTED] dodged these questions and this subject-matter for decades, hiding who he really was. It took him a long journey and many years in the United States, a much more open and accepting society than Liberia, to finally realize and accept his true sexual identity as a gay man. Recently, in [REDACTED] 2013, Mr. [REDACTED] reached a point of acceptance of his own true identity, and came out to his loved ones, including his cousin and his mother.¹⁷ Reaching a point of self-acceptance and coming out to his loved ones made Mr. [REDACTED] feel as if a weight had finally lifted off his shoulders.¹⁸ Simultaneously, however, it made him feel very afraid about his future due to his lack of a permanent immigration status in the United States.

d. Mr. [REDACTED]'s Present Day Life in the United States

Since coming out in the summer of 2013, Mr. [REDACTED] has a new outlook on life. He smiles more often and enjoys going out on dates, meeting new people, and spending quality time with his family. He truly feels like a new individual. Coming out to his family has greatly boosted his self-esteem. However, he fears that all would be taken away if he were to be returned to Liberia. Mr. [REDACTED] is well aware of the current situation in Liberia related to the LGBT community and the serious dangers they face. Due to the animosity that has been created ever since the Liberian legislature began introducing and passing anti-gay legislation in

¹⁶ See Resp't Exh. P.

¹⁷ See Resp't Exh. G. See also Resp't Exh. R - S.

¹⁸ See Resp't Exh. R – Sworn Statement of Ms. [REDACTED].

2012,¹⁹ anyone who is or is perceived to be homosexual, as well as anyone who is merely associated with someone in the LGBT community, may be beaten in the streets, apprehended, imprisoned, beaten, tortured, and even killed.²⁰ Homophobic and anti-gay groups in Liberian society make it their goal to identify, punish, and “cure” gay men of their homosexuality. The Liberian police permit and encourage this violence against gay men. Mr. [REDACTED] fears facing this same outcome if he were to be returned to Liberia. It took him so long to accept his own sexual identity, feel comfortable being honest about it with his loved ones, and live a happy life as the man he is. Going back to Liberia would undo all the progress he has made, and worse, may result in his constant threats and harassment, violent beatings, imprisonment, and maybe even torture or death.²¹

2. Mr. [REDACTED] is eligible for Asylum under INA § 208(a).

Mr. [REDACTED] meets the eligibility criteria for a favorable grant of asylum under INA §208(a). An asylee is an individual who meets the definition of refugee under INA §101(a)(42)(A), is physically present in the United States, and is not subject to any of the bars to asylum as established in INA §208(a)(2) or INA §208(b)(2). Pursuant to INA §101(a)(42)(A), a refugee is defined as “any person outside his or her country of nationality who is unable or willing to return to that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion.”²² Mr. [REDACTED] qualifies for asylum because (a) he is physically present in the United States and is unwilling and unable to return to his country of nationality, (b) he has suffered both past persecution and has a well-founded fear of future persecution, (c) the

¹⁹ See Monica Tabengwa, “It’s Nature, not a Crime” Discriminatory Laws and LGBT People in Liberia, 4 (Graeme Reid ed, Human Rights Watch 2013). Resp’t Exh. I. (hereinafter HRW Report).

²⁰ See Resp’t Exh. N – Expert Report by Mr. Stephen McGill.

²¹ See Resp’t Exh. R. See also Resp’t Exh. L, N, S.

²² INA § 101(a)(42)(A).

persecution he will suffer will be on account of his membership in the particular social group of gay Liberian men, (d) the future persecution he will suffer will be at the hands of the government and groups that the government is unable and unwilling to control, and (e) no statutory bars make him ineligible for asylum.

a. Mr. [REDACTED] is physically present in the United States and is unwilling and unable to return to his country of nationality.

Any asylum applicant must demonstrate he is physically present in the United States²³ and he is unwilling or unable to return to his country of nationality²⁴. A threshold question is determining the applicant's nationality. According to INA §101(a)(21), "nationality" refers to the applicant's permanent state of allegiance. Mr. [REDACTED] is a national of Liberia, as evidenced by his valid birth certificate and various affidavits attesting to the validity of the birth certificate.²⁵

Pursuant to INA §208(a), an applicant must be present in the United States to apply for asylum. Mr. [REDACTED] is physically present in the United States, as he has remained in the United States since his arrival on [REDACTED] 1991.²⁶

Mr. [REDACTED] also is unwilling and unable to return to his country of nationality, Liberia. According to the United Nations High Commissioner for Refugees *Handbook on Procedures and Criteria for Determining Refugee Status*, an individual is "unable" to return to his country of nationality if the conditions in that country are beyond his control or if the government has denied the individual basic government protections.²⁷ Similarly, an individual is "unwilling" to return to his country of origin if he refuses to accept the protections of his

²³ INA § 208(a).

²⁴ INA § 101(a)(42)(A).

²⁵ See Resp't Exh. D – Birth Certificate of [REDACTED]; See also Resp't Exh. D – Affidavits of Attestation.

²⁶ See Resp't Exhs. U – W.

²⁷ United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugees*, at ¶98 – 100, available at <http://www.unhcr.org/3d58e13b4.html> [hereinafter UNHCR Handbook].

government.²⁸ Mr. [REDACTED] is both unwilling and unable to return to his country of nationality, Liberia. The situation in Liberia for a gay man is beyond Mr. [REDACTED]'s control and the government does not offer any protections to gay men in Liberia.²⁹ Furthermore, Mr. [REDACTED] is unwilling to accept the protections of the Liberian government, because they refuse to protect or ignore members of his particular social group, gay men.³⁰ Mr. [REDACTED]'s claims are further supported by the U.S. Department of State Country Report on Human Rights Practices in Liberia 2012:

In October a law enforcement officer refused to investigate allegations of the beating of a gay man. The police subsequently arrested one gay man. Activists alleged that the LNP [Liberian National Police] or other law enforcement agencies targeted or harassed those they believe to be LGBT.³¹

Mr. [REDACTED]'s unwillingness to return to his country of nationality stems from his well-founded fear of persecution that he would suffer if he were to be returned to Liberia.

b. Mr. [REDACTED] suffered past persecution in Liberia and has a well-founded fear of future persecution if he must return to Liberia.

To qualify for asylum, an individual must prove that the harm suffered or feared amounts to "persecution." Persecution has been defined as: "a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive."³² Other harm that may be considered persecution includes, but is not limited to, non-physical harm like psychological harm,³³ or cumulative instances of harassment or discrimination considered in

²⁸ UNHCR Handbook, at ¶98 – 100.

²⁹ See Resp't Exh. N. See also Resp't Exh. E.

³⁰ U.S. State Department, Liberia 2013 Human Rights Report, 22 (2013). Resp't Exh. H (hereinafter 2013 State Department Human Rights Report).

³¹ U.S. State Department, Liberia 2012 Human Rights Report, 23 (2012). Resp't Exh. E (hereinafter 2012 State Department Human Rights Report).

³² *Matter of Acosta*, 19 I. & N. Dec. 211, 222 (BIA 1985).

³³ *Matter of A-K-*, 24 I. & N. Dec. 275 (BIA 2007).

their totality.³⁴

Mr. [REDACTED] has suffered past persecution because of the threats to his life and freedom and the threats to his family's lives during the First Liberian Civil War.³⁵ Mr. [REDACTED] also has a well-founded fear of future persecution based on the current conditions in Liberia facing the LGBT community.³⁶ It is reasonable to infer that the future harm that Mr. [REDACTED] fears amounts to persecution, given the totality of the circumstances and current country conditions facing gay men in Liberia. Mr. [REDACTED]'s fears are supported by the U.S. Department of State Country Report on Human Rights Practices in Liberia 2013, which states that:

LGBT persons were cautious about revealing their sexual identities, and groups that supported the rights of LGBT persons did so quietly due to fear of retaliation... A few civil society groups promoted the rights of LGBT individuals, but most maintained a very low profile due to fear of persecution.³⁷

Thus, Mr. [REDACTED] both suffered past persecution in Liberia and has a well-founded fear of future persecution based on his sexual orientation.

i. Mr. [REDACTED] suffered past persecution during the Liberian Civil War on account of his imputed political opinion, which has left him traumatized for life.

An applicant for asylum may establish his claim by presenting evidence of past persecution in lieu of evidence of a well-founded fear of persecution in general.³⁸ According to 8 C.F.R. § 1208.13(b)(1), in order to establish past persecution, Mr. [REDACTED] must demonstrate that he suffered persecution in his country of nationality on account of an actual or imputed protected ground, and that he is unable or unwilling to return to, or avail himself of the

³⁴ *Matter of O-Z- & I-Z-*, 22 I. & N. Dec. 23 (BIA 1998).

³⁵ See Resp't Exh. G – Sworn Statement by Mr. [REDACTED]. See also Resp't Exh. S – Sworn Statement of Mrs. Bindu [REDACTED].

³⁶ See Resp't Exh. G – Sworn Statement by Mr. [REDACTED]. See also Resp't Exh. N.

³⁷ Resp't Exh. H – 2013 State Department Human Rights Report at 22.

³⁸ *Matter of Chen*, 20 I. & N. Dec. 16 (BIA 1989).

protection of, that country because of such persecution. Political opinion is one of the five grounds for which a refugee may seek asylum.³⁹

Mr. [REDACTED] did in fact suffer from past persecution in Liberia, which is the reason why he fled in 1991. In Mr. [REDACTED]'s affidavit, he details the events he and his family had to endure as the First Liberian Civil war arose. Specifically, he and his family members were almost executed in his cousin's home and they had to flee their homes in order to survive.⁴⁰ He describes the day when the soldiers stormed into his cousin's home bearing guns and attempted to execute all them inside the home.⁴¹ Being terrorized in his own home, with guns pointed at his head, almost being killed in his own home, and having all of his property ransacked by the soldiers,⁴² does rise to the level of past persecution, as it resembles the facts in *Gomes v. Gonzalez*, 473 F.3d 746, 753-54 (7th Cir. 2007). In that case, the court held that being terrorized and physically abused in one's home with a knife to one's throat amounts to persecution.⁴³

Furthermore, in her affidavit, Mrs. [REDACTED] describes the struggles that the family endured during these dark times in their lives. She explains that they had to leave their home, leave most of their belongings behind, and constantly fear for their lives and for their loved ones. She expresses pain at being separated from her children, but she needed to stay with her mother in Liberia while her children left for the United States.⁴⁴

Mr. [REDACTED] and his family were persecuted based on a perceived political opinion by government forces that politically aligned the family with the previous government

³⁹ INA § 101(a)(42)(A).

⁴⁰ See Resp't Exh. G. See also Resp't Exh. S.

⁴¹ See Resp't Exh. G.

⁴² See Resp't Exh. S.

⁴³ *Gomes v. Gonzalez*, 473 F.3d 746, 753-54 (7th Cir. 2007) (holding that the applicant being terrorized and physically abused in their home with a knife to their throats amounted to persecution).

⁴⁴ See Resp't Exh. S.

simply because several members of that family worked for that government. At the time, Mr. [REDACTED] and the [REDACTED] family were thought to be supporting the opposition because several members of the [REDACTED] family had held high positions within the previous government in Liberia. Mrs. [REDACTED] states in her affidavit that her husband, Mr. [REDACTED], worked for the [REDACTED] and her cousin, [REDACTED], was the [REDACTED] [REDACTED] under the administration of William Tolbert, Jr.⁴⁵ Because those members of the [REDACTED] family worked for the previous government, the soldiers perceived that the whole [REDACTED] family was aiding the opposition forces, and the soldiers imputed on Mr. [REDACTED] and his family the political opinion of the opposition forces.⁴⁶ Mr. [REDACTED] therefore endured past persecution because he was nearly executed by soldiers in Liberia on account of his imputed political opinion based on his family's connections to the previous government, the Tolbert administration, in Liberia.

ii. Mr. [REDACTED] has a well-founded fear of future persecution in Liberia because his fear is subjectively genuine and objectively reasonable.

To succeed in a claim of well-founded fear of future persecution, an applicant must show that a "reasonable person" in his circumstances would fear persecution if removed to his home country.⁴⁷ In *INS v. Cardoza-Fonseca*, it was established that a well-founded fear has two components: a "subjectively genuine" and an "objectively reasonable" fear, referring to the applicant's own fears and the current country conditions.⁴⁸ The U.S. Supreme Court has stated in *INS v. Cardoza-Fonseca* that a person "can certainly have a well-founded fear of an event happening when there is less a than 50% chance of the occurrence taking place," and suggested

⁴⁵ See Resp't Exh. S.

⁴⁶ See Resp't Exh. G. See also Resp't Exh. S.

⁴⁷ *Matter of Mogharrabi*, 19 I. & N. Dec. 439, 445 (BIA 1987).

⁴⁸ *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987).

that even a 10% chance of persecution may amount to a reasonable fear of persecution.⁴⁹ Mr. [REDACTED] has a subjectively genuine fear of returning to Liberia based on his identification as a gay man.⁵⁰ This fear is objectively reasonable based on the very real and proven environment of “widespread homophobia” in Liberia that has been sanctioned by the government,⁵¹ and which exposes Mr. [REDACTED] to persecution by the government and other groups that the government is unable and unwilling to control.⁵² Mr. [REDACTED] establishes that he meets both of the components of a well-founded fear of future persecution as set forth by the relevant case law.

A. Mr. [REDACTED] has a subjectively genuine fear of future persecution if he were returned to Liberia.

According to *Berrotean-Melendez v. INS*, an applicant can establish a subjectively genuine fear based on his “candid, credible and sincere testimony.”⁵³ Mr. [REDACTED] has established through his sworn affidavit that he has a legitimate and genuine fear of returning to Liberia because of his identification as a gay man. As Mr. [REDACTED] himself describes in his affidavit:

I strongly fear for my life ... I dread becoming their next victim. I no longer have personal connections back home, meaning I would have nowhere to go back ... I am afraid of being held hostage by one of these extreme groups, or being incarcerated just because I am gay. With no one to turn to in case of an emergency, I would be trapped in the hands of the extremists, and no one would know my whereabouts. I have no desire to go back, and cannot see myself moving back to a country where even the police would be against me.⁵⁴

⁴⁹ *Id.* at 440.

⁵⁰ See Resp’t Exh. G.

⁵¹ Amnesty International, Amnesty International Report 2013, The State of the World’s Human Rights, 160 (Amnesty International Ltd 2013) (2013). Resp’t Exh. E (hereinafter Amnesty International Report 2013).

⁵² See Resp’t Exh. N.

⁵³ *Berrotean-Melendez v. INS*, 955 F.2d 1251, 1256 (9th Cir. 1992); see also *Yong Hao Chen v. INS*, 195 F.3d 198, 201-02 (4th Cir. 1999).

⁵⁴ See Resp’t Exh. G.

In his affidavit, Mr. [REDACTED] thoroughly and clearly explains his fears of what would happen to him if he were returned to Liberia. He fears that he would be another victim like his Uncle [REDACTED] was, and that he would not be able to reach out to anyone for help.⁵⁵ Mr. [REDACTED]'s candid, credible, and sincere testimony regarding what will happen to him if he is returned to Liberia, prove that he has a subjectively genuine fear, satisfying the first component of his well-founded fear claim.⁵⁶

B. Mr. [REDACTED] has an objectively reasonable fear of returning to Liberia based on the current country conditions.

According to *Berrotean-Melendez v. INS*, the objective component requires “credible, direct and specific evidence in the record, of facts that would support reasonable fear that the applicant faces persecution.”⁵⁷ The U.S. Supreme Court in *INS v. Stevic* has established that as long “as the objective situation is established by the evidence, it need not be shown that the situation will probably result in persecution, but it is enough that persecution is a reasonable possibility.”⁵⁸ The circumstances in Liberia towards members of the LGBT community have been well documented through a series of international reports detailing the current situation in that country for members of the LGBT community. For example, the Amnesty International Report of 2013 paints a dark picture of the country’s current situation. In the Liberia section of the report, it states:

A number of [LGBT] people reported incidences of discrimination, harassment and threats based on their sexuality. Many of them also reported that the introduction of [anti-homosexual] bills, perpetuating the stigma of same-sex relationships, made them increasingly concerned for their safety and frightened to seek government services such as health, security, welfare.⁵⁹

⁵⁵ See Resp’t Exh. G. See also Resp’t Exhs. R – S.

⁵⁶ *Berrotean-Melendez* at 1256.

⁵⁷ *Id.*

⁵⁸ *INS v. Stevic*, 467 U.S. 407, 424-25 (1984).

⁵⁹ Resp’t Exh. E – Amnesty International Report 2013 at 160.

Members of the LGBT community in Liberia live in constant fear that they will be targeted by their own government or other groups.

Similarly, the U.S. Department of State Country Report on Human Rights Practices for 2012 in Liberia provides some clear examples of how members of the LGBT community are treated in Liberia. The U.S. Department of State Report states:

There were press and civil society reports of harassment of persons perceived to be LGBT, but none were officially documented. Social stigma and fear of official reprisal may have prevented victims from reporting violence or discrimination based on sexual orientation or gender identity.⁶⁰

The U.S. Department of State, Country Report on Human Rights Practices for 2013 in Liberia further describes the current situation in Liberia:

The law prohibits consensual same-sex sexual activity, and the culture is strongly opposed to homosexuality ... According to a report by a domestic civil society organization that supports LGBT rights, on October 12, two men in Monrovia were attacked by a mob who threatened to kill the two because they were suspected of 'being gay.' The two men first attempted to report the threats and obtain protection at a local police station, but the threats continued and the two fled their homes.⁶¹

These reports cite to some specific cases where homosexual individuals, whether they actually were homosexual or merely perceived as homosexual, were targeted by groups or mobs of civilians who were against homosexuality.⁶² Similarly these individuals, when trying to get protection from the government, were either denied help or ignored, adding to the sense of impunity and fear of persecution that exists in the country.⁶³ The Amnesty International Report begins its section on Liberia and the Rights of LGBT people with the following statement: "Against a backdrop of widespread homophobia in the Liberian general public and the

⁶⁰ Resp't Exh. E – 2012 State Department Human Rights Report at 23.

⁶¹ Resp't Exh. H – 2013 State Department Human Rights Report at 22.

⁶² Resp't Exh. H – 2013 State Department Human Rights Report at 22.

⁶³ Resp't Exh. H – 2013 State Department Human Rights Report at 22.

media...”⁶⁴ That statement alone summarizes the dire circumstances that Mr. [REDACTED] would face were he to be returned to Liberia.

Furthermore, the affidavits of Mr. [REDACTED]’s mother, Mrs. [REDACTED], and his cousin, Ms. [REDACTED], detail some of the harm that another gay member of their family has already suffered.⁶⁵ Mr. [REDACTED]’s uncle, [REDACTED], was a closeted gay man who had a daughter, yet he was still targeted by extremist groups in Liberia because he was perceived to be gay.⁶⁶ During that time, there were no laws that criminalized homosexuality, although there has always been a stigma against the LGBT community. As his cousin Ms. [REDACTED] states in her affidavit:

Uncle [REDACTED] lived his whole life as a closeted gay man because he feared what society would say or how they would judge him if he came out. Back then, like now, homosexuality was not accepted in Liberian society. The difference was that back when Uncle [REDACTED] was alive, there were no laws that explicitly prohibited or punished homosexuality. My uncle was beaten and harassed constantly by the Liberia police forces and other groups in the city. They would arrest him and charge him with being a “deviant” and use that as an excuse to throw him in jail.⁶⁷

Based on the testimony of his family members, who know firsthand the cultural values of Liberian society, as well as the country reports from widely respected international organizations, someone in Mr. [REDACTED]’s position would have an objectively reasonable fear of future persecution upon return to Liberia. The evidence presented above and by country conditions experts Professor [REDACTED] and Mr. [REDACTED] show that there is at least a 10% chance that Mr. [REDACTED]’s fears will be realized if he is returned to Liberia.⁶⁸ Mr. [REDACTED] states:

Mr. [REDACTED] will suffer threats, gross discrimination, exclusion from all normal aspects of Liberian society, and even worse, violent beatings as a result of his gay identity. The Liberian police will not protect him, but rather, will stand idly by, allowing

⁶⁴ Resp’t Exh. E – Amnesty International Report 2013 at 160.

⁶⁵ See Resp’t Exh. S.

⁶⁶ See Resp’t Exh. S.

⁶⁷ See Resp’t Exh. R.

⁶⁸ *Cardoza-Fonseca* at 440.

these actions to occur. These are proven patterns in Liberian society, patterns that Mr. [REDACTED] would be unable to avoid or escape [...] These actions (or lack of actions) by the Liberian police fuel the idea among members of Liberian society that such violence against LGBT individuals is allowed and encouraged. This, of course, only leads to more violence against the LGBT community. It is an increasing and escalating pattern in Liberia.⁶⁹

As Mr. [REDACTED] has established that he has a subjectively genuine and an objectively reasonable fear, he has shown that he has a well-founded fear of future persecution.

C. Mr. [REDACTED] meets all the components of the *Matter of Mogharrabi* test to establish a well-founded fear of future persecution.

The BIA set forth a four-part test to determine whether an applicant has a well-founded fear of future persecution.⁷⁰ To satisfy this test, the applicant must demonstrate that he 1) possesses a belief or characteristic that the persecutor is seeking to overcome, 2) that the persecutor is already aware or could become aware of the applicant's belief or characteristics, 3) that the persecutor has the capability of punishing the applicant and 4) that the persecutor has the inclination to punish the applicant.⁷¹

1. Mr. [REDACTED] possesses a belief or characteristic a persecutor seeks to overcome by means of punishment of some sort.

Mr. [REDACTED] is a gay man.⁷² After struggling with his own sexuality for many years prior to filing his asylum application, Mr. [REDACTED] now identifies himself as a gay man and has come out to members of his family.⁷³ Homosexuality is a characteristic that the Liberian Government and other groups within Liberian society seek to punish and overcome via beatings, jailing, and passing strict laws against homosexuality.⁷⁴ Government officials, like the Liberian National Police, refuse to protect or help members of the LGBT community in Liberia,

⁶⁹ See Resp't Exh. N – Expert Report by Mr. [REDACTED].

⁷⁰ *Matter of Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987).

⁷¹ *Id.*

⁷² See Resp't Exh. G.

⁷³ See Resp't Exh. R. See also Resp't Exh. S.

⁷⁴ See Resp't Exh. L. See also Resp't Exhs. E, N.

even though they are clearly in physical danger at the hands of other groups.⁷⁵ According to Mr. [REDACTED] there have been instances of corrective rape in Liberia, where the aggressors rape the victim in an attempt to turn the victim heterosexual.⁷⁶ It is acts like this that the persecutors in Liberia use to overcome homosexuality in individuals who are gay or are suspected of being gay.

2. The persecutor is already aware, or could become aware, that Mr. [REDACTED] possesses this belief or characteristic.

The future persecutors of Mr. [REDACTED] would become aware of his sexual orientation based on his physical characteristics (i.e. wearing an earring), as well as the fact that he is middle-aged, fairly effeminate, not married and has never been married, and has no children.⁷⁷ Even if Mr. [REDACTED] did not show any of those signs, if he were to associate with anyone in the LGBT community in Liberia, homosexuality would be imputed on him and he would be in danger of persecution.⁷⁸ Mr. [REDACTED], an expert on the conditions in Liberia, explains in his affidavit why such characteristics would alert Liberians to the fact that Mr. [REDACTED] is gay. He states:

There are several factors that would identify Mr. [REDACTED] as a gay man. The main factors would be the fact that Mr. [REDACTED], a 47-year-old man, is not married and has never been married, nor does he have any children. Additionally, he wears an earring and has some effeminate mannerisms, such as the way that he walks. In a traditional, conservative society, like Liberia's, these factors are an affront to the traditional gender roles that we expect from a man. A man is expected to have a wife, to procreate, and to act in a very masculine way. Even the slightest signs that do not conform to traditional gender roles will make the Liberian general population suspect that someone is gay.⁷⁹

⁷⁵ Resp't Exh. H – 2013 State Department Human Rights Report at 22.

⁷⁶ See Resp't Exh. N.

⁷⁷ See Resp't Exh. G.

⁷⁸ Resp't Exh. H – 2013 State Department Human Rights Report at 22. See also Resp't Exh. L.

⁷⁹ See Resp't Exh. N.

Mr. [REDACTED]'s statements are supported by the affidavit of Prof. [REDACTED], who speaks to the way Liberian society views marriage and the gender roles of a man. He states:

In Liberian society, a man is expected to support one or more women and to father children. A man who does not participate in heterosexual relationships and does not have children is not considered to be a responsible member of society, indeed is not considered to be a man.⁸⁰

Accordingly, it is clear that persecutors in Liberia will be able to easily recognize Mr. [REDACTED]'s sexual orientation and identity as a gay man, and Mr. [REDACTED]'s life will be in danger because of it.

3. The persecutor has the capability of punishing Mr. [REDACTED]

The government of Liberia has the capability of punishing anyone who is a member of the LGBT community. As evidenced by the international reports, there are laws that give the government and the Liberian National Police (LNP) the legal backing to punish homosexual behavior.⁸¹ The government, the LNP, and other groups also enjoy the backing of Liberian society at large.⁸² As noted in a report by Human Rights Watch, the passing of anti-homosexual laws – even the mere introduction of those laws in the legislature – has “exacerbated discrimination, harassment, and stigmatization, and that things could worsen should the Liberian legislature actually pass these laws against same-sex conduct or marriage.”⁸³ The Liberian government therefore has the capability of punishing Mr. [REDACTED] for his sexual identity as a gay man.

Moreover, these bills waiting to be passed have increased homophobia and propelled certain groups to intensify and increase their violence against the LGBT community in Liberia.⁸⁴

⁸⁰ See Resp't Exh. M – Expert Report by Dr. [REDACTED].

⁸¹ See Resp't Exh. J – Liberian Penal Code. *See also* Resp't Exh. G.

⁸² Resp't Exh. E – Amnesty International Report 2013 at 160.

⁸³ Resp't Exh. I. – HRW Report at 4.

⁸⁴ Resp't Exh. I. – HRW Report at 7 – 9.

Such groups have become more organized and formed organizations to further their cause against homosexuality.⁸⁵ As Mr. [REDACTED] states in his affidavit:

Although most violent attacks, harassment, and suffering aimed at gay men stems from the intrinsic homophobic feelings found in Liberian society, there also exist hate groups that focus specifically on attacking members of the LGBT community. One example of these groups is the Movement Against Gays in Liberia (MOGAL), a group that published a flyer with a list of seven people who they said were gay or “supporters of the club who don’t mean well for our country.”⁸⁶

Thus, the situation is even worse now than it was for Mr. [REDACTED]’s uncle, [REDACTED], who was beaten by a mob when he lived in Liberia, a mob that continually demanded that he renounce his sexuality.⁸⁷ The government is unwilling to control these groups, because even after MOGAL made its threats against the seven individuals published in the flyer, the government did not take any action against or denounce MOGAL, despite the flyer clearly inciting violence and threatening the lives of these individuals.⁸⁸ These groups have the capability of punishing Mr. [REDACTED] because they know that no one will hold them responsible for their actions - certainly not the Liberian government, which usually turns a blind eye to the plight of the LGBT community.⁸⁹

4. The persecutor has the inclination to punish Mr. [REDACTED]

The government and other groups have the inclination to punish Mr. [REDACTED] because they will perceive his homosexuality as going against traditional Liberian values.⁹⁰ Furthermore, as the Amnesty International report noted, there is an environment of widespread homophobia in the general public and the media, giving the government and other groups a

⁸⁵ Resp’t Exh. I. – HRW Report at 30.

⁸⁶ See Resp’t Exh. N.

⁸⁷ See Resp’t Exh. G.

⁸⁸ Resp’t Exh. I. – HRW Report at 30 -31.

⁸⁹ See Resp’t Exh. M.

⁹⁰ See Resp’t Exh. L.

reason to seek to punish these individuals.⁹¹ The government and other extremist groups know that their actions are backed by the general population, giving them more of an inclination to persecute members of the LGBT community.⁹² The Human Rights Watch report cites some examples of these incidents in the general population:

LGBT men and women – all aged between 18 and 40 – told Human Rights Watch how, even before the bills were introduced, neighbors, family, and even strangers harassed, insulted, and beat them in public; disgraced and threw them out of homes; and ridiculed and bullied them in school. One gay man said a “friend” had stabbed him with a broken bottle because she could not accept that he was happy being a homosexual.⁹³

Furthermore, in his affidavit, Dr. [REDACTED] articulates Liberian’s society recent inclination for wanting to punish homosexuality. He states:

However Liberians may have felt about individual same-sex activity when it took place clandestinely, they did not view it as a threat to society. In contrast, the news of same-sex marriage in the US and Europe has caused Liberians to see the legalization of same-sex marriage as an imminent danger to their society.... Crucially, same-sex marriage is at direct odds with what Liberian society requires of men, namely the support of women and the fathering of children.⁹⁴

Accordingly, Liberian society’s traditional and conservative views of gender roles and families and its desire to prevent deviance from those traditional and conservative views provides the Liberian government and groups within society with the inclination to target and punish gay men like Mr. [REDACTED] in an effort to prevent or cure their homosexuality.⁹⁵

For these reasons, Mr. [REDACTED] has a well-founded fear of future persecution. He has proven through his own affidavit, the affidavits and testimony of his mother and his cousin, Liberia’s anti-homosexual laws and proposed laws, numerous country reports, and the written

⁹¹ Resp’t Exh. H – 2013 State Department Human Rights Report at 22.

⁹² Resp’t Exh. I. – HRW Report at 29 – 32.

⁹³ Resp’t Exh. I. – HRW Report at 4.

⁹⁴ See Resp’t Exh. M.

⁹⁵ See Resp’t Exh. N – Expert Report by Mr. [REDACTED]. See also Resp’t Exh. M – Expert Report by Dr. [REDACTED].

affidavits of two experts on Liberia that he has a subjectively genuine and an objectively reasonable fear of future persecution. The facts meet every element of the *Matter of Mogharrabi* test, and thus, any reasonable person in Mr. [REDACTED]'s circumstances would fear persecution in Liberia. Accordingly, Mr. [REDACTED] has a well-founded fear of future persecution.

c. Mr. [REDACTED] fears future persecution based on his membership in a particular social group.

Mr. [REDACTED] is seeking asylum based on his membership in a particular social group. “The term ‘particular social group’ is ambiguous.”⁹⁶ The Board of Immigration Appeals (BIA) defined “particular social group” in *Matter of Acosta* as a group of individuals with common, immutable characteristics, characteristics which “the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities.”⁹⁷ The BIA has since added the concepts of particularity and social distinction to their particular social group analysis.⁹⁸ The BIA has clarified that “particularity refers to whether the group is sufficiently distinct that it would not constitute a discrete class of persons,”⁹⁹ while “social distinction” requires that the defined group be perceived “as a group by society.”¹⁰⁰ Accordingly, to establish a particular social group for the purposes of an asylum claim, an applicant must show that the group is (1) composed of members who share a common, immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.¹⁰¹

⁹⁶ *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1083 (9th Cir. 2013) (en banc).

⁹⁷ *Matter of Acosta*, 19 I. & N. Dec. 211, 232-33 (BIA 1985).

⁹⁸ See *Matter of W-G-R-*, 26 I. & N. Dec. 208 (BIA 2014); *Matter of M-E-V-G-*, 26 I. & N. Dec. 227 (BIA 2014).

⁹⁹ *Matter of W-G-R*, 26 I&N Dec. 208, 210 (BIA 2014) (quoting *Matter of S-E-G-*, 24 I&N Dec. 579, 584 (BIA 2008)) (quotations omitted).

¹⁰⁰ *Id.* at 216.

¹⁰¹ See *Matter of W-G-R*, 26 I&N Dec. 208 (BIA 2014), see also *Matter of M-E-V-G*, 26 I&N Dec. 227 (BIA 2014).

i. Gay men in Liberia constitute a particular social group because they meet all of the prongs established by the BIA.

Mr. [REDACTED] identifies himself as a gay man, and as a result, he is also a member of the LGBT community.¹⁰² The BIA has already established sexual orientation as a recognized particular social group.¹⁰³ Moreover, the BIA has recently confirmed that this group remains a recognized particular social group, as it meets all three parts of the new test.¹⁰⁴ First, homosexuality is a characteristic that a person cannot change or should not be required to change; it is a common, immutable characteristic.¹⁰⁵ Psychiatrists, such as Dr. [REDACTED], who has evaluated Mr. [REDACTED], agree that sexual orientation - whether heterosexual, lesbian, or gay - is set in place early in life and is highly resistant to change.¹⁰⁶ Thus, as a gay man, Mr. [REDACTED] is a member of a group that shares a common, immutable characteristic.

The second element as establish by the BIA is particularity, which “relates to the group’s boundaries or, as early court decisions describe it, the need to put ‘outer limits’ on the definition of ‘particular social group.’”¹⁰⁷ The group of gay men is well defined in Liberia as the “sexual orientation of a man whose primary sexual and romantic attraction is towards other men.”¹⁰⁸ The particularity analysis “does not occur in isolation, but rather in the context of the society out of which the claim for asylum arises.”¹⁰⁹ The BIA has held that homosexuals is a group that has “sufficient particularity because it was discreet and readily definable.”¹¹⁰ The main particularity of gay men in Liberia is that they are men who have sexual relations with members of the same

¹⁰² See Resp’t Exh. G.

¹⁰³ *Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819 (BIA 1990).

¹⁰⁴ *Matter of W-G-R-*, 26 I. & N. Dec. 208, 219 (BIA 2014).

¹⁰⁵ *Id.* at 822-23.

¹⁰⁶ See Resp’t Exh. P See also Resp’t Exh. O.

¹⁰⁷ *Matter of M-E-V-G-* at 238.

¹⁰⁸ Resp’t Exh. I. – HRW Report.at ii.

¹⁰⁹ *Id.* at 238.

¹¹⁰ *Matter of W-G-R-* at 219.

sex. This is a characteristic that is particular to them and to no other group in the society, because it is viewed as highly objectionable in Liberian Society.¹¹¹ Mr. [REDACTED] shares this particularity with the other members of the group because he has been intimate with other men and desires to have romantic relationships with other men.¹¹² Thus, as a gay man, Mr. [REDACTED] is a member of a group that is particular.

The third element of the particular social group analysis is “social distinction,”¹¹³ which means that “there must be evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group.”¹¹⁴ The particular social group of gay men is one that Liberian society recognizes as a group. It is a group that is easily recognizable by “the certain way that a particular person dressed or their mannerism and behavior.”¹¹⁵ Mr. [REDACTED] embodies many of these characteristics including his manner of speaking, the way he dresses, his behaviors, his civil status, and his lack of children.¹¹⁶ Although, it might not be immediately recognizable to all members of society, over time these are factors that people will recognize and rely upon to identify an individual like Mr. [REDACTED] as gay. Such identification would lead to his persecution.¹¹⁷ Thus, as a gay man, Mr. [REDACTED] is a member of a group that is socially distinct in Liberian society. Accordingly, Mr. [REDACTED]’s particular social group meets all three prongs of the BIA test for a particular social group as set forth in *Matter of W-G-R-* and *Matter of M-E-V-G-*.¹¹⁸

¹¹¹ See Resp’t Exh. M.

¹¹² See Resp’t Exh. G.

¹¹³ *Matter of M-E-V-G-*; see also *Matter of W-G-R-*.

¹¹⁴ *Matter of W-G-R-* at 217.

¹¹⁵ See Resp’t Exh. N.

¹¹⁶ See Resp’t Exh. G. See also Resp’t Exhs. M – N.

¹¹⁷ See Resp’t Exh. G. See also Resp’t Exh. M- N.

¹¹⁸ *Matter of W-G-R-* at 219; *Matter of M-E-V-G-* at 234.

ii. Mr. [REDACTED] is a member of this particular social group, gay men in Liberia.

After defining that the group of gay men in Liberia is a particular social group, the applicant must establish that he is a member of that group. Mr. [REDACTED] has struggled for a long time with his sexuality.¹¹⁹ His journey to self-acceptance and coming out to his loved ones has not been easy,¹²⁰ and although he has disappointed some of his family members in the process, Mr. [REDACTED] has been able to accept his sexual identity and admit that he is a gay man.¹²¹ This is not only established through his own testimony, but also through the expert reports from two psychiatrists that have examined Mr. [REDACTED]. These psychiatrists have concluded that Mr. [REDACTED] is gay, and that his journey of acceptance and coming out – an unusually challenging journey given the many obstacles he has faced throughout his life – has played a major role in defining who he is.¹²² In his affidavit, Mr. [REDACTED] details his relationship with Isaac and how that relationship changed him.

Months had passed since [REDACTED] and I had first met, and I felt like it was about time that I told [my cousin] [REDACTED] how I felt towards men. I had grown tired of living under the shadows and tired of trying to suppress and hide who I was. I longed for the freedom that I knew [REDACTED] felt, having accepted himself and told his loved ones who he really was. He inspired me to be brave.¹²³

Furthermore, Mr. [REDACTED] recently took part in an interview on African gays in the United States published in the [REDACTED], admitting that he was a gay man.¹²⁴ His cousin and roommate, Ms. [REDACTED], confirms that this is something that Mr. [REDACTED] would never have done before, but now that he has admitted to being gay he is more comfortable

¹¹⁹ See Resp't Exh. G.

¹²⁰ See Resp't Exh. R.

¹²¹ See Resp't Exh. G.

¹²² See Resp't Exhs. O – P.

¹²³ See Resp't Exh. G.

¹²⁴ [REDACTED] *African Gays in U.S. and abroad seek legal help amid spate of harsh criminal penalties*, [REDACTED] 2014.

sharing his story with others.¹²⁵ Thus, Mr. [REDACTED] is a member of the particular social group of gay men.

iii. Mr. [REDACTED] will be persecuted if returned to Liberia because he is a gay man, a particular social group in Liberia.

If Mr. [REDACTED], a gay man, is returned to Liberia, his emotional and psychological well-being, safety, and even his life will be in great danger.¹²⁶ Mr. [REDACTED] has certain characteristics as discussed above that would alert other members of society of his sexuality and place him in danger of becoming their next victim.¹²⁷ Upon identifying Mr. [REDACTED] as gay, homophobic groups in Liberian society will target, harass, threaten, and beat him.¹²⁸ The police will stand idly by and will not protect him.¹²⁹ If Mr. [REDACTED] seeks protection from the Liberian government, he will be jailed, where he is likely to suffer further harm and perhaps even torture.¹³⁰ Expert Mr. [REDACTED] states:

I have no doubt that, because Mr. [REDACTED] exhibits characteristics associated with gays in Liberia, he will be subjected to all forms of violence coming from homophobic groups on the street and from the Liberian National Police itself. If he is returned to Liberia, he will not be able to seek protection from the police or anyone else in Liberia.¹³¹

Mr. [REDACTED] knows that this will happen to him because his uncle, [REDACTED], suffered such persecution because of his sexual orientation and identity as a gay man; he was targeted, accused of being gay, ordered to renounce his sexual orientation, and severely beaten in the streets of [REDACTED]. Instead of being taken to the hospital, he was sent to jail.¹³² Thus, Mr. [REDACTED] has seen how the Liberian Government perceives and treats gay men in Liberia,

¹²⁵ See Resp't Exh. R.

¹²⁶ See Resp't Exh. N.

¹²⁷ See Resp't Exh. N.

¹²⁸ See Resp't Exh. N – Expert Report by Mr. [REDACTED]. See also Resp't Exh. M – Expert Report by Dr. [REDACTED]

¹²⁹ See Resp't Exh. N – Expert Report by Mr. [REDACTED]. See also Resp't Exh. M – Expert Report by Dr. [REDACTED]

¹³⁰ Resp't Exh. H – 2013 State Department Human Rights Report). See also Resp't Exh. I. – HRW Report.

¹³¹ See Resp't Exh. N – Expert Report by Mr. [REDACTED]

¹³² See Resp't Exh. G. See also Resp't Exhs. R – S.

seeking to punish and overcome their “undesirable traits.”¹³³ The example of his uncle’s suffering has remained with Mr. [REDACTED] for most of his life and it has driven his fear of coming out.¹³⁴ Now, in Liberia, with the increased sense of homophobia throughout the country due to Liberian government officials’ proposals of anti-gay legislation, Mr. [REDACTED] fears that even worse things could happen to him.

Like in many LGBT cases, the persecutor seeks to harm the individual on the basis that he transgresses traditional gender boundaries.¹³⁵ The 2013 State Department Country Report on Liberia reports that the Liberian government views with animosity and disdain the whole homosexual community in their country.¹³⁶ The government allows and encourages other homophobic mobs to target and persecute homosexuals with impunity.¹³⁷ Groups, like the hate group MOGAL, have been very open about their activities and have openly and unapologetically threatened individuals’ lives and safety based on the fact that they are gay or they help the gay community. They are able to do so without fear of retaliation or punishment by the government. According to MOGAL, homosexuals “don’t mean well for our country.”¹³⁸

Dr. [REDACTED] further explains in his expert report that homophobic levels have risen in Liberia so much because of political rhetoric against the LGBT community, stating that “there is much anti-gay talk that often borders on the hysteric.”¹³⁹ Mr. [REDACTED] writes in his report that there have been instances of “corrective rape” in Liberia against members of the LGBT community and the victims have been targeted because they are gay. He explains:

The most extreme cases of this violence have been instances of corrective rape. Corrective rape occurs when an individual is raped because of their perceived

¹³³ See Resp’t Exh. M.

¹³⁴ See Resp’t Exh. G.

¹³⁵ Resp’t Exh. I – HRW Report. See also Resp’t Exh. M.

¹³⁶ Resp’t Exh. E – 2012 State Department Human Rights Report at 23.

¹³⁷ Resp’t Exh. I – HRW Report. at 40.

¹³⁸ See Resp’t Exh. N.

¹³⁹ See Resp’t Exh. M.

sexual orientation and the perpetrator's intended consequence is to turn the victim heterosexual. Most of these cases of violence go unreported in Liberia because LGBT individuals rightfully mistrust the Liberian National Police.¹⁴⁰

There is substantial evidence in the affidavits and expert reports affirming that in Liberia gay men are targeted for being gay; as gay men, they do not fit into the traditional gender roles, and, as gay men, they are perceived as posing a threat to the traditional society of Liberia.¹⁴¹

d. The persecution that Mr. [REDACTED] fears will be at the hands of the Liberian government, the Liberian National Police, and groups that the government is unable and unwilling to control.

An asylum applicant needs to establish that the persecution will be at the hands of the government or a group that the government is unable or unwilling to control.¹⁴² Mr. [REDACTED] fears both persecution at the hands of the Liberian government and persecution at the hands of groups that the government is unable or unwilling to control.¹⁴³

i. Mr. [REDACTED] fears persecution at the hands of the Liberian government

It has been widely recognized and documented through several reports that the Liberian government would persecute Mr. [REDACTED] or any member of the LGBT community solely because those individuals' lifestyles go against the traditional values of Liberian society.¹⁴⁴ Currently, the law in Liberia considers same-sex relations or "voluntary sodomy" as a misdemeanor deserving a penalty of one-year in prison penalty.¹⁴⁵ Indicating that homophobic sentiments are on the rise, the Liberian legislature has been working on a number of laws aimed at weakening an already fearful LGBT community and its activists. The Liberian House of Representatives has moved to make voluntary sodomy a second-degree felony, while the

¹⁴⁰ See Resp't Exh. N.

¹⁴¹ See Resp't Exhs. L – N.

¹⁴² INA § 208(b)(1).

¹⁴³ See Resp't Exh. G.

¹⁴⁴ Resp't Exh. I. – HRW Report. See also Resp't Exh. L.

¹⁴⁵ Resp't Exh. H – 2013 State Department Human Rights Report at 22.

Liberian Senate passed a bill to make voluntary sodomy a “first-degree felony with a maximum penalty of death.”¹⁴⁶ It has also moved to criminalize certain activities that would be viewed as promoting homosexuality.¹⁴⁷ Furthermore, the Amnesty International Report 2013 on Human Rights confirms that in Liberia:

[T]wo laws aiming to further criminalize same-sex sexual conduct were introduced into the legislature and led to further discrimination. In July, the Senate voted unanimously to pass an amendment to the Domestic Relations Law of Liberia which seeks to make same-sex marriage a second-degree felony. At the end of the year a vote by the House of Representatives was pending. A second bill seeking to amend the New Penal Code, criminalizing the ‘promotion’ of homosexuality and imposing long sentences for entering into a consensual same-sex relationship, was awaiting a vote by the House of Representatives at the end of the year, before proceeding to the Senate. The ambiguity of the ‘promotion’ clause in the House of Representative bill has the potential for criminalizing the work of human rights defenders.¹⁴⁸

Assuming *arguendo* that the current law and the potential laws that the legislature is actively trying to pass were not enforced, these laws in the aggregate constitute a form of psychological persecution.¹⁴⁹

Additionally, they have the effect of exacerbating violence, harassment, and severe stigmatization against homosexuals¹⁵⁰ in a country where the culture is already strongly opposed to homosexuality.¹⁵¹ Most reports make note of LGBT members and how they have been targeted solely for acting “gay.” Besides having to be on the lookout for government officials, a gay man in Liberia also needs to beware of the general public’s widespread homophobia.¹⁵² The story of Hassan, a 23-year-old gay man, from Liberia illustrates the homophobia found in the general public and the police:

¹⁴⁶ Resp’t Exh. H – 2013 State Department Human Rights Report at 22.

¹⁴⁷ Resp’t Exh. I – HRW Report

¹⁴⁸ Resp’t Exh. E – Amnesty International Report 2013 at 160.

¹⁴⁹ *Matter of A-K-*, 24 I. & N. Dec. 275 (BIA 2007).

¹⁵⁰ Resp’t Exh. I – HRW Report

¹⁵¹ Resp’t Exh. H – 2013 State Department Human Rights Report at 22.

¹⁵² Resp’t Exh. I – HRW Report

One day ... these boys became abusive and violent, beat us up really badly, breaking everything in the shop. We called the police who arrested them. But when we attended at the police station, the boys had told the police that we were gay and had been trying to entice them to have sex. The police immediately forgot about our report and arrested us instead and kept us in detention.¹⁵³

These factors, combined with the refusal of the LNP to investigate crimes against homosexuals and refusal to protect those targeted with violence, a gay man in Liberia would live a life of constant fear and anxiety, not knowing whether this will be the day when he becomes a target of the LNP or other government actors.¹⁵⁴ Mr. [REDACTED] fears living under such a government that would persecute, imprison, physically abuse, and refuse to protect its own people simply for being gay.

ii. Mr. [REDACTED] fears persecution at the hands of groups that the government is unable or unwilling to control.

To prove that the persecution feared would be at the hands of a group other than government actor, an applicant must show that the government has not taken reasonable steps to provide meaningful protection to the applicant.¹⁵⁵ Furthermore, an applicant is not required to show that the government refused to protect him on account of a protected ground. Rather, the applicant must only show that the government was unable or unwilling to prevent the persecution.¹⁵⁶

There have been reports that in Liberia, government actors have stood aside and denied protection to individuals who needed it because they were being beaten and harassed by other groups for being gay.¹⁵⁷ Mrs. [REDACTED] explains in her affidavit that it is not only the

¹⁵³ Resp't Exh. I – HRW Report at 40.

¹⁵⁴ Resp't Exh. I – HRW Report at 30-41. *See also* Resp't Exh. H – 2013 State Department Human Rights Report at 22.

¹⁵⁵ *Aliyev v. Mukasey*, 549 F.3d 111, 118-119 (2d Cir. 2008)

¹⁵⁶ *See, e.g. Valdiviezo-Galdamez v. Att'y Gen. of the U.S.*, 502 F.3d 285, 288-289 (3d Cir. 2007)

¹⁵⁷ Resp't Exh. H – 2013 State Department Human Rights Report at 22; *See also supra* Part 2, section (b)(ii).

government that persecutes members of the LGBT community, but it is also indigenous groups that live outside the cities and are now moving into the cities that foster and fan the flames of homophobia in several parts of the country.¹⁵⁸ Her own brother, and the uncle of Mr. [REDACTED], was not able to go to the police to accuse his persecutors or to avail himself of their protections because he was a gay man.¹⁵⁹

For these reasons, Mr. [REDACTED] not only fears persecution at the hands of the Liberian government, but also, he fears persecution at the hands of other groups that the government is unable and unwilling to control.

e. Mr. [REDACTED]'s asylum application is not subject to any of the bars to asylum.

Mr. [REDACTED] meets the definition of refugee under INA § 101(a)(42) because he is unwilling and unable to return to Liberia based on his well-founded fear of future persecution on account of his membership in the particular social group of gay men.¹⁶⁰ The Liberian government would target him directly and it would also be unwilling and unable to provide him meaningful protection from other homophobic groups in Liberia.¹⁶¹ Despite fulfilling these criteria, there are various statutory bars under INA § 208 that could prevent an asylum seeker from being granted relief. Mr. [REDACTED] is not subject to any of these bars.

i. Mr. [REDACTED] has not participated in the persecution of others

According to INA § 208(b)(2)(A)(i), an applicant is barred from applying for asylum if the applicant ordered, incited, assisted, or otherwise participated in the persecution of others.¹⁶² Mr. [REDACTED] has always been a law abiding member of society. He has never been

¹⁵⁸ See Resp't Exh. S.

¹⁵⁹ See Resp't Exh. S; *See also*, Resp't Exh. I. – HRW Report; Resp't Exh. E – 2012 State Department Human Rights Report; Resp't Exh. E – Amnesty International Report 2013; Resp't Exh. H – 2013 State Department Human Rights Report.

¹⁶⁰ *Supra* Part 2, section (b) – (c).

¹⁶¹ *Supra* Part 2, section (d).

¹⁶² INA § 208(b)(2)(A)(i).

involved in the persecution of anyone anywhere in the world. Instead he has focused his attention on providing for and supporting his ailing U.S. citizen parents.¹⁶³ Furthermore, Mr. [REDACTED] has not engaged or participated in the persecution of anyone during his time in Liberia because, during that time, he was either in school or hiding from soldiers who were persecuting his family.¹⁶⁴

ii. Mr. [REDACTED] has not been convicted of a particularly serious crime in the United States.

According to INA § 208(b)(2)(A)(ii), an applicant is barred from applying for asylum if the applicant has been convicted by a final judgment of a particularly serious crime in the United States, and therefore, constitutes a danger to the community.¹⁶⁵ Mr. [REDACTED] has never been convicted of any crime in the United States or anywhere else in the world, as evidenced by his clean criminal record.¹⁶⁶

iii. Mr. [REDACTED] has not committed a serious crime outside the United States.

According to INA § 208(b)(2)(A)(iii), an applicant is barred from applying for asylum if there are serious reasons for believing that the applicant has committed a serious, nonpolitical crime outside of the United States prior to his arrival.¹⁶⁷ Mr. [REDACTED] has never committed any crime before arriving in the United States or following his arrival.¹⁶⁸ Mr. [REDACTED]'s life in Liberia consisted mostly of his childhood and teenage years where he studied and lived with his family members until the family had to flee political persecution during the First Liberian Civil War.¹⁶⁹

¹⁶³ See Resp't Exh. R.

¹⁶⁴ See Resp't Exh. G.

¹⁶⁵ INA § 208(b)(2)(A)(i).

¹⁶⁶ See Background Check done by DHS.

¹⁶⁷ INA § 208(b)(2)(A)(iii).

¹⁶⁸ See Background Check done by DHS.

¹⁶⁹ See Resp't Exh. G.

iv. Mr. [REDACTED] is not a danger to the security of the United States, nor is he a member of a terrorist organization.

According to INA § 208(b)(2)(A)(iv), (v), an applicant is barred from applying for asylum if there are reasonable grounds for regarding the applicant as a danger to the security of the United States, or if the applicant is described as a terrorist or has given material support to a terrorist organization.¹⁷⁰ Neither of these applies to Mr. [REDACTED], who has proven to be an upstanding member of the community. He has held his job for almost a decade,¹⁷¹ he has worked hard and been a contributing member of American society, he has obeyed all laws and paid his taxes, and he helps take care of his elderly parents, who are U.S citizens.¹⁷²

v. Mr. [REDACTED] cannot resettle nor has he ever firmly resettled in a safe third country

According to INA § 208(b)(2)(A)(vi), an applicant is barred from applying for asylum if the applicant has firmly resettled in another country prior to his or her arrival in the United States.¹⁷³ Similarly and pursuant to INA § 208(a)(2)(A), an applicant is barred from applying for asylum if there is a safe third country available to the applicant in which his life or freedom would not be threatened and where he would have access to full and fair procedure for determining asylum eligibility.¹⁷⁴ According to 8 C.F.R. § 1208.15, an applicant is deemed as firmly resettled if he entered the country with, or while in the country received, an offer of permanent resident status, citizenship, or other type of permanent status.¹⁷⁵ In *Matter of A-G-G-*, the BIA determined that the framework for making a firm resettlement determination focuses exclusively on the existence of an offer of permanent resettlement and allows for the

¹⁷⁰ INA §§ 208(b)(2)(A)(iv), (v).

¹⁷¹ See Resp't Exh. U – Letter Confirming Mr. [REDACTED]'s Employment.

¹⁷² See Resp't Exh. S.

¹⁷³ INA § 208(b)(2)(A)(vi).

¹⁷⁴ INA § 208(a)(2)(A).

¹⁷⁵ 8 C.F.R. § 1208.15.

consideration of direct and indirect evidence.¹⁷⁶ It also states that the Department of Homeland Security (DHS) “bears the burden of presenting prima facie evidence of an offer of firm resettlement.”¹⁷⁷

Mr. [REDACTED] spent time in [REDACTED]; [REDACTED]; and [REDACTED], before moving to the United States; however he never firmly resettled in those places because he did not have any type of permanent status while living in those countries, nor was he eligible for permanent status there.¹⁷⁸ Mr. [REDACTED] spent time in London as a student during his early teenage years, and he was permitted to study there while on a temporary student visa.¹⁷⁹ He temporarily stayed in [REDACTED], also on a temporary student visa, while living with his uncle who served as the [REDACTED].¹⁸⁰ Lastly, he spent time hiding in [REDACTED] after fleeing the violence in Liberia, but did not settle in that country. It was not possible for him to settle in [REDACTED], because the violence of the First Liberian Civil War was spilling over to [REDACTED] and Liberian refugees were continuing to be targeted in [REDACTED].¹⁸¹ As Mr. [REDACTED] explains in his affidavit, it was not safe for him in [REDACTED]. He lived in constant fear that he would be discovered and sent back to Liberia.¹⁸² Thus, Mr. [REDACTED] never firmly resettled in any of those countries.

Furthermore, [REDACTED] is not a safe country where Mr. [REDACTED] can seek asylum because its treatment of the LGBT community is currently equal to or worse than the treatment of the LGBT community in Liberia. Mr. [REDACTED]’s life or freedom also would

¹⁷⁶ *Matter of A-G-G-*, 25 I. & N. Dec. 486, 500-501 (BIA 2011).

¹⁷⁷ *Id.* at 501.

¹⁷⁸ See Resp’t Exh. G.

¹⁷⁹ See Resp’t Exh. G.

¹⁸⁰ See See Resp’t Exh. G.

¹⁸¹ See Resp’t Exh. S.

¹⁸² See Resp’t Exh. G. See 8 C.F.R. § 1208.15(a); See also *Matter of A-G-G-*, 25 I&N Dec. 486, 488 (BIA 2011), (holding that an exception to firm resettlement is when the applicant’s entry into the country “was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country.”)

be threatened in [REDACTED], and he would not have access to full and fair procedures for determining asylum eligibility therein.¹⁸³

vi. Mr. [REDACTED] has previously applied for asylum in 1998, but his asylum application was never adjudicated.

According to INA § 208(a)(2)(C), an applicant is barred from applying for asylum if the applicant previously applied for and was denied asylum.¹⁸⁴ Mr. [REDACTED] applied for asylum previously in 1998.¹⁸⁵ However, this application was never denied. Instead, Mr. [REDACTED] was granted Temporary Protected Status (TPS) on [REDACTED] 2000.¹⁸⁶ His asylum application was later administratively closed on [REDACTED] 2004.¹⁸⁷ Administrative closure is a procedural tool “created for the convenience of the Immigration Court and the Board” and it is “used to temporarily remove a case from the Immigration Judge’s active calendar.”¹⁸⁸ Mr. [REDACTED]’s same application was then reopened and it is this same application that Mr. [REDACTED] has recently amended for consideration by this Court. Thus, Mr. [REDACTED]’s previous asylum application was never denied, and he is not barred from re-submitting the present, amended asylum application from 1998.

vii. Although Mr. [REDACTED] did not file his application within one-year of his arrival in 1991, he falls squarely within one of the exceptions to the one year filing deadline.

According to the INA § 208(a)(2)(B), an applicant is barred from applying for asylum if the applicant did not file his application for asylum within one year of his arrival in the United

¹⁸³ Lucas Paoli Itaborahy & Jingshu Zhu, State-Sponsored Homophobia. A new survey of laws: Criminalisation, protection and recognition of same-sex love., 41-43. (International Lesbian Gay Bisexual Trans and Intersex Association (ILGA))(2013)

¹⁸⁴ INA § 208(a)(2)(C).

¹⁸⁵ See Resp’t Exh. W.

¹⁸⁶ See Resp’t Exh. W.

¹⁸⁷ See Resp’t Exh. W.

¹⁸⁸ *Matter of Avetisyan*, 25 I. & N. Dec. 688, 692 (BIA 2012).

States.¹⁸⁹ However, there are two exceptions to the one year filing deadline (1) under 8 C.F.R. § 208.4(a)(4), demonstrating the existence of “changed circumstances” that materially affect his eligibility for asylum; and (2) under 8 C.F.R. § 208.4(a)(5), demonstrating the existence of “extraordinary circumstances” relating to the delay in filing his application. Furthermore, under 8 C.F.R. § 208.4(a)(4)-(5), an applicant must demonstrate that he filed his application within a reasonable amount of time of the changed or extraordinary circumstances.

Mr. [REDACTED] arrived in the United States on [REDACTED] 1991 and he filed his original asylum application on [REDACTED] 1999. Although Mr. [REDACTED] did not submit his asylum application within the year following his arrival, he falls under both of the exceptions to the one year deadline and, given the totality of the circumstances, he applied for asylum within a reasonable amount of time of the changed and extraordinary circumstances.

A. Mr. [REDACTED] falls under the changed circumstances exception because the country conditions in Liberia have changed and recent changes in his circumstances make him eligible for asylum.

Examples of “changed circumstances”, “[...] may include, but are not limited to” changes in the applicant’s country of nationality or changes in the applicant’s circumstances. In Mr. [REDACTED]’s case, there has been a substantial change in conditions in the applicant’s country of nationality.¹⁹⁰ In particular, in 2012, the Liberian legislature began to introduce and pass several anti-gay bills, significantly altering the landscape for LGBT groups.¹⁹¹ Although Liberian society has always discriminated against and been hostile towards the LGBT community, lawmakers are now introducing and passing bills targeting the LGBT community in Liberia, thereby placing their stamp of approval on this society’s discrimination and hostility

¹⁸⁹ INA § 208(a)(2)(B).

¹⁹⁰ 8 C.F.R. § 1208.4(a)(4)(i).

¹⁹¹ Resp’t Exh. I. – HRW Report at 4.

toward the LGBT community.¹⁹² This is a clear change in the circumstances of Mr. [REDACTED] [REDACTED]'s country of nationality because, as of 2012, it has become even more dangerous in Liberia to be a gay man or to be perceived as a gay man. As Mr. [REDACTED]'s cousin, Ms. [REDACTED] explains:

If [REDACTED] were to be sent back to Liberia, that happiness he has attained living here in the United States would completely vanish. ...In Liberia, he would have to go back to being in the shadows, hiding his true identity to make sure he is not a target of the police or other homophobic groups. That is not an adequate way of living for anyone.¹⁹³

Furthermore, not only have the circumstances in Liberia changed but Mr. [REDACTED] [REDACTED]'s own personal circumstances have also changed. His personal journey to come out to his parents and to a few members of his family has been a long and arduous process. However, his fear of members of his family knowing that he is gay prevented Mr. [REDACTED] from applying for asylum based on his well-founded fear of future persecution on account of his sexual orientation any earlier. As Mr. [REDACTED] himself states:

After years of keeping my personal life private, I eventually became fed-up with this double persona lifestyle. I said to myself: enough is enough. I need to first love myself to let myself be loved...I had to accept that this is who I was, and leave the hiding in the past. Coming to this realization was probably one of the best days of my life. I had been carrying with this for so long, and never thought I would ever build the courage to be open about it. I felt like a huge weight had just lifted off my shoulders. Now the next step was being comfortable talking about it with others. I have to admit, it took me a while to feel at ease speaking about my sexual preference with strangers, but the support I have gotten from my family, has helped me overcome those hurdles.¹⁹⁴

The moment Mr. [REDACTED] fully accepted himself, after a long, arduous journey, was in July of 2013, when Mr. [REDACTED] came out as gay to his cousin and his mother. Mr. [REDACTED] finally admitted to his mother his sexual orientation, and he “felt like a huge

¹⁹² Resp't Exh. E – Amnesty International Report 2013 at 160.

¹⁹³ See Resp't Exh. R.

¹⁹⁴ See Resp't Exh. G.

weight had just lifted off [his] shoulders.”¹⁹⁵ Dr. [REDACTED] describes the reason for the long duration of this acceptance and admission process:

The internalization of societal and cultural anti-lesbian and anti-gay prejudice has been referred to as internalized homophobia. Growing up in families, institutions, and societies that denigrate lesbian and gay identities may drive some lesbian and gay individuals to internalize such prejudice and direct it toward the self, leading to disturbances in cohesion of the self, ego fragmentation, self-devaluation, hatred, and despair as manifestations of internalized prejudice.¹⁹⁶

However, when Mr. [REDACTED] accepted himself as a gay man and proclaimed his sexuality to his family, a new fear came upon him: that if he is returned to Liberia, eh will face a particularly acute anti-gay environment in which he would be harmed, jailed, and possibly even tortured or killed.¹⁹⁷

B. Mr. [REDACTED] falls under the extraordinary circumstances exception because he suffered from PTSD for several years following his arrival in the United States, and afterwards, he maintained an authorized immigration status until he filed his asylum application and then amended it to include his sexual orientation claim.

“Extraordinary Circumstances” may include legal disability, serious illness or mental disability, or maintaining lawful immigrant or nonimmigrant status.¹⁹⁸ In Mr. [REDACTED]’s case, he suffered from Post-Traumatic Stress Disorder (PTSD) throughout the first several years in the United States.¹⁹⁹ As Dr. [REDACTED] explains in this affidavit:

It is my professional opinion that [REDACTED]’s initial delay in filing an asylum application is consistent with his diagnosis of Post-Traumatic Stress Disorder, which frequently manifests in an effort to avoid activities which force patients to recount and relive their traumatic histories.²⁰⁰

¹⁹⁵ See Resp’t Exh. G; See also Resp’t Exh. R.

¹⁹⁶ See Resp’t Exh. P – Expert Report and Initial Diagnostic Evaluation by Dr. [REDACTED], M.D.

¹⁹⁷ See Resp’t Exh. G.; See also Resp’t Exh. N.

¹⁹⁸ 8 C.F.R. 1208.4(a)(5).

¹⁹⁹ See Resp’t Exh. O.

²⁰⁰ See Resp’t Exh. W.

Once Mr. [REDACTED] felt that he had more under control over his PTSD symptoms, he was able to address his legal status and made an effort to apply for Temporary Protected Status (TPS) for Liberian nationals in 1997.²⁰¹ However this application was wrongfully denied based on the allegation that Mr. [REDACTED] had submitted a false birth certificate.²⁰² His birth certificate was not false.²⁰³ Subsequently, the same birth certificate was accepted by USCIS when Mr. [REDACTED] filed for asylum in 1999 and for TPS again in 2000. Thus, Mr. [REDACTED]'s 1997 TPS application should have been granted.²⁰⁴ Ever since his TPS application, Mr. [REDACTED] has maintained a lawful nonimmigrant status in the United States.²⁰⁵ Mr. [REDACTED] falls squarely within the extraordinary circumstances examples outlined in 8 C.F.R. 1208.4(a)(5).

C. Mr. [REDACTED] applied for asylum within a reasonable period of time given the changed and extraordinary circumstances in his case.

An asylum-seeker is expected to “apply as soon as possible after expiration of his or her valid status.”²⁰⁶ While short periods of time are judged based on the totality of the circumstances, six months or longer after expiration or termination of status is recognized as unreasonable.²⁰⁷ Therefore, applications filed before the six month deadline are presumptively reasonable.²⁰⁸

After accepting his own sexual identity and finally coming out to his mother, Mr. [REDACTED] filed for asylum within a reasonable amount of time after these changed circumstances. He filed his amended asylum application on [REDACTED] 2013, approximately four months

²⁰¹ See Resp’t Exh. W.

²⁰² See Resp’t Exh. W.

²⁰³ See Resp’t Exh. D.

²⁰⁴ Practice Advisory: Unlawful Presence and INA §§ 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I): A summary of the May 6, 2009 Interoffice Memorandum from Donald Neufeld, Lori Scialabba, and Pearl Chang revising the Adjudicator’s Field Manual. <http://www.aila.org/content/default.aspx?bc=1016|6715|6721|8815|31024|30095> (May 6, 2009).

²⁰⁵ See Resp’t Exh. W.

²⁰⁶ I.N.S. Asylum Procedures, 65 FR 76121-01 (December 6, 2000).

²⁰⁷ *Id.*

²⁰⁸ *Husyev v. Mukasey*, 528 F.3d 1172, 1182 (9th Cir. 2008).

after he accepted himself as a gay man and proclaimed his sexuality to his family. Because Mr. [REDACTED] filed his asylum application before the presumptively reasonable six-month deadline, he applied for asylum within a reasonable period of his changed personal circumstances. These circumstances prevented him from applying for asylum any sooner, as confirmed by the two psychiatrists who have evaluated Mr. [REDACTED].²⁰⁹ Accordingly, Mr. [REDACTED] is not barred from asylum pursuant to the one year filing deadline. Therefore, he is not subject to any of the statutory bars to asylum.

e. Mr. [REDACTED] merits a favorable exercise of the Court's discretion.

An applicant who has established statutory eligibility for asylum, also has the burden of demonstrating that he merits a grant of asylum as a matter of discretion.²¹⁰ In determining whether a favorable exercise of discretion is warranted, both favorable and adverse factors should be considered.²¹¹ Mr. [REDACTED] has proven that he merits a favorable exercise of discretion because of the many positive factors in his application and an absence of any negative factors.²¹² He is a hard-working, devoted son, and contributing member to the American society. Specifically, he is a dedicated son who is always looking out for his U.S. citizen parents' well-being.²¹³ Ever since he first arrived in this country, Mr. [REDACTED] has paid all his income taxes on time, he has kept a clear criminal record, and he has made positive contributions to his community.²¹⁴ Mr. [REDACTED] is the perfect example of the kind of person this country desires because he shares and values the opportunities that have been given to him. He hopes to continue to be able to reside here in the U.S., where he can care and provide for his elderly U.S.

²⁰⁹ Resp't Exh. P – Expert Report and Initial Diagnostic Evaluation by Dr. [REDACTED], M.D.; Resp't Exh. O – Expert Report and Initial Diagnostic Evaluation by Dr. [REDACTED], M.D.

²¹⁰ INA § 208(b)(1).

²¹¹ *Matter of Pula*, 19 I. & N. Dec. 467 (BIA 1987).

²¹² See Resp't Exhs. T, W.

²¹³ See Resp't Exh. G.

²¹⁴ See Resp't Exhs. V - Copies of Mr. [REDACTED]'s Income Tax Returns.

citizen parents who rely upon him.²¹⁵

Respondent's father, Mr. [REDACTED], has been recently diagnosed with beginning stages of dementia. His mom was also diagnosed last summer with facial nerve paralysis. Due to Mr. [REDACTED]'s worsening dementia symptoms, heart problems, and diabetes, he was temporarily placed in a nursing home.²¹⁶ Consequently, Mr. [REDACTED] has been helping his mother cope with such a significant life change. Since he lives across the street from his parent's house, he is able to visit his mom on a daily basis.

Mr. [REDACTED]'s mother, an elderly woman, cannot be left alone for long periods of time, especially now that her husband is residing in a nursing home.²¹⁷ Due to their closeness,²¹⁸ Mr. [REDACTED]'s removal from the United States would cause severe emotional and psychological hardship to both of his parents. Mr. [REDACTED] has always been close to his family. He grew up in a traditional, unified, and strong household.²¹⁹ A prolonged and painful separation from his elderly parents and his family will cause emotional hardship on Mr. [REDACTED], Mrs. [REDACTED], and the rest of their family. Especially for those family members who are aware of Mr. [REDACTED]'s sexual orientation, his return to Liberia would cause them great concern for their loved one.²²⁰

Furthermore, Mr. [REDACTED] has kept his current job at the [REDACTED] in [REDACTED] Virginia for over a decade. It is thanks to his job that he is able to financially support his family.²²¹ He currently pays for his dad's treatment at the nursery home, and helps his mom pay

²¹⁵ See Resp't Exh. S. See also Resp't Exh. G.

²¹⁶ See Resp't Exhs. S.

²¹⁷ See Resp't Exh. G.

²¹⁸ See Resp't Exh. S.

²¹⁹ See Resp't Exh. S. See also Resp't Exh. R.

²²⁰ See Resp't Exh. G. See also Resp't Exh. R – S.

²²¹ See Resp't Exh. U.

the bills and buy groceries on a weekly basis.²²² Aside from that, his cousin and roommate [REDACTED], has always said that Mr. [REDACTED] goes out of his way to help out his parents in whichever way possible.²²³ Even though Mr. [REDACTED] struggles to make ends meet, his perseverance has kept him going. He knows that if he were to stop working, this would not only affect him as an individual, but it would affect his whole family who depends on him.²²⁴ If Mr. [REDACTED] were returned to Liberia, he would not be able to continue helping his parents financially or otherwise. Instead, it would cause his U.S. citizen parents to suffer great pain and concern for their son's safety, factors which could lead to further deterioration of their health.²²⁵ Accordingly, based on these positive factors and the overall lack of any negative factors, Mr. [REDACTED] merits a favorable exercise of this Court's discretion.

3. Mr. [REDACTED] is eligible for "Humanitarian" Asylum under 8 C.F.R. § 208.13(b)(1)(iii)

Mr. [REDACTED] has demonstrated compelling reasons that humanitarian asylum is warranted under 8 C.F.R. § 208.13(b)(1)(iii). Humanitarian asylum has its roots in *Matter of Chen*,²²⁶ where the BIA determined that, even if the presumption of future persecution arising from past persecution has been rebutted, "an alien may have suffered such severe or atrocious forms of persecution at the hands of the former regime such that it would be inhumane to require the alien to return to his home country."²²⁷ In relevant part, the regulation for humanitarian asylum states that an applicant who has suffered past persecution and who does not face a reasonable possibility of future persecution may be granted asylum if he or she has demonstrated "compelling reasons for being unwilling or unable to return to that country arising out of the

²²² See Resp't Exh. S.

²²³ See Resp't Exh. R.

²²⁴ See Resp't Exh. G.

²²⁵ See Resp't Exh. S.

²²⁶ *Matter of Chen*, 20 I. & N. Dec. 16 (BIA 1989).

²²⁷ *Brucaj v. Ashcroft*, 381 F.3d 602, 608 (7th Cir. 2004).

severity of the past persecution,”²²⁸ or has established “that there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country...”²²⁹ To further clarify the definition, the Seventh Circuit has explained that “[t]o establish such eligibility, an alien must show past persecution so severe that repatriation would be inhumane.”²³⁰

The first element an applicant must show is “severe harm” and “long-lasting effects.”²³¹ Mr. [REDACTED] has suffered severe harm due to the horrible events he experienced during the First Liberian Civil War.²³² In his affidavit, Mr. [REDACTED] describes in detail the horrific events that he had to endure while living in war-torn Liberia as a part of a family viewed as an enemy to both sides of the conflict.²³³ In particular, Mr. [REDACTED] was beaten with rifles by soldiers and almost executed along with his other male family members, in front of his mother, before he was rescued by the [REDACTED] peacekeeping soldiers.²³⁴ His own mother also details the struggles that their whole family went through during those difficult years. They were targeted because the soldiers and armed groups on both sides of the conflict in Liberia at the time perceived them as having money, having influence, and aiding the opposition.²³⁵ These events have caused severe psychological harm to Mr. [REDACTED], harm that continued to haunt him several years after leaving Liberia. Psychiatrist Dr. [REDACTED] confirms that Mr. [REDACTED] suffered post-traumatic stress disorder (PTSD) as a result of his experiences in the First Liberian Civil War. He states:

In my professional opinion, the experiences of persecution in the Liberian civil war are of an extremely traumatic nature. The history that [Mr. [REDACTED]] describes and the symptoms he reports are consistent with trauma. The

²²⁸ 8 C.F.R. §208.13(b)(1)(iii)(A).

²²⁹ 8 C.F.R. §208.13(b)(1)(iii)(B).

²³⁰ *Brucaj v. Ashcroft*, 381 F.3d 602, 608 (7th Cir. 2004) (quoting *Asani v. INS*, 154 F.3d 719, 724 (7th Cir. 1998)).

²³¹ *Matter of N-M-A*, 22 I. & N. Dec. 312, 326 (BIA 1998).

²³² See Resp’t Exh. G.

²³³ See Resp’t Exh. S.

²³⁴ See Resp’t Exh. G.

²³⁵ See Resp’t Exh. S.

experiences of such trauma can lead to the development of one or more psychiatric conditions. [Mr. ██████]'s history, symptoms, and description of his experience in the Liberian civil war and several years afterwards, are consistent with the following diagnosis: Post Traumatic Stress Disorder, with the experience of events that involved threatened death or serious injury. It is my professional opinion that ██████ suffered from this illness as a result of the suffering he reports enduring. I find his story to be credible.²³⁶

Dr. ██████'s diagnosis is confirmed and reinforced by the diagnosis of Dr. ██████, who also evaluated Mr. ██████. In his affidavit, Dr. ██████ states:

Based on his traumatic experience, [Mr. ██████] met criteria for Posttraumatic Stress Disorder in the years following the incident, which overlaps with his immigration to the United States. This diagnosis is based on Mr. ██████'s narrative as well as on the instruments that were utilized for diagnostic purposes. Mr. ██████'s testing profile was valid and is likely to be free of malingering or deliberate exaggeration.²³⁷

Mr. ██████ suffered "long-lasting effects," in the form of PTSD, as a result of his experiences during the First Liberian Civil War. Some of his symptoms included recurrent, involuntary, and intrusive distressing memories of the traumatic event, avoidance or efforts to avoid distressing memories, thoughts or feelings about or closely associated with the traumatic events, hyper vigilance, and exaggerated startle response.²³⁸ These symptoms lasted for several years after he arrived in the United States because Mr. ██████ did not recognize them as a disorder requiring medical attention and he attempted to address them on his own.²³⁹ Upon evaluating Mr. ██████, Dr. ██████ expresses his concern that if Mr. ██████ is returned to Liberia, he is in serious danger of retraumatization. He states:

Additionally, based on his experiences in Liberia, Mr. ██████ would face the possibility of retraumatization if he were to return to there. When an individual has experienced trauma, they become highly sensitized to reminders of that trauma, such that any such reminder could exacerbate symptoms.²⁴⁰

²³⁶ See Resp't Exh. O.

²³⁷ See Resp't Exh. P.

²³⁸ See Resp't Exh. P.

²³⁹ See Resp't Exh. G.

²⁴⁰ See Resp't Exh. P – Expert Report and Initial Diagnostic Evaluation by Dr. ██████, M.D.

Thus, given the serious risk that a return to Liberia would mean retraumatization for Mr. [REDACTED], this Court should exercise its discretion to grant him humanitarian asylum as an alternative to asylum under INA § 208(a).

Once the first element is met, “then the [Immigration Judge] or BIA is to consider a variety of discretionary factors, independent of the circumstances that led to the applicant’s refugee status, such as his age, health, or family ties, which are relevant to the ultimate exercise of discretion.”²⁴¹ Mr. [REDACTED] is an upstanding member of society. He has no criminal record and has paid his taxes without fail.²⁴² Furthermore, he is a loving son, who takes care of his elderly and ailing U.S. citizen parents. His mother, Mrs. [REDACTED], describes the kind of son that Mr. [REDACTED] is:

I love my son [REDACTED] very much, because he is my right-hand man. He is very attentive, considerate, and caring with his father and me. We do not know what we would do without him.²⁴³

Those are the qualities of an individual that merits a favorable exercise of this Court’s discretion.

Mr. [REDACTED] suffered for several years the consequences of his experiences during the Liberian Civil War.²⁴⁴ Through the credible and detailed sworn affidavits of Mr. [REDACTED] and Mrs. [REDACTED] as to the horrors they endured before fleeing to the United States, the diagnoses by two psychiatrists attesting to Mr. [REDACTED]’s years of PTSD, and the ongoing trauma that Mr. [REDACTED] would immediately suffer upon return to Liberia,²⁴⁵ Mr. [REDACTED] meets the requirements necessary for a favorable exercise of discretion in the form of humanitarian asylum. Even though Mr. [REDACTED] no longer faces danger due to the First Liberian Civil War, he suffered such atrocious forms of persecution

²⁴¹ *Brucaj* at 609, (quotations omitted) (quoting *Matter of N-M-A* at 325 n.7).

²⁴² See Resp’t. Exh. V.

²⁴³ See Resp’t Exh. S.

²⁴⁴ See Resp’t Exh. G. See also Resp’t. Exhs. O – P.

²⁴⁵ See Resp’t Exh. P.

Supervising Attorneys:

[REDACTED]

[REDACTED]

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
[CITY, STATE]**

In the Matter of:

[REDACTED]

In Removal Proceedings

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NOT DETAINED

A [REDACTED]

Next Individual Hearing

2014

PROOF OF SERVICE

On [REDACTED] 2014, I, [REDACTED], served a copy of this Memorandum of Law in Support of Respondent's Application for Relief and any attached pages to the Department of Homeland Security, ICE Office of Chief Counsel, Fallon Federal Building, 31 Hopkins Plaza, Room 1600, [CITY, STATE] 21201, by U.S. First Class Mail.

Date

[REDACTED]