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**(###) ###-####**

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
BOARD OF IMMIGRATION APPEALS**

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**In the Matter of:** )  
)  
**REDACTED** )  
)  
**In Removal Proceedings** )  
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)  
\_\_\_\_\_)

**File No.: A XXX-XXX-XXX**

**MOTION TO REOPEN AND REMAND BASED ON CHANGED CIRCUMSTANCES IN  
THE DOMINICAN REPUBLIC**

REDACTED is a gay man of Haitian descent from the Dominican Republic. Mr. REDACTED, by and through counsel at [Organization/Firm Name], respectfully moves the Board of Immigration Appeals (“Board”), pursuant to 8 CFR §1003.2(c)(3)(ii), to reopen and remand removal proceedings to the immigration court in order for him to apply for asylum, withholding of removal and relief under the Convention Against Torture (“CAT”) based on material changed circumstances arising in the Dominican Republic that have given Respondent an objective well-founded fear of future persecution if he is returned to the Dominican Republic because he is of Haitian descent.

## **I. PROCEDURAL HISTORY AND FACTS**

Mr. REDACTED, was born in CITY, Dominican Republic on DATE.<sup>1</sup> Mr. REDACTED father, REDACTED, was a Haitian citizen, but he possessed a Dominican Cedula, or national ID card, suggesting he had legal immigration status in the Dominican Republic.<sup>2</sup> Mr. REDACTED mother, REDACTED was a Haitian citizen with unknown immigration status in the Dominican Republic.<sup>3</sup>

As a person of Haitian descent in the Dominican Republic, Mr. REDACTED experienced mistreatment and discrimination throughout his life.<sup>4</sup> Mr. REDACTED became politically active with the Dominican Revolutionary Party (PRD) and was an outspoken advocate for the rights of persons of Haitian descent in the Dominican Republic.<sup>5</sup> Mr. REDACTED received death threats

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<sup>1</sup> Tab C, I-589, Application for Asylum; Tab D, Respondent’s Declaration.

<sup>2</sup> Tab D, Respondent’s Declaration.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

because of his political activism and his Haitian nationality, and he fled the Dominican Republic.<sup>6</sup>

Mr. REDACTED was admitted to the United States as a nonimmigrant visitor on DATE, 2008.<sup>7</sup> Mr. REDACTED applied affirmatively for asylum on DATE, 2008 and was referred to Immigration Court. Immigration Judge (“IJ”) XXX ordered Mr. REDACTED removed on DATE, 2009.<sup>8</sup> The IJ found that the mistreatment Mr. REDACTED experienced did not rise to the level of persecution, and that Mr. REDACTED’s fear of future persecution was not objectively reasonable.<sup>9</sup> The Board of Immigration Appeals denied Mr. REDACTED’s appeal on DATE, 2010, and agreed with the IJ that Mr. REDACTED’s fear of persecution was not objectively reasonable.<sup>10</sup> The U.S. Court of Appeals for the Eleventh Circuit dismissed Mr. REDACTED’s petition for review on DATE, 2011. Mr. REDACTED subsequently filed three motions to reopen in which he raised, *inter alia*, his sexual orientation as grounds for asylum.<sup>11</sup>

Conditions for persons of Haitian descent in the Dominican Republic have drastically worsened since Mr. REDACTED was ordered removed on DATE, 2009. In DATE 2013, the Dominican Constitutional Court issued a ruling retroactively applying provisions of the 2010 Constitution stating that children born in the Dominican Republic to foreigners are not Dominican citizens.<sup>12</sup> The Court ordered the Central Electoral Board to examine its civil registry

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<sup>6</sup> *Id.*

<sup>7</sup> Tab C, I-589, Application for Asylum; Tab D, Respondent’s Declaration.

<sup>8</sup> Tab E, Oral Decision of the Immigration Judge Dated DATE, 2009.

<sup>9</sup> *Id.* at 12.

<sup>10</sup> Tab F, Board of Immigration Appeals Decision Dated DATE, 2010 at 4.

<sup>11</sup> Tab D, Respondent’s Declaration.

<sup>12</sup> *See generally* Tab H, Indexed Country Conditions Materials Documenting the Treatment of Dominicans of Haitian Descent in the Dominican Republic and Treatment of LGBT Individuals in the Dominican Republic and Haiti.

and move all foreigners to a separate foreign birth registry.<sup>13</sup> Human rights groups estimate that more than 200,000 people were denationalized and rendered stateless by this decision.<sup>14</sup> Mr. REDACTED learned that he had been placed in the foreign birth registry when he attempted to replace his Cedula, a vital national ID card, on DATE, 2014.<sup>15</sup>

In response to international criticism, the Dominican government implemented a Naturalization Law or “Regularization Plan for Foreigners in the Dominican Republic” that allowed persons born in the Dominican Republic to foreign parents the opportunity to register and potentially regain Dominican citizenship.<sup>16</sup> The design and implementation of the registration process has been criticized for its ineffectiveness and bureaucratic hurdles.<sup>17</sup> Only a fraction of individuals stripped of their citizenship have been able to register before the DATE, 2015 deadline. NGOs and other observers have criticized the short timeline,<sup>18</sup> inconsistent processing of applications,<sup>19</sup> overly intensive documentation requirements,<sup>20</sup> and insufficient information campaigns.<sup>21</sup> Human Rights Watch observed that “officials have developed burdensome, resource-intensive processes that put unnecessary and unjustified bureaucratic obstacles in the way of those eligible, leading to harassment and violations of fundamental rights.”<sup>22</sup> Many have been denied required nationality documents, rendering them “unable to perform basic legal transactions as citizens.”<sup>23</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> Tab H-13; Tab H-20.

<sup>15</sup> Tab D, Respondent’s Declaration.

<sup>16</sup> *See generally* Tab H.

<sup>17</sup> Tab H-3.

<sup>18</sup> Tab H-2.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*; Tab H-4, Tab H-5.

<sup>21</sup> Tab H-2, Tab H-4.

<sup>22</sup> Tab H-3 at 4.

<sup>23</sup> Tab H-3 at 14.

Violence against persons of Haitian descent escalated during this registration period.

Persons of Haitian descent have been the victim of lynching,<sup>24</sup> mob attacks,<sup>25</sup> stabbing,<sup>26</sup> home break-ins,<sup>27</sup> and house burnings,<sup>28</sup> and murder threats.<sup>29</sup> Even journalists speaking in support of the rights of Dominicans of Haitian descent have received death threats.<sup>30</sup>

The Dominican government claimed that no deportations of Dominicans of Haitian descent would occur during the registration process, but reports indicate that deportations have occurred with regularity.<sup>31</sup> Dominicans of Haitian descent also report home raids and detention.<sup>32</sup> Even those who could provide proper documentation of legal status in the Dominican Republic were subject to detention and deportation.<sup>33</sup> Reports indicate that larger groups of 30-40 people at a time, including buses of children have been detained and deported with no opportunity for individual adjudication of immigration status.<sup>34</sup> In at least one case, government officials entered a registration office to attempt to detain and deport Dominicans of Haitian descent attempting to comply with the Naturalization Law, and reportedly detentions occurred at checkpoints near registration centers.<sup>35</sup> Excessive force and inhumane treatment by Dominican forces has been reported.<sup>36</sup>

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<sup>24</sup> Tab H-18.

<sup>25</sup> Tab H-3 at 12.

<sup>26</sup> Tab H-11.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Tab H-10.

<sup>30</sup> Tab H-6.

<sup>31</sup> Tab H-3; Tab H-16; H-17.

<sup>32</sup> Tab H-3.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 16-17, 25.

<sup>35</sup> *Id.* at 24, 26.

<sup>36</sup> *Id.*; Tab H-2.

In DATE 2015, the Dominican government announced that deportations to Haiti would officially restart.<sup>37</sup> NGOs have criticized the lack of protocols established for the deportations and commented that Dominicans of Haitian descent are likely to be deported as well.<sup>38</sup> The U.S. Department of State issued a statement expressing its concern that Dominicans of Haitian descent risk deportation in violation of “We remain deeply concerned that individuals with a right to citizenship or otherwise eligible to remain in the Dominican Republic may not have had sufficient time and means to access the processes to regulate and formalize their status and have their claims adjudicated.” Those that have already been deported to the Dominican Republic faced arbitrary detention, and did not go through an individualized adjudication.<sup>39</sup> Most live in makeshift camps along the Haitian-Dominican border.<sup>40</sup>

## **II. LEGAL STANDARD**

The Board of Immigration Appeals may reopen a case in which it has made a decision where Respondent seeks to “apply or reapply for asylum or withholding of deportation based on changed circumstances arising in the country of nationality or in the country to which deportation has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous hearing.”<sup>41</sup> No time or numeric bars apply to motions to reopen based on changed country conditions.<sup>42</sup> Additionally, Respondent must demonstrate prima facie eligibility for the underlying relief sought.<sup>43</sup>

In determining whether evidence a material change in country conditions has occurred, the Board compares the evidence of country conditions submitted with the motion to those that

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<sup>37</sup> Tab H-8; Tab H-9; Tab H-10, Tab H-12.

<sup>38</sup> Tab H-8.

<sup>39</sup> Tab H-3; Tab H-10.

<sup>40</sup> Tab H-10.

existed at the time of the merits hearing before the IJ.<sup>44</sup> Evidence that is largely cumulative of that already in the record does not meet the burden required for reopening.<sup>45</sup>

The Court of Appeals for the Eleventh Circuit, out of which this case arises, holds that evidence is material when, “if the proceedings were reopened, the new evidence would likely change the result in the case.”<sup>46</sup> The court identified three independent grounds upon which the Board may deny a motion to reopen: 1) failure to establish a prima facie case; 2) failure to introduce evidence that was material and previously unavailable; and 3) a determination that despite the alien's statutory eligibility for relief, he or she is not entitled to a favorable exercise of discretion.<sup>47</sup> The Eleventh Circuit has found State Department reports, newspaper articles, and personal affidavits sufficient evidence to establish a material change in country conditions.<sup>48</sup>

The Board may remand a case so that the Immigration Judge may consider evidence that “is material and was not available and could not have been discovered or presented at the previous hearing.”<sup>49</sup> The Board applies the same legal standard to motions to remand and motions to reopen, and the motions may be consolidated.<sup>50</sup>

### **III. ARGUMENT**

#### **A. The Treatment of Dominicans of Haitian Descent Has Materially Changed Since Mr. REDACTED's Last Hearing**

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<sup>41</sup> 8 C.F.R. § 1003.2(c)(3)(iii); INA § 240(c)(7)(C)(ii).

<sup>42</sup> 8 C.F.R. § 1003.2(c)(3); INA § 240(c)(7)(C)(ii).

<sup>43</sup> *INS v. Doherty*, 502 U.S. 314, 323 (1992).

<sup>44</sup> *In re S-Y-G-*, 24 I&N Dec. 247, 253 (BIA 2007).

<sup>45</sup> *Id.* (citing *Matter of Coelho*, 20 I&N Dec. 464, 474 (BIA 1992)).

<sup>46</sup> *Jiang v. U.S. Atty. Gen.*, 568 F.3d 1252, 1257 (11th Cir. 2009) (citing *Ali v. U.S. Atty. Gen.*, 443 F.3d 804, 813 (11th Cir. 2006)).

<sup>47</sup> *Najjar v. Ashcroft*, 257 F.3d 1262, 1302 (11th Cir. 2001).

<sup>48</sup> *Li v. U.S. Atty. Gen.*, 488 F.3d 1371, 1375 (11th Cir. 2007).

<sup>49</sup> 8 C.F.R. § 1003.2(c)(1); *Matter of Coelho*, 20 I&N Dec. 464, 471 (BIA 1992).

<sup>50</sup> 8 C.F.R. § 1003.2(c)(4).

Conditions for Dominicans of Haitian descent have materially changed since the IJ issues an oral decision on DATE, 2009. Because these events occurred after the hearing, the evidence of worsening conditions was previously unavailable.

### **1. Changes in Dominican Law**

Changes in Dominican law and enforcement have created a material change in the circumstances of persons of Haitian descent in the Dominican Republic. While the IJ previously found that Mr. REDACTED's fear of denationalization was speculative and objectively unreasonable,<sup>51</sup> the 2013 Constitutional Court ruling officially stripped Dominicans born to foreign parents of their citizenship.<sup>52</sup> Unregistered Dominicans of Haitian descent are now subject to deportation.<sup>53</sup> Though the IJ previously credited the Dominican government's reluctance to issue birth certificate to efforts to "weed out fraud,"<sup>54</sup> denationalization of nearly 200,000 people violates human rights law and cannot be justified through government fraud reduction efforts.

### **2. Violence and Mistreatment**

The IJ previously found that the treatment of Dominicans of Haitian descent constituted discrimination and did not rise to the level of persecution. The treatment of Dominicans of Haitian descent has materially worsened. Dominicans of Haitian descent now face brutal violence, including lynching, murder, mob attacks, and home invasions by community members.<sup>55</sup> Police and other security forces contribute to this violence.<sup>56</sup> Inability to access a

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<sup>51</sup> Tab E, Oral Decision of the Immigration Judge Dated DATE, 2009 at 16.

<sup>52</sup> *See generally* Tab H.

<sup>53</sup> *Id.*

<sup>54</sup> Tab E, Oral Decision of the Immigration Judge Dated DATE, 2009 at 14.

<sup>55</sup> *See generally* Tab H.

<sup>56</sup> *Id.*



Cedula, makes living in the Dominican functionally impossible since it is required for all matters of daily life.<sup>57</sup> Dominicans of Haitian descent are unlawfully and arbitrarily detained.<sup>58</sup> Their homes are raided and they are deported to Haiti in mass and without the opportunity to contest their citizenship.<sup>59</sup> In addition to denationalization, risk of violence, arbitrary detention, and deportation constitutes a material change since Respondent's last hearing before the IJ, and the mistreatment Dominicans of Haitian descent face now far exceeds discrimination.

**B. Respondent is Prima Facie Eligible for Asylum and Withholding of Removal and Should Be Granted Relief**

To be eligible for asylum, an applicant must be a "refugee" pursuant to section 101 of the Immigration and Nationality Act of 1952. Under that section, a refugee is:

[A]ny person who is outside of any country of such person's nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or himself of the protection of, 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 . . . .

8 U.S.C. § 1101(a)(42)(A). An applicant bears the burden of showing that he is: 1) outside his country of nationality; 2) has either suffered actual past persecution or has a well-founded fear of future persecution; and 3) has suffered persecution that is "on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 C.F.R. § 208.13(b)(1); *see also INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992); *In re Chen*, 20 I. & N. Dec. 16, 17-18 (B.I.A. 1989). Once an applicant has met that his burden, that applicant is eligible for asylum as a matter of discretion.

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<sup>57</sup> Tab D, Respondent's Declaration.

<sup>58</sup> *See generally* Tab H.

<sup>59</sup> *Id.*

Mr. REDACTED has an objectively reasonable fear of future persecution in the Dominican Republic because he is a person of Haitian descent. Physical violence, unlawful detention, forced expulsion, and stripping of citizenship can all constitute forms of persecution. The pervasiveness of the mistreatment persons of Haitian descent in the Dominican Republic is so widespread as to establish a pattern or practice of persecution.<sup>60</sup>

Though the Eleventh Circuit has previously found that statelessness alone does not warrant asylum,<sup>61</sup> the cumulative mistreatment that Dominicans of Haitian descent now experience in the Dominican Republic rises to the level of persecution. Because Mr. REDACTED is a Dominican of Haitian descent, his fear of persecution if he is returned to the Dominican Republic is now objectively reasonable. His placement on the foreign birth registry and denial of his Cedula<sup>62</sup> confirm that the Dominican government considers him to be a noncitizen and subject to deportation to Haiti.

Mr. REDACTED also has a well-founded fear of persecution on account of his sexual orientation is he is returned to the Dominican Republic, or subsequently deported to Haiti. Gay men in both countries risk violence and abuse that constitutes persecution.<sup>63</sup>

Mr. REDACTED seeks to file his application for asylum within a reasonable period of time since the material changes in the Dominican Republic occurred as required by 8 C.F.R. § 208.4(a)(4)(i)(A). He seeks to file his application only a few weeks after the Dominican Republic announced in its official start of deportations of Haitian nationals in August 2015, and within a few months of the end of the registration deadline and escalation of violence.

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<sup>60</sup> 8 CFR § 208.13 provides that an applicant can establish a well-founded fear of persecution by demonstrating a pattern or practice of similarly situated persons.

<sup>61</sup> *Najar v. Ashcroft*, 257 F.3d 1262, 1293 (11th Cir. 2001)

<sup>62</sup> Tab D, Respondent's Declaration.

<sup>63</sup> See Tab H-21-29.

Mr. REDACTED also merits a discretionary grant of asylum. He has no criminal history and has worked as an advocate for the rights of persons of Haitian descent.<sup>64</sup>

**C. The Board Should Exercise Its Discretion to Grant Respondent's Motion to Reopen and Remand To Serve The Interests of Justice**

Because a material change in the conditions for persons of Haitian descent in the Dominican Republic has occurred, Mr. REDACTED can now demonstrate that he has an objectively reasonable fear of future persecution if he is forced to return to the Dominican Republic. The interests of justice are best served by allowing Mr. REDACTED to reopen his case to reapply for asylum on this basis.

Mr. REDACTED will suffer extreme prejudice if this motion is denied. If the motion is denied, Mr. REDACTED will lose the opportunity to seek protection from persecution in the Dominican Republic during this human rights crisis impacting Dominicans of Haitian descent.

**IV. CONCLUSION**

For the foregoing reasons, the Mr. REDACTED's Motion to Reopen and Remand to the IJ should be granted.

Respectfully Submitted by:

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[Attorney Name], Esq.  
[Title]  
[Organization/Firm Name]  
[Address]

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<sup>64</sup> Tab D, Respondent's Declaration.