[redacted]

NON-DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
U.S. IMMIGRATION COURT
[redacted]

In the Matter of:	)	
[redacted]	)	[redacted]
Minor Respondent	)	
In Removal Proceedings.	)	

Before the Hon. [redacted] Next Hearing Date: N/A

RESPONDENT'S MOTION TO AMEND
PREVIOUSLY FILED MOTION TO REOPEN *IN ABSENTIA* REMOVAL ORDER

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
U.S. IMMIGRATION COURT
[redacted]

In the Matter of:	)	
	)	
[redacted]	)	[redacted]
	)	
Minor Respondent	)	
	)	
In Removal Proceedings.	)	
	)	

RESPONDENT'S MOTION TO AMEND
PREVIOUSLY FILED MOTION TO REOPEN *IN ABSENTIA* REMOVAL ORDER

Minor Respondent, [redacted], through undersigned *pro bono* counsel, respectfully moves this Honorable Court to amend a previously filed motion to reopen his *in absentia* removal order. The motion to reopen was filed with this Court on [redacted] 2018. The motion references the dates of master calendar hearings attended by Respondent prior to his *in absentia* order, based on the best recollection of Respondent's mother.

Since filing the motion to reopen, *pro bono* counsel has obtained the results of a FOIA request submitted on behalf of the Respondent. While Respondent's mother remembered taking him to three master calendar hearings between [redacted] 2015 and [redacted] 2015, the FOIA results reflect that Respondent attended four master calendar hearings between [redacted] 2014 and [redacted] 2015. Respondent moves this Court to accept his amended motion to reopen, included with this filing, which reflects the correct master calendar hearing dates. Specifically:

- On page 3 of the initial filing: "…three Master Calendar Hearings in [redacted] 2015, [redacted] 2015, and [redacted] 2015" is replaced with "…four Master Calendar Hearings

on [redacted] 2014; [redacted] 2014; [redacted] 2015; and [redacted] 2015."

- On page 3 of the initial filing: "At the [redacted] 2015 Master Calendar Hearing…" is deleted and replaced with "Over the course of these hearings…"
- On page 5 of the initial filing: "[redacted]'s mother took him to three master calendar hearings at the [redacted] Immigration Court before missing the fourth hearing and being issued an *in absentia* order" is replaced with "[redacted]'s mother took him to four master calendar hearings at the [redacted] Immigration Court before missing the fifth hearing and being issued an *in absentia* removal order."
- On page 6 of the initial filing: "During [redacted]'s third Master Calendar Hearing…" is replaced with "During [redacted]'s Master Calendar Hearings…"
- On page 9 of the initial filing: "…during any of th e three Master Calendar Hearings at which they appeared. However, during the [redacted] Master Calendar Hearing the Immigration Judge did identify [redacted] as potentially eligible for Special Immigrant Juvenile Status…" is replaced with "…during any of the four Master Calendar Hearings at which they appeared. However, the Immigration Judge did identify [redacted] as potentially eligible for Special Immigrant Juvenile Status…"

There are no other changes to the contents of the motion to reopen.

DATED: [redacted] 2018

Respectfully submitted,

[redacted]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
U.S. IMMIGRATION COURT
[redacted]

In the Matter of:	)	
	)	
[redacted]	)	[redacted]
	)	
Minor Respondent	)	
	)	
In Removal Proceedings.	)	
	)	

RESPONDENT'S AMENDED MOTION TO REOPEN
***IN ABSENTIA* REMOVAL ORDER**

Minor Respondent, [redacted], through undersigned *pro bono* counsel, respectfully moves this Honorable Court to reopen and rescind his [redacted] 2016 *in absentia* removal order. [redacted] moves this Honorable Court to *sua sponte* reopen his proceedings given the truly "exceptional circumstances" present in his case. 8 CFR § 1003.23(b)(1); *see also Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997). [redacted] also seeks reopening of his removal proceedings so that he can pursue asylum and related relief for which he is *prima facie* eligible. *Matter of M-S-*, 22 I&N Dec. 349 (BIA 1998) (en banc).

STATEMENT OF FACTS AND PROCEDURAL POSTURE

[redacted] is a 4-year-old respondent. [redacted] arrived in the United States in [redacted] 2014 at the age of one with his mother, [redacted]. [redacted]'s mother carried him in her arms as she fled Honduras looking for safety in the United States. *See* Declaration in Support of Motion to Reopen, Tab A at ¶ 5. They fled [redacted]'s physically, emotionally and psychologically abusive father. [redacted]'s father hit his mother on her face and

body, threatened her with a knife, tried to kill her, and raped her multiple times. *See* Declaration in Support of Application for Asylum, Tab C at ¶ 4. [redacted]'s father mistreated him as well, including intentionally depriving [redacted] of his mother while he was breastfeeding and being reckless with [redacted]'s life while riding his motorcycle. *Id.* at ¶ 8. [redacted]'s father's family was complicit in this abuse and control. *Id.* at ¶ 6. [redacted]'s father told [redacted]'s mother that the police would do nothing. *Id.* at ¶ 7.

Prior to [redacted] and his mother's arrival in United States in [redacted] 2014, [redacted]'s mother had been deported from the United States.[1] *See* Tab A at ¶¶ 2–4. During her first effort to find protection, [redacted]'s mother was never asked if she was afraid of returning to Honduras or given a credible fear interview. *Id.* at ¶ 2, n.1. The [redacted] 2014 trip marked the second time his mother fled [redacted]'s father looking for safety in the United States. U.S. Customs and Border Protection apprehended them at the border and detained them for approximately five days before releasing them without an ankle monitor or much guidance regarding the next steps. *Id.* at ¶ 6. [redacted] received a hearing date at the Immigration Court, but his mother did not.[2] *Id.* at ¶ 9. Approximately two weeks after they were released, [redacted]'s mother reported to ICE ERO [redacted] where ICE issued her an ankle-monitor and told her in Spanish that she would never get the ankle monitor removed "until the day I was taken to the airport to be deported." Her appointments with ISAP were, and continue to be, frequent. *Id.* at ¶ 10.

[redacted]'s mother took him to four Master Calendar Hearings on [redacted] 2014; [redacted] 2014; [redacted] 2015; and [redacted] 2015.[3] Over the course of these hearings,

[1] During this first trip, [redacted]'s mother, [redacted], was not provided with an opportunity to express her fear, which would have prompted a Credible Fear Interview.
[2] Ostensibly, [redacted]'s mother did not receive a hearing notice at this time because she was subject to a reinstatement order of removal and had not had a reasonable fear interview to determine her placement in withholding only proceedings.
[3] These dates are updated from the previously filed motion to reopen and are based on the results of a FOIA request.

[redacted]'s mother learned that [redacted] was eligible for Special Immigrant Juvenile Status and that she had to bring an attorney to the next hearing on [redacted] 2016. Although [redacted]'s mother was informed of the possibility of Special Immigrant Juvenile Status, she was not informed of [redacted]'s opportunity to apply for asylum and related relief. *Id.* at ¶ 13. After learning that she had to bring an attorney to the next hearing, [redacted]'s mother was afraid that if she returned without an attorney, she and [redacted] would both be deported. By [redacted] 2016, [redacted]'s mother still did not have an attorney for him despite her many efforts. [redacted]'s mother had consulted with four attorneys who all advised her that while [redacted] may be eligible to stay in the country she would be deported given her prior order of removal. *Id.* at ¶¶ 13–16. Confused and afraid of being deported again to Honduras where she would face her abusive former partner and the likelihood of more rape, increased harm and death, she decided not to take [redacted] to his [redacted] hearing. [redacted]'s mother decided to not take [redacted] to this hearing because she had no choice; [redacted]'s mother thought this was the only way to protect him and herself from his father and his family. *Id.* at ¶ 16.

ARGUMENT

[redacted] presents two grounds for reopening his removal proceedings and rescinding his *in absentia* removal order. First, [redacted] merits reopening his removal proceedings and rescinding his *in absentia* removal because he presents a truly exceptional situation worthy of this Honorable Court's exercise of *sua sponte* authority. Second, [redacted] merits reopening his removal proceedings to apply for asylum and related relief that his mother was not fully apprised of during the former hearing.

I. This Honorable Court should invoke *sua sponte* authority to reopen Respondent's removal proceedings and rescind his *in absentia* removal order.

In addition to reopening a case pursuant to the Immigration and Nationality Act ("INA"),

an Immigration Judge may at any time reopen a proceeding in which he or she has made a decision. 8 CFR § 1003.23(b)(1). The Board of Immigration Appeals ("BIA") has held that this *sua sponte* authority is "not meant to be used as a general cure for filing defects or to otherwise circumvent the regulations, when enforcing them might result in hardship." *Matter of J- J-*, 21 I&N Dec. 976, 984 (BIA 1997). The BIA has further held that a motion to reopen *sua sponte* turns on whether "respondent's situation is truly exceptional." *See Matter of G-D-*, 22 I&N Dec. 1132, 1134-1135 (BIA 1999).[4] The burden is on the movant to show that an "exceptional situation" exists that merits a reopening by the BIA. *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997).

The Respondent's case is precisely the type of "exceptional situation[]," in which *sua sponte* reopening is appropriate. *See Matter of G- D-*, 22 I& N Dec. 1132, 1134 (BIA 1999). First, the Respondent's age at the time of the *in absentia* removal order along with other vulnerabilities renders this a truly exceptional situation. Second, the Respondent is eligible for Special Immigrant Juvenile Status. Third, Congress has recognized Special Immigrant Juvenile eligible children as presenting unique and exceptional circumstances requiring protection. Therefore, the Respondent merits reopening of his removal proceedings and rescission of his *in absentia* removal order.

A. As supported by the BIA in unpublished decisions, the Respondent incurred an in absentia order through exceptional circumstances beyond his control.

The totality of the circumstances warrants an exercise of this Honorable Court's *sua sponte* authority. [redacted]'s mother took him to four master calendar hearings at the [redacted] Immigration Court before missing the fifth hearing and being issued an *in absentia*

[4] Although "exceptional situation" is not defined and requires a case-by-case assessment, the term "exceptional circumstances" was added to the INA by the Immigration Act of 1990. Immigration Act of 1990 (IMMACT90), Pub. L. No. 101-649, 104 Stat. 4978. It is defined as those "exceptional circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) *beyond the control of the alien*." INA §240(e)(1); see also INA § 242B(f)(2) (1995) (emphasis added).

removal order. Given his age, [redacted] was solely under his mother's control and the circumstances were beyond his control. Even if [redacted] had understood the consequences of an *in absentia* removal order, [redacted] lacked the ability to rectify the matter.

The BIA has recognized several cases similar to the [redacted]'s where the Immigration Judge should have exercised its *sua sponte* authority. In those cases, the BIA consistently held that the respondent's young age at the time of the removal order was a truly exceptional situation. One of these unpublished decisions stemmed from this Honorable Court and the BIA sustained the Respondent's appeal granting *sua sponte* rescission and reopening. *See* Tab G ([redacted] (BIA Nov. 21, 2016)). These decisions recognize that a young respondent is invariably under the control of an adult and unable to act independently. In fact, in one case the BIA held this despite the respondent being 17 years old and therefore having more independence than a 4-year-old like [redacted] *See* Tab H ([redacted] (BIA April 11, 2016). Further, in none of these cases did the BIA impute the parent's conduct that lead to the *in absentia* removal order on the respondent minor to dismiss the motion to reopen. Here, [redacted]'s mother acted out confusion at what it would mean if she returned to this Honorable Court without an attorney for [redacted], anxiety that she had already consulted in vain with four immigration attorneys, and fear that they would be deported to Honduras to again face their persecutor.

While diligence in reopening *in absentia* removal proceedings has been a factor for reopening consideration, it should be noted that of these BIA unpublished decisions, four of them are decision in which the respondent waited many years—including as many as 13 years—to file the motion to reopen and rescind the *in absentia* removal order. *See* Tab H. Furthermore, [redacted] did not seek reopening and rescission prior to this motion because, given the lack of support and guidance [redacted]'s mother has faced in the United States, she was unable until recently to find pro

bono counsel. The presence of undersigned counsel and submission of this motion proves that [redacted]'s mother has acted with diligence on [redacted]' behalf.

Therefore, as the BIA has recognized, the Respondent's age at the time of the order and the vulnerabilities he faced at the time render this a truly exceptional situation meriting *sua sponte* reopening of the proceedings and rescission of the *in absentia* order of removal. So doing would serve the interests of justice and not cause a hardship for this Honorable Court.

B. The Respondent is eligible for Special Immigrant Juvenile Status, a form of relief that Congress has recognized as unique benefit for those like the Respondent who have been in truly exceptional situations of abuse, abandonment or neglect by at least one parent.

During [redacted]'s Master Calendar Hearings, this Honorable Court identified [redacted] as being eligible for Special Immigrant Juvenile Status. Special Immigrant Juvenile Status is a unique type of humanitarian-based immigration option under for children who require state court intervention for their protection.[5] INA § 101(a)(27)(J).

In 1990, Congress created Special Immigrant Juvenile Status as a path to legalization for undocumented children in state foster care.[6] The original statutory definition of a Special Immigrant Juvenile protected those who were declared dependent on a juvenile court, deemed eligible for long-term foster care, and had a determination by the court or an administrative body that it would not be in their best interest to return to their home country. Pub. L. No. 103-416, § 219(a), 108 Stat.

[5] *See also* Special Immigrant Juveniles (SIJ) Status, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, https://www.uscis.gov/humanitarian.

[6] Special Immigrant Status; Certain Aliens Dependent on a Juvenile Court; Revocation of Approval of Petitions; Bona Fide Marriage Exemption to Marriage Fraud Amendments; Adjustment of Status, 58 Fed. Reg. 42,843 (proposed Aug. 12, 1993) (to be codified at 8 C.F.R. pts. 101, 103, 204, 205, and 245) ("No method existed for most court-dependent juvenile aliens to regularize their immigration status and become lawful permanent residents of this country, even though a United States juvenile court had found them dependent upon the court and eligible for long-term foster care, and it had determined that it was not in the children's best interest to be returned to their home countries or the home countries of their parents.").

4316. In the Immigration and Nationality Technical Corrections Act of 1994, Congress added "or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State" to those declared dependent on a juvenile court. In 1997, Congress amended the definition of Special Immigrant Juvenile to limit protection to those deemed eligible for "long-term foster care due to abuse, neglect, or abandonment."[7] In 2008, Congress passed the Trafficking Victims Protection Reauthorization Act (TVPRA) which again amended the statute. William Wilberforce Trafficking Victims Protection and Reauthorization Act of 2008, Pub. L. No. 110-457, § 235, 122 Stat. 5079. The TVPRA of 2008 expanded eligibility for Special Immigrant Juvenile Status in two key ways: (1) by allowing children placed under the custody of an individual, and not otherwise declared dependent or legally committed to, or placed under the custody of, a state agency or department, to apply and (2) by eliminating the requirement that an individual be found eligible for long-term foster care and instead requiring that the individual's reunification with one or both parent's not be viable due to abuse, neglect, abandonment, or a similar basis under state law. Therefore, since 1990, Special Immigrant Juvenile Status has evolved as a unique and humanitarian status that allows children who would otherwise be deported to remain in the United States because of their unfortunate past of abuse, neglect, or abandonment and overall vulnerabilities.

[redacted] is *prima facie* eligible for Special Immigrant Juvenile Status. INA § 101(a)(27)(J). For starters, [redacted] is an immigrant who is present in the United States and whose reunification with his father is not viable due to abuse, neglect, abandonment, or a similar basis found under state law. *Id.* A state juvenile court may place [redacted] under the custody of his mother

[7] Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998, Pub. L. No. 105-119, § 113, 111 Stat. 2460, 2461 (emphasis added); 143 CONG. REC. H10844 (1997) ("The language has been modified in order to limit the beneficiaries of this provision to those juveniles for whom it was created, namely abandoned, neglected, or abused children, by requiring the Attorney General to determine that neither the dependency order nor the administrative or judicial determination of the alien's best interest was sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect.").

or another individual located in the United States. *Id.* It would not be in his best interest to be returned to Honduras. *Id*.

Therefore, Special Immigrant Juvenile Status has been recognized as an exceptional benefit for those like [redacted] whose situation is truly exceptional because they have been abused, abandoned or neglected by at least one parent. [redacted]'s *prima facie* eligibility for Special Immigrant Juveniles Status merits *sua sponte* reopening of an *in absentia* removal order.

II. This Honorable Court should reopen without rescinding the Respondent's removal proceedings so that he may pursue asylum and related relief as he was not fully appraised of his right to apply for such relief at the former hearings.

A respondent can file one motion to reopen proceedings, which "shall state the new facts that will be proven at a hearing to be held if the motion is granted, and shall be supported by affidavits or other evidentiary material." INA § 240(c)(7)(B); *see also* 8 C.F.R. § 1003.23(3). A motion to reopen to apply for discretionary relief must be based on circumstances that arose after the hearing, *or establish that the respondent was not fully apprised of his or her right to apply for such relief at the former hearing*. 8 CFR § 1003.23(b)(3) (emphasis added). This Honorable Court may reopen [redacted]'s removal proceedings for consideration of a previously unavailable form of relief without having to rescind the order of removal. *Matter of M-S-*, 22 I&N Dec. 349 (BIA 1998) (*en banc*). This Honorable Court should assess the reasonable likelihood of success on the merits

A. [redacted] was not fully apprised of his right to apply for asylum and related relief at the former hearing.

During his Master Calendar Hearings, [redacted] was not fully apprised of his right to apply for asylum. If a respondent expresses a fear of persecution or harm in a country to which he or she might be removed, the regulations require the Immigration Judge to advise the respondent of the right to apply for asylum or withholding of removal (including protection under the Convention

Against Torture) and make the appropriate application forms available. *See Matter of C-B-*, 25 I&N Dec. 888 (BIA 2012). The regulations also require the Immigration Judge to advise the respondent of the right to apply for asylum or withholding of removal (including protection under the Convention Against Torture) and make the appropriate application forms available. *See* 8 C.F.R. § 1240.11(c)(1)(i)–(ii); *see also* 8 C.F.R. §§ 1208.13, 1208.16, 1208.17. Here, the Immigration Judge did not advise *pro se* [redacted] of his right to apply for asylum and related relief. The Immigration Judge did not provide this advisal because, it seems, the Immigration Judge did not ask [redacted] and his mother about any fear of returning to Honduras during any of the four Master Calendar Hearings at which they appeared.[8] However, the Immigration Judge did identify [redacted] as potentially eligible for Special Immigrant Juvenile Status and explained this form of relief and the application process to [redacted] and his mother. While [redacted]'s mother understood that she could pursue Special Immigrant Juvenile Status for [redacted], [redacted]'s mother did not know that he had the right to apply for asylum based on the persecution he experienced in Honduras. *See* Tab A at ¶ 13. As such, [redacted] was not fully apprised of his right to apply for asylum and related relief. *See* 8 C.F.R. § 1240.11(c)(1).

B. Rescission of an in absentia order is not a condition precedent to the reopening of proceedings for consideration of a previously unavailable form of relief.

In *Matter of M-S-*, 22 I&N Dec. 349 (BIA 1998) (*en banc*), the BIA held that former Section 242B(c)(3) of the Act did not require the rescission of an *in absentia* order prior to reopening the respondent's removal proceedings to consider an application for adjustment of status. As the BIA explained, the rescission of an *in absentia* order nullifies all prior determinations reached in the proceedings, returns the alien to the same status he or she enjoyed prior to the

[8] Undersigned counsel will confirm via the submitted DAR and FOIA request.

hearing, and requires the Government to prove the charge of removability. *Id*. at 353. The BIA thus analogized the rescission of an *in absentia* order to the rescission of a grant of adjustment of status under Section 246 of the Act, which returns the alien to the same status he or she enjoyed prior to becoming a lawful permanent resident. *Id*. at 353 n.4. By contrast, the BIA characterized the reopening of proceedings as an interlocutory order that does not affect the prior finding of removability or otherwise abrogate prior determinations made in proceedings. *Id*. at 354. Accordingly, the BIA held that rescission of an *in absentia* order is not a "condition precedent" to reopening proceedings to pursue a previously unavailable form of relief. *Id.* at 355.

The BIA recently followed *Matter of M-S-* and held that the requirements for rescission of an *in absentia* order under current Section 240(b)(5)(C) of the Act need not be satisfied to reopen proceedings to apply for asylum and withholding of removal based on changed country conditions. *Matter of J-G-*, 26 I&N Dec. 161 (BIA 2013). The BIA observed that if rescission of an *in absentia* removal order was a condition precedent to reopening removal proceedings, Section 240(b)(7) of the Act—which makes aliens subject to *in absentia* removal orders ineligible for certain forms of discretionary relief for ten years after the entry of the order—would be superfluous, because no bars to discretionary relief exist following the rescission of an *in absentia* order. *Id*. at 167. The BIA thus remanded the record for consideration of the respondent's asylum application, notwithstanding the fact that she did not meet the requirements for rescission of the *in absentia* order. *Id*. at 170.

This Honorable Court therefore may reopen [redacted]' proceedings for consideration of his attached Form I-589, Application for Asylum and for Withholding of Removal, without first rescinding the *in absentia* order of removal. *See* Application for Asylum and Withholding of Removal, Tab B.

C. [redacted]'s asylum and related relief application should be assessed pursuant to *Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996).

A motion to reopen filed in order to apply for relief must be accompanied by the "appropriate application for relief and all supporting documentation." 8 C.F.R. § 1003.23(b)(3). [redacted] submits a completed Form I-589, Application for Asylum and for Withholding of Removal, along with a declaration from him mother. *See* Application for Asylum and Withholding of Removal, Tab B; Declaration in Support of Application for Asylum, Tab C.

This Honorable Court should follow the "reasonable likelihood of success" standard issued by the BIA in *Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996). In *Matter of L-O-G-*, the BIA suggested that the "heavy burden" standard articulated four years earlier in *Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992), might be reserved for cases where there were "special, adverse" or "egregious" factors such as dilatory tactics or where the respondent had already had an opportunity to present and litigate the claim for relief. 21 I&N Dec. 413 (BIA 1996). In *Matter of L-O-G-*, the BIA considered a motion to reopen filed by a mother and her teenage daughter to apply for suspension of deportation. 21 I&N Dec. at 413. In addressing whether the respondents were *prima facie* eligible for the relief being sought, the BIA acknowledged the "heavy burden" discussed in the Supreme Court's decision in *INS v. Abudu*, 485 U.S. 94 (1988), which involved a physician who overstayed a student visa and was placed in proceedings after being convicted of fraudulently obtaining narcotic drugs, and its decision in *Matter of Coelho*, which involved a respondent had been convicted of conspiracy to possess with intent to distribute approximately two pounds (or $50,000 worth) of cocaine. *Id*. at 419. The BIA stated, however, that "in those cases where we have emphasized the heavy burden of proof faced by an alien seeking reopening, the facts warranted the strict imposition of such a burden." *Id*. The BIA stated that in the absence of "special, adverse considerations," and where the respondent "has not had an opportunity to present her

application before the Immigration Judge," reopening should be granted where "there is sufficient evidence proffered to indicate a reasonable likelihood of success on the merits, so as to make it worthwhile to develop the issues further at a full evidentiary hearing." *Id*. at 420.

Given that there are no special, adverse considerations present in 4-year-old [redacted]'s case, the standard for motions to reopen enunciated in *Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996)—i.e., whether a respondent's applications for relief has a "reasonable likelihood of success" applies to this case. There is a reasonable likelihood that [redacted] would qualify for asylum because while in Honduras his father caused him harm to the level of persecution, particularly given his very young age at the time. In the attached declaration from [redacted]'s mother, she discusses how [redacted]'s father would mistreat [redacted] from the time he was an infant in order to "further hurt and control [her]." *See* Tab C at ¶ 9. [redacted]'s mother offers specific examples of [redacted]'s father depriving [redacted] of food for hours and playing Russian roulette with [redacted]'s life while on a motorcycle. *Id.* at ¶ 8. [redacted]'s father persecuted [redacted] because of his status in the family and, as such, [redacted] has a reasonable likelihood of success on an asylum claim.

CONCLUSION

This Honorable Court should reopen and rescind the Respondent's *in absentia* removal order because the totality of the evidence presented in this case presents truly exceptional circumstances warranting exercise of *sua sponte* authority. That evidence includes the respondent's very young age at the time of the entry of the *in absentia* order of removal and his eligibility for Special Immigrant Juvenile Status. Further, this Honorable Court should reopen Respondent's case to allow him to make an application for asylum and related relief.

DATED: [redacted] 2018

Respectfully submitted,

[redacted]

Minor Respondent: [redacted]
Alien Number: [redacted]

CERTIFICATE OF SERVICE

I, [redacted], hereby certify that I served the attached Motion to Amend Previously Filed Motion to Reopen *In Absentia* Removal Order with supporting documents upon the [redacted] of Chief Counsel, Department of Homeland Security, on [redacted] 2018 via first-class mail to:

[redacted]
Department of Homeland Security
U.S. Immigration and Customs Enforcement
[redacted]

_____
Signature