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**NOT DETAINED**

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
HYATTSVILLE, MARYLAND**

<p><b>IN THE MATTER OF</b>  █ <b>(Respondent)</b></p>	<p><b>IN REMOVAL PROCEEDINGS</b>  A# █</p>
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The Honorable Judge █

**Next ICH: October 20, 2023**

**PREHEARING BRIEF IN SUPPORT OF ASYLUM APPLICATION**

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE OF IMMIGRATION REVIEW  
HYATTSVILLE IMMIGRATION COURT**

**IN THE MATTERS OF:**

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**BRIEF IN SUPPORT OF RESPONDENT’S APPLICATIONS FOR  
ASYLUM, WITHHOLDING OF REMOVAL AND  
RELIEF UNDER THE CONVENTION AGAINST TORTURE**

**I. INTRODUCTION AND SUMMARY OF CASE**

Mr. █████ entered the United States on █████ 2020, fleeing political persecution in Venezuela. Mr. █████ is a gay, HIV positive man who was active in political protests in Venezuela in opposition to the ruling Venezuelan government, which has committed numerous human rights abuses and is widely considered to be one of the most violent and repressive dictatorships worldwide. As a result of his activities in favor of human rights, in particular advocating for the dignity and equality of the LGBT community and those with HIV/AIDS, Mr. █████ suffered numerous reprisals from the government, including receiving threatening phone calls, being under constant surveillance, and being deprived of his life-saving HIV medication. In addition to these harms targeted at him directly by the government, Mr. █████ has also been a victim of Venezuela’s general attitude of repression towards members of the LGBT community. Mr. █████ was mercilessly teased and bullied for being different when he was growing up. In order to avoid being targeted in Venezuela because of his sexual orientation, he has essentially

remained “closeted” his entire adult life. He is unable to be open about his sexual orientation in his home country, for fear of being targeted. He had to pretend to be straight and had to keep his feelings to himself. He was also pressured to have a girlfriend, which only lasted a short time.

Mr. [REDACTED] was involved in protests for several years against the dictatorial government in Venezuela. He was concerned about the rights of citizens, particularly those with chronic health conditions who were impacted. When he participated in these demonstrations, they usually ended up being violently broken up by the government. The government would use tear gas and rubber bullets against them, or spray them with water. Mr. [REDACTED] was never arrested or beaten after a protest but he knows many people who were. Around this time, Mr. [REDACTED] began receiving phone calls from unknown individuals and who would reference things that only people who know him well would know. The callers would ask him intimidating questions and make references to the fact that the cleaning lady had just arrived. They wanted to make clear that they were watching him. Mr. [REDACTED] also began to suffer because of medication shortages, which made it very difficult for him to obtain lifesaving medication. In 2018, he had to change his treatment regime four different times because of all the shortages. While many HIV positive people in Venezuela face medication shortages, Mr. [REDACTED] notes that he faced more changes than his other friends who were not as politically active. Mr. [REDACTED] is registered with the minister of health and the government has a lot of personal information about him as a result. Without his HIV medication, Mr. [REDACTED] cannot survive.

Mr. [REDACTED] experienced past persecution on account of his membership in the particular social groups of **1) gay Venezuelan men; 2) HIV positive Venezuelan men; 3) Gay, HIV positive Venezuelan men.** He also suffered past persecution on account of his political opinion and has a well-founded fear of persecution on account of these same grounds. He endured this

persecution and harm by government actors. In addition, country conditions reports establish that the government of Venezuela is ineffective at protecting gay, HIV positive men in that country.

Mr. [REDACTED] by and through his undersigned counsel, respectfully submit this Brief in support of his applications for asylum pursuant to Section 208(a) of the Immigration and Nationality Act (“INA”) and withholding of removal pursuant to Section 241(b) of the INA and the Convention Against Torture (“CAT”). As set forth below, the facts and law support a grant of asylum.

## **II. PROCEDURAL HISTORY**

Mr. [REDACTED] entered the United States on [REDACTED] 2020 on a B-2 visa, fleeing political persecution in Venezuela. He timely filed for asylum with the asylum office on October 20, 2020 within one year of his entry to the United States. Mr. [REDACTED] was interviewed by an asylum officer on February 10, 2021, in connection with his asylum application. On March 23, 2021, USCIS issued a decision referring Mr. [REDACTED] I-589 application for asylum to immigration court, finding that he had not established either past persecution or a well-founded fear of persecution in Venezuela. He was issued a Notice to Appear, dated March 23, 2021. On December 12, 2022, Mr. [REDACTED] filed written pleadings in which he admitted the factual allegations against him and conceded the charge of removability pursuant to section 237(a)(1)(B) of the Immigration and Nationality Act. On April 3, 2023, Mr. [REDACTED] filed a motion to schedule the individual hearing in his case, and the court scheduled his hearing for October 20, 2023.

## **III. LEGAL ARGUMENT FOR ASYLUM ELIGIBILITY FOR MR. [REDACTED]**

### **A. Mr. [REDACTED] is a refugee**

To qualify for asylum, a non-citizen must show that he meets the definition of a “refugee.” *See* 8 U.S.C. § 1158(b)(1). A “refugee” is a person who is unable or unwilling to return to his

country due to past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.<sup>1</sup>

**1. Mr. █████ experienced harm serious enough to rise to the level of past persecution on account of several protected grounds.**

The harm experienced by Mr. █████ clearly rises to the level of persecution. The term persecution has been interpreted broadly to include “the infliction of suffering or harm upon those who differ... in a way regarded as offensive [by the persecutor].<sup>2</sup> All harm must be considered cumulatively by the adjudicator in determining whether past mistreatment rises to the level of persecution. A summary of the past persecution that Mr. █████ endured, as well as the evidence showing its nexus to a protected ground is summarized below.

- ***Mr. █████ was bullied and mistreated during his childhood because of his sexual orientation.*** Mr. █████ statement supports that he was bullied and mistreated during his childhood because of his sexual orientation. Although he would not have felt comfortable outwardly declaring himself to be gay, other children could sense that he was different in some way and targeted him as a result. As a result, they subjected him to severe bullying and discrimination. He was called insulting names and offensive words for gay men, establishing that their animus was motivated by a protected ground. Mr. █████ had no one that he could turn to for support during this difficult time. O████F████, Licensed Independent Social Worker from La Clinica del Pueblo, confirms that Mr. █████ “experienced significant and cruel bullying from an early age” due to being a “non-typical boy.” The bullying and discrimination continued in high school. Mr. Flores diagnoses Mr. █████ with post-traumatic stress disorder and general adjustment disorder due in part to the mistreatment that he endured as a child. According to the UNHCR Guidelines, and as

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<sup>1</sup> INA § 101 (a)(42)(A).

<sup>2</sup> *Matter of Acosta*, I&N Dec. 211 (BIA 1985).

upheld by several U.S. Courts of Appeals, “[t]he harm a child fears or has suffered . . . may be relatively less than that of an adult and still qualify as persecution.”<sup>3</sup> Being relentlessly bullied as a child for his sexual orientation, even in the absence of physical harm, impacted Mr. [REDACTED] gravely and continues to impact him to this day.

- ***Societal pressure to hide his sexual orientation for fear of reprisal constitutes a form of persecution.*** As he grew older, Mr. [REDACTED] was faced with the impossible choice of being open about who he was, or hiding his sexual orientation in order to avoid reprisals, discrimination at work, and violence in the streets. Mr. [REDACTED] mostly chose the latter—while he came to accept himself as a gay man, he was not outwardly open about his sexual orientation, for example, at his place of work. As a result, he was forced to live a double life in order to avoid losing either his job or his life. He has been diagnosed with PTSD as a result of the trauma he has endured and has suffered from feelings of alienation and anxiety. The BIA has affirmed in a recent precedential decision that an asylum applicant should not be forced to hide his sexual orientation to avoid being harmed. [\*Matter of C-G-T\*](#), 28 I&N Dec. 740 (BIA 2023). However, because Venezuela is unaccepting of gay rights, this is exactly the impossible situation that Mr. [REDACTED] was forced into.
- ***Mr. [REDACTED] participated in political protests that were violently broken up by government forces.*** Beginning in 2012, Mr. [REDACTED] became active in protests against Hugo Chavez and his successor, Nicolas Maduro. Mr. [REDACTED] demonstrated in favor of the political party of which he was a sympathizer, called Voluntad Popular. The situation was difficult during

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<sup>3</sup> See also *Hernandez-Ortiz*, 496 F.3d 1042 (9th Cir. 2007); *Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir. 2006); *Liu v. Ashcroft*, 380 F.3d 307, 314 (7th Cir. 2004); *Abay v. Ashcroft*, 369 F.3d 634, 640 (6th Cir. 2004).

these initial years of protests, but worsened in 2016. This is the year that Mr. [REDACTED] began to participate in more protests against human rights violations of LGBT and HIV positive individuals, as he noted that the government's negligence made it impossible for individuals with chronic health conditions to receive proper HIV medication. These protests were violently broken up by government forces. These government forces used water hoses and tear gas against the crowds of which Mr. [REDACTED] was a part. The use of force by a dictatorship against peaceful protestors constitutes persecution on account of a political opinion.

- **Mr. [REDACTED] received threats and was under surveillance as a result of his participation in these protests.** As a result of his participation in these protests, Mr. [REDACTED] was placed under surveillance and received threatening phone calls at his home. The callers would mention details about where his family was living and would tell him that they had just seen the cleaning lady arrive at his house. The point of these calls was to make Mr. [REDACTED] feel that he was under constant siege, was always being monitored, and could not live in safety even in his own home. This had a grave psychological impact on him. Surveillance and threats have been found to constitute persecution. *Manzur v. U.S. Dep't of Homeland Sec.*, 494 F.3d 281, 292 (2d Cir. 2007); *Bedoya v. Barr*, 981 F.3d 240, 246 (4th Cir. 2020).
- **Mr. [REDACTED] was denied life-saving medication as a result of his political activity and HIV positive status.** As a result of his participation in these political protests in favor of the rights of the LGBT community and the rights of HIV positive individuals that he was denied access to his life-saving medication. All HIV medication is handled through the government agency called IVSS (Instituto Venezolano de Seguro Social) part of the

Ministry of Health. This agency has his information in the database, and would easily be able to match his identity as someone who had previously participated in opposition political protests. He was forced to change treatment protocols four times because the life-saving medication that he needed was not available to him. For a number of months he was forced to buy the medication on the black market because the medication was simply unavailable to him. This type of protocol switching did not really happen to his friends and the government intentionally blocked his medication when it became aware that he was participating in these political protests. Without his medication, Mr. [REDACTED] will quickly become sick and die. The expert witness for Mr. [REDACTED] Ms. Ligia Bolivar, notes that **“the most urgent needs for health, food and services have become tools of political and social manipulation and control, which makes people with special needs such as HIV more vulnerable and subject to greater risks to their personal integrity...”** [Submission of September 20, 2023, Tab D.]

Even if this Court were not to find that Mr. [REDACTED] was denied his HIV medication because of his political activity but rather because of general shortages in medication, Mr. [REDACTED] argues that these HIV shortages are a result of a deliberate government policy targeting HIV positive individuals. For example, as Ms. Bolivar writes “in 2016, the government stopped purchasing ART, which has increased the number of hospitalizations and deaths” in Venezuela for those who are HIV positive. [Submission of September 20, 2023, Tab D.] The government in 2021 also targeted humanitarian workers by raiding their headquarters and arresting workers and directors. The State Department further confirms that public hospitals frequently refuse to treat individuals with HIV. In 2019, President Maduro



blocked a \$5 million shipment of ART medication from entering Venezuela. [See Submission Referred from Asylum Office, Page 66.] **Thus the denial of Mr. [REDACTED] medication is a result of a deliberate policy by the government to stop providing HIV medication to those who need it.**

**2. Mr. [REDACTED] has a well-founded fear of future persecution in Venezuela.**

Because Mr. [REDACTED] suffered past persecution in Venezuela by the Venezuelan government, there is a presumption that he has a well-founded fear of persecution on this same basis. 8 C.F.R. § 1208.13(b)(1). Even in the absence of a finding of past persecution, Mr. [REDACTED] still has a well-founded fear of persecution in his home country. Mr. [REDACTED] does not need to show that it is more likely than not that he will be persecuted--- he simply needs to show a slight though discernible chance of persecution. As little as a 10% chance of persecution is sufficient under the well-founded fear standard. *INS v. Cardoza-Fonseca*, 480 U.S. 421 (19787). He has more than met his burden in this case.

In the current political climate in Venezuela, all dissent against the government is suppressed. Political opponents are subject to indefinite detention without judicial process and peaceful protestors are violently killed. The United States government has recognized the repressive human rights violations of the Maduro regime. Venezuela is one of the most corrupt countries in the world and the government takes reprisals against individuals who publicly express criticism of the president or of government policy, as Mr. [REDACTED] has consistently done.

Mr. [REDACTED] is also at special risk in Venezuela as a gay, HIV positive man. The country conditions evidence explains the special hardships that gay, HIV positive individuals face in Venezuela. The State Department describes that there were numerous instances of bias-motivated violence against LGBT persons in Venezuela. [Submission of September 20, 2023, Tab E.] Law

enforcement did not properly investigate these crimes. *Id.* In addition, local police and private security forces prevented LGBT persons from entering malls, public parks, and recreational areas. *Id.* There was discrimination against individuals with HIV/AIDS, including the denial of necessary medical treatment. *Id.*

A February 2019 article from Voice of America describes the violence and discrimination that are a daily part of life in Venezuela for LGBT individuals. It tells the story of a man who was tied with old cables to an electric pole while people threw fireworks at him and put out cigarettes on his body. [See Submission of Evidence Referred from Asylum Office, Pages 73-76.] Many gay and transgender individuals are forced to leave Venezuela. This is confirmed by a May 2017 NBC News article stating that many LGBTQ individuals in Venezuela have suffered violent crimes and that the government there is extremely homophobic. As a result, their only choice is to flee. [See Submission of Evidence Referred from Asylum Office, Pages 83-90.]

An understanding of the current political backdrop in Venezuela is critical to realizing both the plausibility of Mr. ██████ account as well as the very real dangers that he will face if returned to Venezuela. The dangers that Mr. ██████ faces are not exaggerated or theoretical. As the voluminous country conditions evidence demonstrates, the government will target Mr. ██████ upon return. He will also be at risk of violence from private individuals whom the government will be unable or unwilling to control.

#### **B. Mr. ██████ Qualifies for Withholding of Removal**

In order to prevail on a claim for withholding of removal under INA § 241(b)(3), an applicant must show that it is more likely than not that he will face persecution on account of a protected ground if returned to his country. If the applicant meets this standard, relief is mandatory rather than discretionary.

As discussed above, Mr. [REDACTED] has already established past persecution on account of several protected grounds. Mr. [REDACTED] experienced past persecution when he was surveilled, targeted by violent government forces, forced to stifle his identity, and denied his critical lifesaving HIV medication. This persecution was carried out on account of his political opinion and membership in a particular social group. Mr. [REDACTED] is entitled to a presumption that he would experience future persecution if returned to Venezuela.<sup>4</sup>

Country conditions reports cited above, and others submitted by Mr. [REDACTED] establishes that the presumption that he would experience future persecution if returned to Venezuela cannot be rebutted. Because the persecution that Mr. [REDACTED] fears is carried out by the government, the persecution is presumed to be nationwide.

### **C. Mr. [REDACTED] Qualifies for Protection Under the Convention Against Torture.**

To obtain protection under the Convention Against Torture, Mr. [REDACTED] must demonstrate that it is more likely than not that he would be tortured if returned to Venezuela. The term “torture” is defined as “any act by which severe pain or suffering... is intentionally inflicted on a person... for any reason based upon discrimination of any kind, when such pain and suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or person acting in an official capacity.”<sup>5</sup>

The country conditions reports discussed above and others submitted by Mr. [REDACTED] clearly establish that it is more likely than not that Mr. [REDACTED] would experience torture if returned to Venezuela. In Venezuela, government officials acquiesce by purposely failing to protect HIV positive individuals, failing to provide them proper medical treatment, and targeting humanitarian workers who are just trying to do their jobs. Government officials also arrest and detain political opponents to their regime.

## **IV. CONCLUSION**

As outlined above and in the attached exhibits, Mr. [REDACTED] has demonstrated that he suffered persecution in the past on account of his protected characteristics. Furthermore, he has a well-founded fear of future persecution or torture if returned to Venezuela. For the reasons discussed,

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<sup>4</sup> See 8 C.F.R. § 1208.16 (B)(1)(i).

<sup>5</sup> 8 C.F.R. § 1208.18(a)(1).

Mr. [REDACTED] requests that he be granted asylum or alternative relief to allow him to remain in the United States.

Respectfully submitted,

[REDACTED]

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**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
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HYATTSVILLE, MARYLAND**

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**IN THE MATTER OF**

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**In removal proceedings**

**[REDACTED]  
(Respondent)**

A# [REDACTED]

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**PROOF OF SERVICE**

On September 20, 2023, I served a copy of RESPONDENT’S PREHEARING BRIEF PRIOR TO via ECAS. No separate service is required.

9/19/2023

Date

[REDACTED]  
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