

Asylum - Defensive - Sample Brief LGBT Fourth Circuit

**LEGAL MEMORANDUM IN SUPPORT OF [REDACTED] APPLICATION FOR
ASYLUM, OR ALTERNATIVELY, WITHHOLDING OF REMOVAL OR RELIEF
PURSUANT TO THE
CONVENTION AGAINST TORTURE**

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INTRODUCTION

Jane DOE Jane (“Jane” or “Ms. DOE Jane”) seeks asylum in the United States because she fears persecution in her home country of Origin country on the basis of her membership in a particular social group and political opinion. Ms. DOE Jane, openly lesbian, has been beaten by family members and harassed and detained by the police. During the past four years, her suffering has included threats of violence and death, rape, beatings, and attempted arrest and detention by Origin country law enforcement officials. Ms. DOE Jane is not safe anywhere in Origin country, and she fears that she will be severely harmed or killed if forced to return.

Ms. DOE Jane should be granted asylum under §208(a) of the Immigration and Naturalization Act (“INA”) or, in the alternative, withholding of removal under INA §241(b)(3) or the Convention Against Torture.

I. FACTUAL BACKGROUND

Ms. DOE Jane (herein after “Jane”) was born on [REDACTED] in [REDACTED], Origin country into the family of [REDACTED], members of the X tribe (also spelled Jane)¹. Tab C, Resp’t Decl., ¶ 1. Throughout her childhood and adolescence, Jane lacked interest in sex or sexuality. *Id.* at ¶10. When her female friends had boyfriends she “would get mad at

[REDACTED]

them” and could not understand why she did not have crushes on boys like they did. *Id.* at ¶21. At age fifteen, Jane began training as a hair braider which led her to a career working at hair salons where she first encountered both gay men and lesbians. *Id.* at ¶¶ 8, 11. Unlike most Origin country, Jane felt “comfortable” with her new gay friends and began spending time socially with them. *Id.* at ¶11.

Around 2004, at the age of nineteen, Jane fell in love for the first time. A woman named Mary became her client at the salon. *Id.* at ¶20. This attraction sparked the realization for Jane that she was a lesbian; for the first time “[her] feelings started making sense to [her] at age 19. [She] finally understood who [she] was”. *Id.* at ¶¶20-22. While Jane did not engage in a relationship because Mary was married and straight, this experience led to her awareness of her sexual orientation. *Id.* at ¶¶ 23.

Soon after this realization, Jane was raped by a male acquaintance named Jack Sprat. Mr. Sprat romantically pursued Jane despite her repeated refusals. *Id.* at ¶24-26. Mr. Sprat regularly attempted to dissuade Jane from associating with lesbians and repeatedly asked her if she was a lesbian. *Id.* at ¶26. Despite her repeated denials, he told her “we could pray together and things would change”. *Id.* at ¶27. One day in February █████, Mr. Sprat raped Jane. *Id.* at ¶28. Right before he raped her, he told Jane that “you don’t want to follow me because you follow girls. Now you are going to see what I do.” *Id.* When Jane became pregnant, he told her it could not be his child because she was a lesbian”. *Id.* at ¶29. Unfortunately, this was actually the second rape² suffered by Jane by the time she was twenty-one years old. *Id.* at ¶¶12-15. Jane never reported the rapes because she believed that the police would never act on her report and she

² Jane was raped by a male acquaintance when she was 18 years old. See Tab C at ¶¶12-17.

knew that women who are raped in Origin country are subject to humiliation and harassment. *Id.* at ¶16-17.

The trauma of the rape led Jane to seek comfort in the friendship of Sally May. *Id.* at ¶30. Jane had known Sally as a client at the salon but had previously rebuffed Sally's overtures. *Id.* at ¶19, 30. Sally was a lesbian client who "was like a man. She had the body build like a man with lots of muscles because she would lift weights. Her chest was flat and she kept her hair in dreadlocks". *Id.* at ¶30. Previously, Jane had rejected Sally's advances because she was interested in Mary at the time and thought Sally was a "just a flirt". *Id.* However over time, Sally convinced Jane that her feelings were serious and after two months of courtship they became a couple. *Id.* at ¶¶31-39. When Jane revealed that she was pregnant from the rape, Sally responded that "this child will be mine" as the couple embraced and declared their love to each other for the first time. *Id.* at ¶37.

The couple decided to keep their relationship a secret during the pregnancy, as Jane was overwhelmed with the situation and was not ready to "come out". *Id.* at ¶38. There had been rumors in the neighborhood about Jane's sexuality but they seemed to die down once it was clear that she was pregnant because "people in Origin country don't believe that lesbians can become pregnant". *Id.* at ¶38. The couple supported each other through the pregnancy and the opening of Jane's own beauty salon called "Princesse Beaute". *Id.* at ¶40. After Jane gave birth to her daughter X on November 15, 2006, the couple kissed for the first time and eventually became sexually intimate. *Id.* at ¶41. Jane came out to Sally's circle of lesbian friends but not to her community or family due to the illegality of homosexuality and wide-spread societal condemnation. *Id.* at ¶¶47-49; *see also* Tab H; Tab J. Homosexuality in Origin country is illegal

61. Even when the neighbors came to the scene, no one assisted Jane after he told them “If one of your daughters loves another woman, is that going to please you? What type of education are you going to give to your daughters? What are you going to bring to this family? Have you forgotten our culture?” *Id.* at ¶62; *see also* Tab I. It was only after Jane was bruised, bloody and begged for mercy that her Uncle stopped beating her, but only after warning her “If I ever see you again with that woman, I am going to kill you.” Tab C at ¶63.

After the beating, Jane fled to her father’s home in ██████████ to seek protection. *Id.* at ¶ 64-69; *see also* Tab G. When her father found out the reason for the beating he condemned her but took her to the local village for treatment. *Id.* After this, her father stopped talking to her. Tab C at ¶ 74. As a result of the beating, Jane suffered an open wound on her legs and became sick with fever. *Id.* at ¶70; *see also* Tabs B, C & F. Jane returned to ██████████ to receive treatment at the hospital after Sally found out about the beating. Tab C at ¶71; *see also* Tab F. Jane had to spend several days at “██████████” where she was treated for her multiple wounds and fever and comforted by her partner and friends. *See* Tab C at ¶72; *see also* Tabs D-H. After this assault, Jane became afraid of her own family members because she knew that her entire family agreed with Uncle ██████████ actions “to save the honor of the family”. Tab C at ¶73. As a result, Jane was ostracized and became estranged from her family, including her father. *Id.* at ¶74-78; *see also* Tab G.

Jane and Sally continued to be together as a family, but kept their relationship “out of sight” for fear of her family. Tab C at ¶75; *see also* Tab I. In spite of their attempts to conceal the relationship, after the public beating, Jane’s sexuality became well-known among her neighbors and community members. Tab C. at ¶76-77; *see also* Tab I. When community members and clients questioned her about her sexuality, Jane would respond “I will do whatever

I want to do, and no one has a right to judge me.” Tab C. at ¶76. As a result, some clients stopped patronizing her salon and neighbors would call the couple “witches” or “devils” and tell them that “they were the people who killed god”. *Id.* at ¶76-77. Additionally, Jane suffered two robberies at her salon during those years and believes she was targeted because she was a known lesbian. *Id.* at ¶79. In 2010, her father demanded that X come live with him in Fongo Tongo because Jane refused to conform to a heterosexual lifestyle. *Id.* at ¶78, Tab G. Jane obeyed in order to appease her father and so [REDACTED] was taken to [REDACTED]. *Id.*

In December [REDACTED], Sally proposed marriage to Jane and presented her with an engagement ring in front of all their friends. Tab C at ¶¶80-83. Despite this formal commitment to each other, they had to keep their intentions secret because they could be subject to arrest. *Id.* at ¶84. The couple chose March [REDACTED] as their wedding day in conjunction with International Women’s Day in Africa on March [REDACTED]. *Id.* at ¶86; *see also* Tab H. The couple enlisted their community of lesbian friends to make preparations for the wedding and reception. *Id.* at ¶87; *see also* Tab H. A lesbian friend of Sally had a home inherited from her parents which had been previously used to conduct same-sex ceremonies. Tab C at ¶88. That day, Jane, Sally and all of their friends went to this home to celebrate their relationship. *Id.* at ¶89-91; *see also* Tab H. Their friends [REDACTED] served as the couple’s witnesses. *See* Tab H. The couple had just exchanged rings when the Origin country police raided the ceremony. Tab C at ¶93.

Initially, at least five police officers arrived at the property and ordered everyone to remain still. *Id.* at ¶94. However, many people panicked and began running to escape the police. *Id.* at ¶94. Jane was grabbed by a police officer and dragged into a police truck that was parked right in front of the courtyard gate to block the exit. *Id.* From the truck, Jane could hear screams and see people running. *Id.* at ¶95. She could also see police officers hitting people with their

police batons and stamping on people's feet. *See* Tab C at ¶95; *see also* Tab H. In order to stop people from fleeing, the police officers guarding the truck were called to help block the other exits, leaving it unattended. Tab C at ¶96. Several people, including Jane, took the opportunity and jumped out of the back of the truck and ran away. *Id.* at ¶¶96-97. Luckily, Jane still had her wallet with an ATM card and was able to take out money and get to her father's home in Fongo Tongo. *Id.* at ¶¶97-99; *see also* Tab G. Jane later learned through her brother that the police had questioned him and her neighbors, had gone to her home to look for her and had broken into her salon. Tab C at ¶¶100-104. Jane had heard of a Pentecostal church that might help her so she returned to [REDACTED]. *Id.* at ¶107. Jane was able to make it to this church undetected where she begged for help. *Id.* at ¶108-109. She begged for assistance and one of the pastors agreed to help her travel outside of the country. *Id.* at ¶¶110-112. Her brother was able to get a few basic belongings for Jane and take out money from her bank account. *Id.* at ¶113.

Over the next several months, Jane and the pastor travelled by bus and boat until they arrived to [REDACTED] border. *Id.* at ¶¶114-123. Jane was left at the border where she requested asylum. *Id.* at ¶128; *see also* Tab B & NTA. Ms. DOE Jane timely applied for asylum in Baltimore Immigration Court on May 21, 2013. *See* I-589.

Upon her arrival, Jane was trafficked to a home in Maryland where she was forced to work under threat and without pay. Tab C at ¶131. Jane was able to escape that situation and move in with good samaritans in Baltimore County, although she continued to suffer from depression from the trauma. *See* Tab K. On February 26, 2013, while waiting for a public bus in [REDACTED], Jane was abducted by two unknown men and raped by one of her kidnappers; Tab C at ¶133-134. Jane reported that rape to Baltimore County police and has filed a U Nonimmigrant Status Petition that is pending with USCIS. *See* Tab L. The rape exacerbated her

prior trauma causing her to be hospitalized in June 2013. Tab C at ¶134. Recently Jane learned that after she left Origin country, her grandfather and father were banished from Fongo Tongo by their chief due to the dishonor that she had brought upon the tribe and were only able to return after it was confirmed that Jane was no longer in Origin country. Tab C at ¶139. Jane was able to get in touch with her girlfriend Sally and her friend ██████, both of whom have fled Origin country after they were detained, beaten and arrested. Tab C at ¶137, 140; *see also* Tab H.

I. MS. DOE JANE’S REQUEST FOR ASYLUM SHOULD BE GRANTED

To qualify for asylum under Section 208 of the Immigration and Nationality Act, Respondent must show that she is a refugee within the meaning of Section 101(a) (42) of the Act. INA § 208(a). The refugee definition includes a requirement that Respondent demonstrate either that she suffered past persecution or possesses a well-founded fear of future persecution in her country of nationality on account of one of five statutory grounds. *Id.* The REAL ID Act specifies that the Respondent must establish that one of the five grounds was or will be “at least one central reason” for persecuting respondent. 8 U.S.C. § 1158(b)(1)(B)(i) (2008).⁴ Finally, an applicant for asylum must also establish that asylum is warranted in the exercise of discretion. The burden of proof is on the Respondent to establish eligibility for asylum.

As set forth below, Ms. DOE Jane meets the definition of a refugee and qualifies for asylum based on the past persecution she suffered as well as her well-founded fear of persecution on account of her membership in two different particular social groups and her political opinion. As demonstrated below, the Origin country government is Ms. DOE Jane’s persecutor and is unable and unwilling to stop her family members from further persecuting her. Furthermore,

⁴ The provisions of the “REAL ID Act of 2005” apply to the respondents’ applications as they were filed on or after May 11, 2005.

Ms. DOE Jane's application for asylum was timely filed and warrants a positive exercise of discretion.

A. MS. DOE JANE SUFFERED PAST PERSECUTION

Since [REDACTED] when her sexual orientation was revealed, Ms. DOE Jane has been subjected to rape, threats of violence and death, a brutal beating that required hospitalization, loss of physical custody of her daughter and an attempted arrest by the Origin country police. *See generally* Tab C *see also* Tabs D-I. Ms. DOE Jane has been persecuted both by the Origin country government through the police and by her immediate family members, namely her paternal uncles, [REDACTED].

The INA does not define "persecution," but courts and the BIA have found that persecution involves "the infliction or threat of death, torture, or injury to one's person or freedom" because of one of the statutorily protected grounds. *See Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (quoting *Kondakova v. Ashcroft*, 383 F.3d 792, 797 (8th Cir. 2004)); *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985). ,

The Beatings and Threats of Violence and Death Suffered By Ms. DOE Jane Constitute Persecution

The cumulative harm that Ms. DOE Jane suffered at the hands of her uncles, her father, and the Origin country police unquestionably rises to the level of persecution. Persecution includes the "threat of death," *Crespin-Valladares v. Holder*, 632 F.3d 117, 126 (4th Cir. 2011). Upon hearing rumors of his niece's homosexuality, her Uncle [REDACTED] threatened to have her beaten and stripped naked in public if she continued to engage in homosexuality. Tab C at ¶ 52-54. This violent threat turned out to be more than idle. Approximately two months later, on November 17, 2008, Ms. DOE Jane was brutally beaten by her Uncle [REDACTED] after he witnessed

her being affectionate with her girlfriend Sally. *Id.* at ¶¶60-63. ██████ repeatedly beat her with his hands, feet, a belt and a metal rod and told onlookers that “I won’t stop even if I give her death”. *Id.* After he was done beating his niece, ██████ threatened to kill her. *Id.* Ms. DOE Jane’s injuries were so severe that she required treatment at a clinic in Fongo Tongo and hospitalization in Douala. *Id.* at ¶¶70-74; see also Tabs D, E, G, H. Severe physical abuse committed by one’s own family has been found by the BIA to amount to persecution. *See Matter of S-A-*, 22 I&N 1328 (BIA 2000). Similarly, severe threats of violence and repeated beatings in a domestic situation are also persecution. *See Lazo-Majano v. INS*, 813 F.2d 1432, 1434 (9th Cir. 1987), *overruled on other grounds by Fisher v. INS*, 79 F.3d 955 (9th Cir. 1996); *See, e.g., Vaduva v. INS*, 131 F.3d 689, 690 (7th Cir. 1997) (Court found single serious beating to constitute persecution).

This assault is corroborated by supporting evidence. A report from ██████, M.D. noted scarring on Ms. DOE Jane’s left and right lower legs which is consistent with “blunt trauma as from a belt or police baton” per her description of the November 2008 assault. *See* Tabs C, D & Tab A, ¶70. Dr. ██████ also found that the scarring was consistent “with an open wound that was infected and then healed by scarring over”, corroborating Ms. DOE Jane’s account of requiring but refusing stitches for her leg wounds. *Id.* A certified medical record from Origin country confirms that Ms. DOE Jane reported the assault by her uncle in November ██████ and received treatment at the ██████. *See* Tab D. These events are further corroborated by sworn affidavits from her father and her friend ██████ who witnessed her injuries. *See* Tabs G & H.

The Rape Suffered By Ms. DOE Jane Constitutes Persecution

As detailed in Section I, *supra*, Ms. DOE Jane was raped in 2006 by Mr. Jack Sprat. Tab C at ¶¶24-29. This was the first incident of persecution on account of her sexual orientation. It is well-settled amongst the courts that rape and threats of physical violence constitute acts of persecution. *See Matter of D-V-*, 21 I&N Dec. 77, 79 (1993); *Lopez-Galarza v. INS*, 99 F.3d 954, 959 (9th Cir. 1996). Therefore, the rape that Ms. DOE Jane suffered on account of her sexual orientation constitutes past persecution.

Attempted Arrest, Harassment and Destruction of Ms. DOE Jane’s Business By the Origin country Police Amounts To Persecution

Ms. DOE Jane has also suffered past persecution from the Origin country government through its police. The police raided Ms. DOE Jane’s same-sex marriage ceremony to her chosen spouse and then attempted to arrest and detain her for exercising that right. Tab C at ¶¶94-98. After Ms. DOE Jane was able to escape imminent arrest, the police then searched for her and questioned her brother and neighbors about her whereabouts. *See* Tab C, ¶¶93-98, 101; *see also* Tab I. The police then went to Ms. DOE Jane’s salon and caused destruction or significant damage to it. *See* Tab C at ¶¶103-15; Tab I. Ms. DOE Jane’s brother told her that his friends “had called him about what happened at the salon”. *See* Tab C at ¶¶103-105. Her brother had told her that her neighbors knew that her hair salon “was a place where lesbians gathered and told the police to ‘totally get rid of my place...to make it disappear’”. *See* Tab C at ¶¶103-105. ██████████, a sympathetic neighbor, had heard that Ms. DOE Jane’s salon “had been demolished” and went to visit the site where he “saw the disaster (at the salon), and Jane was gone”. *See* Tab I, Wandji Decl. The cumulative effect of an asylum applicant’s experience must be taken into account in evaluating whether the applicant suffered persecution. *See Matter of O-Z- & I-Z-*, I. & N. Dec. 23, 25-26 (BIA 1998) (finding that, “[i]n the aggregate”

being physically assaulted three times, harassed through the mail system, and suffering property vandalism, “rise to the level of persecution”).

The Denial of Liberties Suffered By Ms. DOE Jane Constitutes Persecution

The BIA and six circuits have also recognized that persecution encompasses the “significant deprivation of liberty.” *Acosta*, 19 I&N Dec. 211, 223-24 (BIA 1985); *Suharyadi v. Attorney General*, No. 06-2314, 2008 U.S. App. LEXIS 6369, at 8 (3d Cir. Mar. 26, 2008); *Bi Hua Weng v. Mukasey*, No. 06-3862, 2007 U.S. App. LEXIS 29635, at 9 (6th Cir. Dec. 19, 2007); *Evelyne v. Keisler*, No. 06-2314, 2007 U.S. App. LEXIS 23685, at 7 (1st Cir. Oct. 5, 2007); *Pavlovich v. Gonzales*, 476 F.3d 613, 616 (8th Cir. 2007); *Roman v. INS*, 233 F.3d 1027, 1034 (7th Cir. 2000); *Alfaro v. INS*, No. 95-70493, 1997 U.S. App. LEXIS 2503, at 4-5 (9th Cir. Feb. 12, 1997). Ms. DOE Jane faces a threat to the deprivation of her liberties in the form of detention and attempted arrest, denying her the right to raise her child, and denial of her right to marry the person of her choosing.

Denying Ms. DOE Jane’s Right to Marry Constitutes a Deprivation of Liberty That Rises to the Level of Persecution

In December 2011, Ms. DOE Jane accepted the proposal of marriage from Sally, her partner of five years. Tab C at ¶¶80-84; *see also* Tab H. The engagement made their relationship “profound and welded”. Tab C at ¶85. On March [REDACTED], the couple was in the middle of a marriage ceremony and had just exchanged rings when the Origin country police entered the property. *Id* at ¶92; *see also* Tab H. Origin country police raided the wedding in order to prevent the marriage from taking place as same-sex marriage is illegal in Origin

country⁵. Tab C at ¶¶ 89-93; *see also* Tabs H, M. The basic human right to family unity, *which will be discussed in greater detail below*, necessarily includes the right to marry the person of one's choosing. Numerous international human rights treaties recognize an individual's right to enter into marriage voluntarily.⁶ Because denying her right to marry violates her basic human rights such actions constitute the kind of deprivation of liberty that rises to the level of persecution.

Denying Her the Right To Raise Her Daughter Amounts to Persecution

In [REDACTED], Ms. DOE Jane's father demanded physical custody of Ms. DOE Jane's four year old daughter X because she refused to conform to a heterosexual orientation. Tab C at ¶78; *see also* Tab G. Mrs. DOE Jane's father admits in his sworn affidavit that he took Ursula away from her mother because his elder brother Frank urged him "to take my granddaughter so that she wouldn't follow the same lifestyle as her mother". Tab G. Forcing Ms. DOE Jane to relinquish custody of her daughter as punishment for her sexual orientation is a violation of their fundamental human right to family unity. "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." *See*, Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec.

⁵ [REDACTED]

12, 1948), at art. 16(3), *available at* <http://www.unhchr.ch/udhr/lang/eng.htm>. Further, the UDHR protects a parent's right of freedom to live and associate with the members of his or her family without state interference. *Id.*

“[A] parent's right to maintain custody of her child and the intactness of her family are understood as fundamental rights by the U.S. courts and the international community.” Melanie A. Conroy, *Refugees Themselves: The Asylum Case for Parents of Children at Risk of Female Genital Mutilation*, 22 Harv. Hum. Rts. J. 109, 118 (Winter 2009) (*citing Moore v. City of Cleveland*, 431 U.S. 494 (1977) (finding the intactness of one's family unit was deemed a right fundamental to free association guaranteed by the First Amendment and the substantive due process of the Fifth Amendment); International Covenant on Civil and Political Rights, art. 23 (addressing creation and maintenance of the family unit) and art. 22 (addressing the rights of association), Dec. 19, 1966, 999 U.N.T.S. 171). These international conventions establish the rights to associate with one's family and the right to freedom from unlawful interference with one's family as basic human rights and therefore, “[a]rbitrary and discriminatory violation of these rights that forces the abandonment of one's child in order to avoid her torture is violative of the basic guarantees of human dignity that the Convention sought to protect.” *Id.* While there was no explicit threat of violence delivered by her father in seizing his granddaughter, it would be reasonable for someone in Ms. DOE Jane's position to fear violence if she had refused to comply given the beating she endured by her Uncle George. Additionally, denying Ms. DOE Jane the right to raise her daughter and to instruct her daughter's political and religious education is also a violation of a fundamental right.⁷ Denying Ms. DOE Jane's parental involvement in

⁷ The U.S. Supreme Court in *Troxel v. Granville*, 530 U.S. 57, 65 (2000) held that the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution protects the fundamental right of parents to make decisions

such fundamental decisions as the morality and religion violates her right to guide her child's upbringing.

II. Ms. DOE Jane Suffered Persecution on Account of her Membership in Two Particular Social Groups and Political Opinion

Ms. DOE Jane qualifies for asylum because the past persecution she suffered is on account of multiple protected grounds, namely her membership in two particular social groups and political opinion. *See* 8 U.S.C. § 1101(a)(42)(A). Ms. DOE Jane is a member of the particular social groups of: (1) "Origin country lesbians", (2) "Origin country X Females in the Ngeufack Family Who Refuse To Conform to a Heterosexual Orientation, and (3) Origin country X Females of the Ngeufack Family Who Have Brought Dishonor Upon their Families due to Their Lesbian Orientation.

The Fourth Circuit and BIA have expressed that a particular social group must (1) share a common, immutable characteristic, (2) be defined with sufficient particularity to render the

concerning the care, custody, and control of their children. In making this holding, the Court examined its past treatment of parental rights:

The liberty interest at issue in this case -- the interest of parents in the care, custody, and control of their children -- is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in [Meyer v. Nebraska, 262 U.S. 390, 399, 401, 67 L. Ed. 1042, 43 S. Ct. 625 \(1923\)](#), we held that the 'liberty' protected by the Due Process Clause includes the right of parents to 'establish a home and bring up children' and 'to control the education of their own.' Two years later, in [Pierce v. Society of Sisters, 268 U.S. 510, 534-535, 69 L. Ed. 1070, 45 S. Ct. 571 \(1925\)](#), we again held that the 'liberty of parents and guardians' includes the right 'to direct the upbringing and education of children under their control.' We explained in *Pierce* that the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.' [268 U.S. at 535](#). We returned to the subject in [Prince v. Massachusetts, 321 U.S. 158, 88 L. Ed. 645, 64 S. Ct. 438 \(1944\)](#), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."

[321 U.S. at 166](#).

group a “discrete class of persons,” and, (3) be “socially distinct” in the country at issue.

Crespin-Valladares v. Holder, 632 F.3d 117, 124-25 (4th Cir. 2011); *Matter of W-G-R*, 25 I&N Dec 208 (BIA 2014); *Matter of M-E-V-G*, 26 I&N Dec. 227 (BIA 2013). The BIA has instructed that social distinction is determined by the perception of the group in question as a socially distinct group by the society or segments of their society. *Id. In re W-G-R*, 26, I&N Dec. at 217.

A. “Origin country Lesbians” is a Legally Cognizable Social Group

First, a particular social group is “a group of persons all of whom share a common, immutable characteristic.” *Crespin-Valladares*, 632 F.3d at 124-25, quoting *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (BIA 1985), *overruled on other grounds by Matter of Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987). This shared characteristic must be one “that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.” *Id.* at 124 (internal quotation marks omitted). The BIA has recognized homosexuality is an immutable characteristic fundamental to a person’s identity. *Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819, 822-23 (BIA 1990). The Attorney General designated *Toboso-Alfonso* “as precedent in all proceedings involving the same issue or issues,” which is to say homosexuals seeking asylum by way of membership in a particular social group. *See* Attorney Gen. Order No. 1895-94 (June 19, 1994). The social group of Origin country lesbians is further defined by the immutable characteristics of gender and nationality. *See Matter of Acosta*, 19 I. & N. Dec. 211, 233-34 (BIA 1985).

Further, the particular social group of Origin country lesbians is defined with sufficient particularity to render the group a “discrete class of persons.” *Crespin-Valladares*, 632 F.3d at 125. The group includes only Origin country, female homosexuals and is “at least as particular and well-defined as other groups whose members have qualified for asylum.” *See id.* (internal

quotation marks omitted). This distinguishes it from groups like “noncriminal informants”,⁸ which have been found to lack particularity due to variable membership, and makes it much more akin to accepted social groups bearing similar immutable characteristics such as “young women of the Tchamba-Kusuntu Tribe who have not undergone female genital mutilation.”⁹ This is important because a particular social group must be “at least as particular and well-defined as other groups whose members have qualified for asylum.”¹⁰

Finally, Origin country lesbians are socially distinct as members of a particular social group because Origin country society recognizes them as such. Under the BIA’s current social distinction test, a particular social group must be viewed as “socially distinct within the society in question”. *Matter of W-G-R*, 25 I&N Dec 208 (BIA 2014); *Matter of M-E-V-G*, 26 I&N Dec. 227 (BIA 2013). Origin country law, in both its criminal and civil code, recognizes and penalizes homosexual individuals, which includes lesbians. Origin country gay men and lesbians routinely suffer persecution, arbitrary arrest, threats, violence, and rejection by their families and communities due to their sexual orientation.¹¹ Article 347 of the Origin country Penal Code states that “Any person who has sexual relations with a person of the same sex shall be punished with a term of imprisonment of up to five years and a fine of between 20,000 and 200,000 francs.”¹² See Tab P. Section 52(3) of the Origin country Civil Status Registration prohibits that “No marriage may be celebrated: if the spouses to be are of the same sex”. Tab M. The very existence of these laws shows that Origin country society; i.e. through the arm of its government,

⁸ *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006).

⁹ *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996).

¹⁰ *Crespin-Valladares v. Holder*, 632 F.3d 117, 125 (4th Cir. 2011).

¹¹ See UNITED STATES DEPARTMENT OF STATE, 2013 HUMAN RIGHTS REPORT: [REDACTED]

recognizes homosexuals as a distinct group of people whose behavior is regulated differently than non-homosexuals. These laws are consistent with the beliefs of the overwhelming majority of Origin countries; in 2002, roughly 92% of Origin countries condemned homosexuality,¹³ and in 2013, the news site *IRIN* labeled the nation “one of the world’s most homophobic countries.”¹⁴

From a cultural perspective, “[c]ontrary to the West, where homosexuality is commonly viewed as an increasingly acceptable sexual orientation, in Origin country it is perceived as anathema to the country’s religion, roots and culture.”¹⁵ Human Rights Watch has reported that “[o]rdinary citizens at times express virulent hatred toward lesbian, gay, bisexual, and transgender (LGBT) people,”¹⁶ and “[p]eople commonly say that homosexuality is foreign and negates African values...Some people interviewed consider it a ‘perversion,’ a ‘cult,’ or ‘sorcery.’”¹⁷ The particular social group of Origin country lesbians meets the requirements of a shared immutable characteristic, particularity, and social distinction.

Furthermore, Ms. DOE Jane is undoubtedly a member of this group. Ms. DOE Jane discovered her sexual orientation around 2004 and began her relationship with her lesbian partner Sally in 2006. *See* Tab C at ¶¶19-40. After Ms. DOE Jane entered a lesbian relationship

¹³ U.S. BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES [REDACTED]

¹⁴ [REDACTED]

[REDACTED]

[REDACTED]

with her partner, her associations with lesbian women who, “given their accoutrements and their tomboyish appearances”, gave rise to rumors amongst her neighbors and family; her salon became known as a “corner of the lesbians” Tab C at ¶¶47-48; *see also* Tabs G-I. Her neighbors would call her “sorceress” or “witch”, common epithets for lesbians as they are often accused by their community of witchcraft or sorcery. *See* Tab O. Ms. DOE Jane freely associated and continued her intimate relationship with her partner Sally despite vocal condemnation from her neighbors, threats from her Uncle Frank, and a brutal beating by her Uncle George in 2008. *See* Tab C at ¶¶75-77; *see also* Tabs D, G-I. Her adherence to her lesbian orientation and her commitment to her lesbian partner culminated in her agreement to marry Sally, despite its illegality and the danger it posed. *See* Tab C at ¶¶80-93; *see also* Tab H. Despite the abuses she has suffered and the physical separation from her partner, Ms. DOE Jane is still committed to Sally and one day hopes to reunite with her. Tab C at ¶138.

1. Ms. DOE Jane was Persecuted on Account of her Membership in the Particular Social Group of “Origin country Lesbians”

Ms. DOE Jane must demonstrate that she fears persecution “on account of” a protected ground.¹⁸ Persecution occurs “on account of” a protected ground if that ground serves as ‘at least one central reason for’ the feared persecution.”¹⁹ The Fourth Circuit recognizes that an asylum applicant need not show that nexus to a protected ground was “‘*the* central reason or even a dominant central reason’ for [her] persecution, [s]he must demonstrate that these ties are more than ‘an ‘incidental, tangential, superficial, or subordinate’ reason” for her persecution.”²⁰

¹⁸ 8 U.S.C. § 1101(a)(42)(A).

¹⁹ 8 U.S.C. § 1158(b)(1)(B)(i).

²⁰ *Crespin-Valladares*, 632 F.3d at 127 (internal citations omitted).

In Ms. DOE Jane’s case, there is ample evidence that she was persecuted because of her sexual orientation.²¹ The first time Ms. DOE Jane was persecuted on account of her sexual orientation occurred when she was raped by Mr. Jack Sprat in February [REDACTED]. Right before he raped Ms. DOE Jane, he told her that, “you don’t want to follow me because you follow girls. Now you are going to see what I do.” Tab C. at 28. When Ms. DOE Jane became pregnant, he told her it could not be his child because she was a lesbian”. *Id.* at ¶29.

The second incident of persecution occurred in 2008 when Ms. DOE Jane’s Uncle Frank threatened to have her beaten and stripped naked if she did not “change her ways” because she was “always with these witches”. *Id.* at ¶53. Ms. DOE Jane understood her uncle was referring to her lesbian friends because lesbians are often accused of “sorcery” or being in a “cult”. *See* Tab O. The motivation for the beating by her Uncle George on November [REDACTED], two months after Uncle Frank’s threat could not have been any clearer. George told Ms. DOE Jane that he had witnessed her with Sally and that her daughter’s birthday party was “full of lesbians”. *See* Tab C at ¶ 60. As he was beating her, Ms. DOE Jane heard him say to the neighbors, “if someone tries to stop me, I will kill you...If one of your daughters loves another woman, is that going to please you? What type of education are you going to give to your daughters? What are you going to bring to this family? Have you forgotten our culture?” *Id.* at ¶¶61-62. After he was done beating her, George warned Ms. DOE Jane that “if I ever see you with that woman, I am going to kill you.” *Id.* at ¶63.

²¹ According to the Asylum Officer Basic Training Course, “Lesbians often experience harm as a result of their gender as well as their sexual orientation. The types of harm that a lesbian may suffer will frequently parallel the harms in claims filed by women in general more closely than the harm in gay male asylum claims.” *Officer Training, supra* note **Error! Bookmark not defined.**, at 24.

Despite this brutal beating, Ms. DOE Jane continued her relationship with Sally. *Id* at ¶74-77. In 2010, her father came to Ms. DOE Jane and demanded physical custody of her daughter X; Ms. DOE Jane obeyed her father to appease his anger. *Id* at ¶78; *see also* Tab G. Ms. DOE Jane’s lesbian sexual orientation was at least one central motivation for her father’s actions; he did so after being informed by his elder brother Frank that Ms. DOE Jane “was continuing her lesbian lifestyle and that [he] needed to take [his] granddaughter so she wouldn’t follow the same lifestyle as her mother”. *See* Tab G. Whether his intention was to persecute Ms. DOE Jane or “protect” his granddaughter was irrelevant; denying custody of his granddaughter to Ms. DOE Jane was on account of her sexual orientation as a lesbian. A subjective intent to harm or punish an applicant is not required for a finding of persecution. *See Pitcherskaia v. INS*, 118 F.3d 641, 646-48 (9th Cir. 1997) (Russian government’s attempt to “cure” lesbian applicant established persecution)

The motivation by the police to raid the marriage ceremony and subsequent actions in order to apprehend Ms. DOE Jane for committing this illegal act; including attempting to detain her, to pursue her for arrest and destroy her salon, is clear from the circumstances. Tab C at ¶¶94-106. There was no other apparent purpose for the police to enter the property other than the fact that a same-sex marriage was occurring. The marriage ceremony was being conducted with the property owner’s consent. *See* Tab C at ¶89; Tab H. Furthermore, there is direct evidence regarding the police’s motivation when they told Ms. DOE Jane’s brother that they were seeking her for conducting an illegal wedding. Tab C at ¶101. Her neighbor [REDACTED] also witnessed the police repeatedly searching for Ms. DOE Jane and later learned that Ms. DOE Jane had an illegal, i.e. same-sex, marriage. *See* Tab I. Her own father was subjected to jeers in the marketplace that Ms. DOE Jane was being searched by the police because she was a lesbian.

See Tab G. The record is clear that Ms. DOE Jane has been repeatedly persecuted by her family members, acquaintances and the Origin country police on account for being a Origin country Lesbian.

B. Ms. DOE Jane is a Origin country Female Member of the Jane Family Who Has Dishonored her family by means of her Sexual Orientation as a Lesbian and Has been Persecuted on Account of this Membership

As discussed above, a particular social group must be immutable, particular and socially distinct. Ms. DOE Jane also is a member of “Origin country female members of the Jane family who have brought dishonor because of their sexual orientation as a Lesbian”, which holds many of the same characteristics of her first social group including, homosexual orientation, gender, and nationality,²² but this group adds tribe,²³ and family²⁴ two characteristics that are also immutable because they are innate and an individual does not have the power to alter them. “Having brought dishonor” is also an immutable trait because it arises out of circumstances that have already occurred and cannot be changed; (“Sometimes the characteristic is immutable because a shared past experience or status has imparted a status or labeling that cannot be undone”), *Cece v. Holder*, 733 F. 3d 662 (7th Cir. 2013) *citing* *Acosta*, 19 I&N Dec. at 133. Furthermore, it holds even greater particularity because it further limits the group than the formulation of “Origin country Lesbians”. This group is also socially distinct in addition to the reasoning applied to the particular social group of “Origin country Lesbians” because family membership has been widely recognized as socially visible. *See Crespin-Valladares v. Holder*,

²² See, *Matter of V-T-S-*, 21 I&N Dec. 792 (BIA 1997) (nationality immutable in social group of Filipinos of mixed Filipino-Chinese ancestry).

²³ See *Kasinga*, 21 I&N Dec. 357 (clan membership is inextricably linked to family ties and thus immutable in particular social group including the Tchamba-Kunsuntu Tribe); *In Re H-* 21 I&N Dec. 337, 342 (BIA 1996) (accepting “clan membership” as an immutable characteristic because it is “inextricably linked to family ties”).

²⁴ Family membership as defined by kinship ties is another immutable characteristic. A family’s “kinship ties” are precisely the type of “innate” characteristic that is immutable. *Matter of Acosta*, 19 I&N Dec. at 233.

632 F.3d 117, 124 (4th Cir. 2011) (“[We] can conceive of few groups more readily identifiable than the family”; *see also* In re C-A, 23 I&N Dec. 951 at 959 (BIA 2006).

Ms. DOE Jane has been targeted for persecution by the male members of her family, namely her father and paternal uncles Frank and George, in order to punish her for her refusal to conform to a heterosexual orientation which they and Origin country society perceive as an act that brings shame and dishonor to the entire family. There is no history of her family members targeting homosexuals otherwise. Her Uncle Frank warned her that “it seems like you don’t understand when we talk to you, and I don’t have the strength to break you into pieces, so I am going to ask your Uncle George to beat you very hard if you don’t change your ways”. Tab C at ¶53. Two months later when she was beaten by her Uncle George for overt displays of affection towards her lesbian partner Sally, he stated that “I will not accept this situation, even if my brother allows his daughter to live this way”. *Id.* at ¶62. He further articulated that “If one of your daughters loves another woman, is that going to please you? What type of education are you going to give to your daughters? What are you going to bring to this family? Have you forgotten our culture?” *Id.* When Ms. DOE Jane’s father found out why his brother had beaten her up, he condoned his brother’s actions when he told her that “If the reason is because your life with other women, I cannot deal with that. I cannot accept that. I cannot have a child that does that”. *See* Tab C at ¶67; *see also* Tab G. Her father concluded his scolding by telling her, “You have no right to do that to me. Why do you do that? You bring shame on me.” *See* Tab C at ¶67; *see also* Tab G. It is clear from the statements and actions of her uncles and father that one central reason for their motivation to harm her was connected to the shame brought to their family because of her homosexuality. Circumstantial evidence further supports this nexus.

██████████ the country conditions expert, explains in her affidavit that certain ethnic

groups, including the X people—of whom Ms. Jane is a member—hold homosexuality in especially poor regard, viewing it as disruptive of traditional ideas and contrary to the expected gender-specific behavior. *See* Tab J.

C. Ms. DOE Jane was Persecuted on Account of her Political Opinion

Political opinion encompasses far more than electoral or formal political ideology and action.

The “behavior an applicant seeks to advance as political” “must be motivated by an ideal or conviction of sorts before it will constitute grounds for asylum.” *Perafan-Saldarriaga v.*

Gonzalez, 402 F.3d 461, 466 (4th Cir. 2005) (dismissing the applicant’s claim because the

applicant did not argue that his actions “were grounded in principle, inspired by altruism, or

intended to advance a cause, as a political opinion applicant must show”). Courts have repeatedly

found that feminist ideals, opposition to male-dominated cultural norms and the “role and status

of women” in the community, are all forms of political expression. Such overt expressions are

not even necessary to establish political opinion for asylum purposes. “Less overtly symbolic

acts may also reflect political opinion.” *Saldarriaga v. Gonzalez*, 402 F.3d 461, 466 (4th Cir.

2005).²⁵

In Ms. DOE Jane’s case, she was persecuted based on her political opinion that lesbian

women should not have to conform to a heterosexual orientation and should be able to marry

their same-sex partner. Tab C at ¶¶8, 13, 46. While Ms. DOE Jane did repeatedly deny her

homosexuality to her family, she did tell clients and neighbors who questioned her sexuality that

²⁵*Accord*, *USCIS Asylum Officer Basic Training Course: Female Asylum Applicants and Gender-Related Claims* (Mar. 12, 2009), available at:

<http://www.uscis.gov/USCIS/Humanitarian/Refugees%20&%20Asylum/Asylum/AOBTC%20Lesson%20Plans/Female-Asylum-Applicants-Gender-Related-Claims-31aug10.pdf> (noting that “opposition to institutionalized discrimination of women, expressions of independence from male social and cultural dominance in society, and refusal to comply with traditional expectations of behavior associated with gender (such as dress codes and the role of women in the family and society) may all be expressions of political opinion.”).

she did not care what they thought or told them that “I will do whatever I want to do, and no one has the right to judge me.” *Id* at ¶¶47, 76. Ms. DOE Jane’s salon, patronized by gay men and women, became known as “the corner of lesbians”. *Id* at ¶¶40, 76; *see also* Tab H & I. Some of her presumable non-homosexual clients stopped patronizing her salon. Tab C at ¶76. Ms. DOE Jane’s political opinion was most clearly demonstrated by her decision to marry her lesbian partner in March [REDACTED]. *Id.* at ¶¶82-93. Ms. DOE Jane disobeyed a law that she did not agree with according to her moral conscience and to exercise a right that she believed she was entitled. As previously discussed, her refusal to conform to a heterosexual orientation led to threats of beatings, death and a brutal assault by her paternal uncles. *Id* at ¶¶52-63. Her marriage ceremony to her lesbian partner led to a police raid, attempted arrest, pursuit by the police and destruction of her salon. *Id* at ¶¶94-106. Under these circumstances, Ms. DOE Jane’s actions clearly amount to an expression of political opinion and civil disobedience, akin to activists in the United States in the 1960’s who conducted sit-ins to express their opposition to laws they believed were unjust, and her actions caused her to suffer persecution.

III. MS. DOE JANE IS ENTITLED TO THE PRESUMPTION OF A WELL-FOUNDED FEAR OF FUTURE PERSECUTION

A showing of past persecution raises a presumption that the applicant has demonstrated a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). Where a showing of past persecution has been established, the Department of Homeland Security bears the burden of establishing by a preponderance of the evidence that either (1) there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution or (2) the applicant could avoid persecution by internally relocating. *Id.* § 1208.13(b)(1)(i)-(ii).

Ms. DOE Jane's personal circumstances have not fundamentally changed to negate a finding of past persecution. Her familial persecutors, namely, her paternal uncles Frank and George, are still living in Origin country. Tab C at ¶¶141. In 2012 after Ms. DOE Jane left Origin country, her grandfather and father were subject to verbal abuse and threats that their homes would be burned; as a result they were banished for a time from their home village by their chief in punishment for Ms. DOE Jane's disobedience and the dishonor that she brought to her family. . See Tab C at ¶139; Tab G. They were only allowed back after Ms. DOE Jane's departure from Origin country was confirmed. *Id.* This "outing" of Ms. DOE Jane and the high-profile of banishment, albeit temporary, from the family village only heightens the danger she will face from her own family upon return. See Tab C at ¶140; see also Tab E. Moreover, as discussed below, country conditions in Origin country for homosexuals have not changed since Ms. DOE Jane fled. If anything, they have gotten worse, as the Origin country government considers increasing the maximum penalties for violating Origin country's anti-gay law and continues to arrest lesbians and allow the murder of a gay activist in ██████ to go unpunished.

A. Country Conditions in Origin country for Homosexuals Have Not Improved

As previously discussed, homosexuality is illegal in Origin country and the laws remain unchanged today. Origin country has a history of government sanctioned discrimination and brutality against homosexuals and continues to have one of the most aggressive records for enforcing their anti-homosexuality laws in the world. See Tabs O, Q-U. There have been recent calls by the Origin country National media outlets and political and cultural leaders to reinforce stereotypes with regularity, adding to the stigma associated with outwardly homosexual

individuals. Those acts are now “fuel[li]ng prejudice and hatred against LGBTI individuals.”²⁶ In August [REDACTED], for example, “[REDACTED], the newly appointed administrator of the Catholic Archdiocese of [REDACTED] and the archbishop of [REDACTED], condemned homosexuality as a foreign practice and called on Africans to ‘resist what will destroy their culture and family.’” Tab N. Major newspapers within Origin country have published articles labeling numerous individuals as homosexual in an attempt to “out” them to the public, and other media outlets have stated that “rich, power-hungry homosexuals” threaten to “tak[e] over” the country.²⁷ On August 21, 2012, a nationally-publicized “gay hate day” was held in Origin country to denounce those who engage in same-sex relations. *See* Tabs S & FF.

Moreover, the pervasive and widespread nature of such anti-gay sentiment in Origin country has frequently resulted in frequent and systemic violence directed at homosexual individuals and those with whom they associate. Attacks against gays and lesbians take place across the nation, inside and outside the home, and are perpetrated by ordinary citizens and families of homosexuals as well as police and government officials. *See* Tab O. In May of 2012, a mob in Yaoundé, Origin country ravaged a home in order to break up an LGBT gathering taking place there; they beat, robbed, and stripped naked many of those present. *See* Tab R. Witnesses later reported that members of the mob justified their actions by stating simply, “They’re homosexual; we need to eliminate them.” *See* Tab Q In 2013, “[t]he Movement of Origin country Youth organized anti-homosexual brigades throughout the year...[including] a

26 [REDACTED]

public march to urge a more heavy-handed government crackdown on homosexuality. Suspected members of the LGBT community received anonymous threats by telephone, text message, and e-mail.” *See* Tab N. Origin country lesbians have reported that they must hide their sexual orientation or risk subjection to social marginalization, name-calling, or extreme violence. *See* Tab O. Quite simply, one woman explained, “If they find out you are gay, they will kill you.” *Id.* This is consistent with Ms. DOE Jane’s own experience. When the police raided her marriage ceremony, Ms. DOE Jane could hear an onlooker yell, “Set them on fire. Beat them, kill them.” Tab C at ¶96; this is corroborated by her friend [REDACTED]. Tab H. Professor [REDACTED] confirms that the “use of terms like ‘abomination’ and ‘set alight’, are also common place, as are the ‘remedies’ that Origin country society employs to eliminate homosexuality such as burning, torturing, and scarring with fire or burning objects. *See* Tab J.

In addition, the police in Origin country have a history of arresting suspected homosexuals in public places, as well as in the privacy of their homes, despite lacking the authority to do so.²⁸ On May [REDACTED] in the Eastern Province of [REDACTED], police arrested two women suspected of lesbian relations. While in custody, the two women were allegedly forced to denounce four others as “accomplices.”²⁹ That case substantiates Ms. DOE Jane’s belief that it was most likely some guest at her wedding who had been arrested that gave the police her name and address. Tab A at ¶102. In April [REDACTED], a gay rights workshop in the capitol city of [REDACTED] was shut down after authorities discovered that gay rights would be discussed. *See* Tab AA. And earlier this year, *The Nation* reporter Andy Kopsa interviewed a lesbian woman in Origin

²⁸ *Id.* at 23.

[REDACTED]

country currently serving a 5-year sentence for alleged homosexuality.³⁰ According to [REDACTED] estimates, more than 200 individuals may currently be imprisoned in Origin country on charges of same-sex sexual relations. *See* Tab N.

These arrests often occur without any objective evidence that a homosexual act has taken place, and result in individuals being kept in prison for months or years without charge. *See* Tabs N & U. While such detainees are entitled to legal representation, many lawyers remain hesitant to associate themselves with gays and lesbians, as LGBT legal advocates have received death threats from anti-homosexual groups and individuals. *See* Tab S. Further, “[p]rosecutors appear not to feel compelled even to build evidence against the detainees; one witness who claims a person is a homosexual can be enough to sway a judge.” *See* Tab O at 20. Once imprisoned, homosexuals are routinely subjected to detention conditions that the State Department has described as “harsh and life threatening.” *See* Tab N at 4. Those suspected of same-sex relations endure verbal disparagement, beatings, and intrusive anal examinations—used to confirm or deny their homosexuality—at the hands of police and prison officials. *See* Tab O. They also face pressure from police to expose homosexual friends and partners, and often endure physical abuse if they refuse to do so. *Id.* Police violence against gays and lesbians in Origin country is so severe that in 2012, the International Gay and Lesbian Human Rights Commission stated that some documented cases of police beatings of homosexuals “rise to the level of torture.” *See* Tab R.

Such reports indicate that Origin country police not only fail to stem violence directed at suspected gays and lesbians, but in fact condone and frequently *participate* in such attacks. Tab

³⁰ [REDACTED] available at [http://www.\[REDACTED\].at 3 \(Exhibit \)](http://www.[REDACTED].at 3 (Exhibit)).

unaccountable for any rights abuses they perpetrated: in ██████, Amnesty International reported that over the last three years, it was not aware of any member of law enforcement who had faced charges of carrying out torture or ill-treatment.³⁴

Moreover, the danger of female subjection to violence only increases for lesbian women: ██████, who served as the UN special rapporteur on violence against women from ██████, has observed that, “Gender-based violence ... is particularly acute when combined with discrimination on the basis of sexual orientation.”³⁵ Because men in a Origin country family “control the intimate lives of women,” girls are more likely to be singled out for conduct that fails to meet accepted social norms or that is considered unfeminine.³⁶ Women suspected of homosexual activity can be “specifically targeted” for rape or sexual attacks, lose custody of their children, or endure physical abuse at the hands of family members.³⁷

B. Ms. DOE Jane Cannot Avoid Persecution by Internally Relocating

In Ms. DOE Jane’s situation, internal relocation is not a viable possibility. By Regulation, relocation must be reasonable under the totality of the circumstances. 8 C.F.R. § 208.13(b)(1)(i)(B). *See also, Matter of M-Z-M-R-*, 26 I&N Dec. 28 (2012)(clarifying how adjudicators must analyze the reasonableness of internal relocation). Furthermore, “in cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the service establishes by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate.” 8 C.F.R. § 208.13(b)(3)(ii)

³⁴ MAKE HUMAN RIGHTS A REALITY, *supra* note ██████, at 11 (Exhibit S).

³⁵ *Id.* at 45.

³⁶ *Id.* at 37.

³⁷ *Id.* at 5.

(2007). As discussed, homosexuality is illegal in all of Origin country. The government of Origin country has repeatedly snubbed international efforts to curb the nation's abuse of homosexuals and those who advocate on their behalf, evidencing its continued commitment to promoting anti-gay rhetoric and policy. Since ██████ in response to Origin country's zealous enforcement of Article 347, the United Nations Working Group on Arbitrary Detention (WGAD), UN Human Rights Council, and UN Human Rights Committee have called upon the Origin country government to repeal the law and work to stem prejudice against gays and lesbians.³⁸ To date, Origin country government officials continue to advocate for the practice of Article 347 in an effort to preserve "positive African cultural values," since "homosexuality is not a value accepted in Origin country society."³⁹ And because Article 347 is a federal law enforced throughout Origin country, homosexuals cannot seek internal relocation as a solution to the rights abuses and violence they consistently endure. Indeed, gays and lesbians individuals undergo brutalization in small villages as well as Origin country's major cities, with one human rights worker reporting that she receives "four calls a week" from LGBT individuals living in rural areas.⁴⁰ As the Supreme Court of the United Kingdom has argued, "[t]here is no place, in countries such as...Origin country, to which a gay [person] could safely relocate without making fundamental changes to his behav[i]o[r] which he cannot make simply because he is gay."⁴¹

It is clear that Ms. DOE Jane's name has become known by police as evinced by her narrow escape from being arrested and the police's subsequent search to locate her at her

³⁸ CRIMINALIZING IDENTITIES, *supra* note , at 6 (Exhibit).

³⁹ *Id.* at 10.

⁴⁰ Kopsa, *supra* note , at 1 (Exhibit).

⁴¹ Supreme Court of the United Kingdom, Judgment in the Matter of HJ and HT v. Secretary of State for the Home Department, *available at* http://www.supremecourt.uk/decided-cases/docs/UKSC_2009_0057_Judgment.pdf, at 10 (Exhibit).

residence and business. Tab C at ¶¶97-106. Since the police and gendarmerie collaborate on security mandates, “it is plausible that someone in Ms. Jane’s position would be under surveillance by various factions of local security forces, as she has already been a target of a police raid as a result of her homosexual marriage.” Tab J. Additionally, Ms. DOE Jane believes that her uncles could “bribe the police or use the X community to track [her] down”. Tab C at ¶141. That threat is credible because “throughout Origin country, immediate family and extended kin networks are most likely to enforce the social order through violence”. Tab J.

Given her uncles’ ability to bribe police and use ethnic networks, Ms. DOE Jane’s only hope of survival upon return would be to go into hiding. The Fourth Circuit has found relocation unreasonable where it required an asylum applicant to hide from her persecutors. *See, Essohou v. Gonzalez*, 471 F.3d 518 (4th Cir. 2006). Therefore, in Ms. DOE Jane’s case it would be ineffective and unreasonable for her to internally relocate to avoid persecution either from the Origin country government or her family.

IV. THE ORIGIN COUNTRY GOVERNMENT IS UNABLE OR UNWILLING TO PROTECT MS. DOE JANE FROM INTRA-FAMILY VIOLENCE

As discussed above, the laws and customs of Origin country deprive Ms. DOE Jane of any meaningful recourse of government protection from intra-family violence or violence from non-family members who might target her on account of her sexual orientation. See Sec. III, *supra*. An applicant for asylum must demonstrate that past persecution was committed either by the government or by forces the government is unwilling or unable to control. *See Crespin-Valladares v. Holder*, 632 F.3d 117, 128 (4th Cir. 2010). As previously discussed, in ██████ Jane’s case, one of the persecutors is the Origin country government itself but she is also at danger of being persecuted by her male family members. The Government of Origin

country, as will be discussed below, is unwilling to protect Ms. DOE Jane from persecution perpetrated by her family members.

Throughout Origin country, women are uniformly and consistently regarded second-class citizens. Though the Origin country Constitution recognizes women's rights in certain provisions, women "[do] not enjoy the same rights and privileges as men," and "some provisions of civil law [are] prejudicial to women."⁴² In addition, Origin country "is a patriarchal society in which customs and traditions thrive and are promoted in spite of existing modern laws."⁴³ As such, even where civil laws exist that protect women, they are often rebuffed in favor of customary laws that (among other injustices) deny women the right to inherit from their husbands,⁴⁴ consider them the "property" of their new spouse once they are married,⁴⁵ and confer paternal figures such as uncles, fathers, brothers, and boyfriends "physical disciplinary power" over women.⁴⁶ Professor ██████████ opines in her affidavit that "Ms. Jane's uncles and father could beat and abuse her without interference from the police, as such attacks are not illegal under national criminal law." *See* Tab J.

This climate of gender inequality, in turn, "creates a fertile ground for violence."⁴⁷ According to a 2007 CEDAW Shadow Report, "53% of women are subjected to one form of violence or another from the age of 15." Tab O. Such abuse is more likely to occur in the "family sphere than in the public sphere"⁴⁸ since women's "access to public space is highly restricted."⁴⁹

Girls and women subjected to family-based violence often have little recourse under the

⁴² ██████████

private individuals or state officials...while Origin country has a duty under international law to act with due diligence to prevent, investigate, prosecute and punish all forms of violence against women, irrespective of whether this violence is committed by public or private individuals, this obligation has not been adequately implemented at the national level.”⁵⁶ Thus, Origin country is clearly unwilling to protect women in the position of Ms. DOE Jane.

V. MS. DOE JANE HAS A WELL-FOUNDED FEAR OF FUTURE PERSECUTION ON ACCOUNT OF HER MEMBERSHIP IN TWO PARTICULAR SOCIAL GROUPS AND POLITICAL OPINION

An applicant for asylum has a well-founded fear of persecution if she (1) fears persecution on account of the protected grounds, (2) there is a reasonable possibility of suffering if she were forced to return, and (3) she is unable or unwilling to return to, or avail herself of the protection of the country because of such fear. 8 C.F.R. 208.13(b)(2)(i). A “reasonable possibility of suffering” has been further clarified to constitute a 10% probability that the persecution feared will happen. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987). As demonstrated below, there is at least a 10% chance that Ms. DOE Jane’s life is at risk in Origin country on account of the protected grounds.

A. The Harm Ms. DOE Jane Fears Rises to the Level of Persecution

Ms. DOE Jane narrowly escaped arrest prior to departing Origin country. She fears that if forced to return to Origin country, she will be imprisoned, raped, tortured, and killed. This fear undoubtedly rises to the level of persecution.

B. Ms. DOE Jane Subjectively and Objectively Fears Persecution

⁵⁶ OMCT Press Release, at 2 (Exhibit CC).

To establish a well-founded fear of persecution, the applicant must establish that she both subjectively and objectively fears persecution. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 430-31 (1987). To meet the requirement of the subjective element, an applicant needs to show that her fear is genuine. *See, e.g., Carvajal-Munoz v. INS*, 743 F.2d 562, 574 (7th Cir. 1984). An applicant meets the objective standard by showing that a reasonable person in the same circumstances would fear persecution and that the fear has “some basis in the reality of the circumstances” and is validated with “specific, concrete facts.” *M.A. v. INS*, 899 F.2d 304, 311 (4th Cir.1990). Ms. DOE Jane’s fear is subjectively genuine. She explicitly fears that she may be killed, beaten, tortured, imprisoned, or otherwise harmed, if she returns to Origin country. *See* Tab C at ¶¶140; *see also* Form I-589. Ms. DOE Jane’s fears are concretely grounded in reality. Her partner Sally and her friend Hermine were arrested, tortured and had to flee Origin country in order to escape imprisonment. *See* Tab C & H. Ms. DOE Jane was almost arrested and is now a fugitive from the Origin country police. *See* Tab C at ¶¶94-108. As discussed in Section III.A, *supra*, homosexuality remains illegal in Origin country with numerous arrests of lesbians confirmed in 2012, a gay rights activist recently arrested in 2014⁵⁷ and rampant societal intolerance for homosexuality. Given the current country conditions, a reasonable person in Ms. DOE Jane’s situation would fear persecution upon her return to Origin country.

c. The Persecution Ms. DOE Jane Fears is on Account of her Membership in Two Particular Social Groups and Political Opinion

For the reasons stated above in section I, *supra* (past persecution on account of membership in social group and political opinion), Ms. DOE Jane fears future persecution on account of those protected grounds.

⁵⁷ Source: <http://www.>

VI. Ms. DOE Jane is Unable and Unwilling to Avail Herself of the Protection of the Government of Origin country

If forced to return to Origin country, Ms. DOE Jane would not be able to depend on the protection of the Origin country government. *See* sections III to IV, *supra*. Ms. DOE Jane is a known homosexual, and homosexuality is illegal throughout the country. Instead of protecting her in the past, government officials persecuted her, including breaking up her marriage ceremony, detaining and attempting to arrest her and damaging her business. *See* Tab C at ¶¶93-108. Furthermore, corruption in Origin country is “pervasive”, including within its police force. *See* Tab N.

VII. Ms. DOE Jane Cannot Avoid Persecution by Internally Relocating

An asylum applicant does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant’s country of nationality, if such relocation were reasonable given the circumstances. 8 C.F.R. 208.13(b)(2)(ii). In Ms. DOE Jane’s case, as previously addressed in Section IV.B.2, *supra*, internal relocation is not a viable possibility.

VIII. There Are No Statutory Bars to a Grant Of Asylum

INA § 208(b)(2)(A) provides a list of statutory bars to granting asylum to an applicant. None of these bars are applicable in this case. Ms. DOE Jane has never been accused of or convicted of a serious crime. She is a law-abiding citizen and has no criminal record in Origin country, the United States, or any other country. She has never firmly resettled in any country other than the United States.

IX. ALTERNATIVELY, MS. DOE JANE'S APPLICATION FOR WITHHOLDING OF REMOVAL SHOULD BE GRANTED

An asylum application also constitutes an application for withholding of removal. 8 C.F.R. § 208.3(b). Withholding of removal is a mandatory form of relief available to applicants who can show that their life or freedom would be threatened in the proposed country of removal on account of an enumerated ground. *See* INA § 241(b)(3)(A), 8 C.F.R. § 208.16(b); 8 U.S.C. § 1231(b)(3)(A).

The applicant's burden of proof is satisfied by evidence of past persecution, absent an affirmative showing by a preponderance of the evidence that there has either been a fundamental change in circumstances or there is a reasonable possibility of avoiding persecution by relocating within the country of persecution. 8 C.F.R. §208.16(b)(1). To establish a claim for withholding of removal in the absence of past persecution, the applicant must show that the threat to life or freedom is "more likely than not" to occur. 8 C.F.R. §§ 1208.16(b)(1)(iii), 1208.16(b)(2); *see also INS v. Stevic*, 467 U.S. 407, 414 (1984) (stating that to receive withholding of removal, an applicant must establish a "clear" probability of persecution on account of one or more enumerated grounds).

As detailed above, Ms. DOE Jane suffered past persecution. Section II.A, *supra*. Given that she is known by Origin country police throughout the country, is an identified lesbian and fugitive, and has male family members who have beaten and threatened to kill her, it is more likely than not that Ms. DOE Jane would be subjected to future persecution if forced to return to Origin country. Prior to her departure in [REDACTED] Ms. DOE Jane only narrowly escaped arrest by Origin country authorities, and her departure occurred immediately after this attempt. *See* Section I., *supra*.

X. MS. DOE JANE IS ENTITLED TO WITHHOLDING OF REMOVAL UNDER THE CONVENTION AGAINST TORTURE

Torture is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as . . . punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person . . . when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” 8 C.F.R. §208.18(a)(1). Ms. DOE Jane believes that upon her return to Origin country that she will be subjected to arrest, imprisonment, torture or murder by the Origin country police. *See* Tab C at ¶140. Her fears are supported by the experiences of her friend Hermine and her partner Sally who were subjected to imprisonment and severe beatings, as well as country conditions in Origin country for homosexuals as discussed in Section III.A, *supra*. *See* Tab H. Additionally, Ms. DOE Jane faces a severe risk of being severely harmed and killed in Origin country, by her uncles or private individuals, as discussed in Sections I-III.A., *supra*. Ample country conditions show that the Origin country government acquiesces to violence against homosexuals by non-government actors as well as intra-family violence through its non-action. *See* Sections III.A and IV, *supra*. Accordingly, Ms. DOE Jane is entitled to withholding of removal under the Convention Against Torture.

XI. Ms. DOE Jane’s Past Persecution Compels a Grant of Humanitarian Asylum

Ms. DOE Jane has demonstrated past persecution in the form of rape, a brutal beating, death threats, denial of fundamental rights of liberty and a well-founded fear of future persecution. Even if the Court finds that she has not demonstrated a well-founded fear of persecution, her circumstances compel a grant based on humanitarian asylum. An applicant who

has suffered past persecution may be granted humanitarian asylum if she has demonstrated (1) “compelling reasons for being unwilling or unable to return to that country arising out the severity of the past persecution,” or (2) “that there is a reasonable possibility . . . she may suffer other serious harm upon removal to that country.” *See* 8 C.F.R. §208.13(b)(1)(iii). Ms. DOE Jane is eligible for humanitarian asylum under both subsections.

In *Matter of Chen*, the BIA held that where past persecution was so severe that it would be inhumane to return an asylum applicant to her former country, past persecution may serve as the basis of a grant of asylum, even absent a risk of future persecution. *See Matter of Chen*, 20 I&N Dec. 16, 21 (1989). In Ms. DOE Jane’s case, she endured being raped, brutally beaten, threatened with violence and death and an attempted arrest for attempting to marry her partner. As a result of this severe and atrocious persecution, Ms. DOE Jane suffers from severe depression. *See* Tab K.

Even if the Court does not find that Ms. DOE Jane’s past persecution was sufficiently compelling to warrant a grant of *Matter of Chen* humanitarian asylum, she has undoubtedly suffered past persecution and faces other serious harm upon return to Origin country. Other serious harm includes the basis for Respondent’s well-founded fear of future persecution, including further death threats, intimidation, beatings, torture, and possibly rape. As a known lesbian who is a fugitive from police, country conditions support that the likelihood of these harms.

CONCLUSION

For the foregoing reasons, Ms. DOE Jane respectfully requests that she be granted asylum, or in the alternative, withholding of removal under the INA or pursuant to the Convention Against Torture.

Respectfully submitted, this ____ day of [REDACTED]

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

IN THE MATTER OF:)
)
Jane DOE JANE,) File No.: [REDACTED]
)
Respondent.) In Removal Proceedings
_____)

Immigration Judge David Crosland Next Hearing: [REDACTED]

PROOF OF SERVICE

[REDACTED]

Signature

Date

