

## **I. Introduction**

Respondents are a husband and wife from \_\_\_\_\_ who have suffered past persecution in the form of repeated and credible threats of death and Female Genital Mutilation (“Genital Mutilation”) at the hands of the husband’s family and tribe for their public, professional, and personal opposition to the practice of Genital Mutilation. The couple’s problems began when the wife, supported by her husband, refused to undergo Genital Mutilation as was conditioned upon the husband’s father’s approval of their marriage. These problems intensified as time went on and the couple not only continued to oppose the practice for the wife but also, refused to submit their U.S. citizen daughter to Genital Mutilation as ordered by the husband’s father and tribe. Interpreting these acts as disobedience to the patriarchal and tribal structure which threaten the honor and stability of their tribe, the husband’s tribe has threatened to make examples of the couple by subjecting them both to beatings, and various forms of deprivation of liberty including: imprisonment, forced abandonment of their children or kidnapping thereof, and forced divorce, as well as subjecting the wife to Genital Mutilation and honor crimes like acid burning. Fearful for their lives and liberty the couple seeks asylum based on the past persecution experienced and the persecution they face on account of their anti-Genital Mutilation political opinions, religion, and membership in numerous particular social groups including:

(1) \_\_\_\_\_ Women who Married into the X Family, Who Have not had Genital Mutilation as Practiced by that Family, and Who Are Outspoken Opponents of the Practice;

(2) Parents Who Refuse to Perform Genital Mutilation on a daughter as Mandated by Family and/or Tribe;

(3) \_\_\_\_\_ Husbands of Wives Who Have not been Subjected to Genital Mutilation and Who Are Outspoken Opponents of the Practice;

(4) \_\_\_\_\_ Fathers of Daughters Who Have not been Subjected to Genital Mutilation and Who Are Outspoken Opponents of the Practice;

(5) \_\_\_\_\_ Mothers of Daughters Who Have not Been Subjected to Genital Mutilation and Who Are Outspoken Opponents of the Practice; and

(6) \_\_\_\_\_ Men of the X Family Whose Wives and Daughters have not been Subjected to Genital Mutilation, and Who Are Outspoken Opponents of the Practice.

Additionally, respondents seek relief from removal in the form of withholding of removal and protection under the Convention Against Torture.

## II. Facts and Procedural History

The male Respondent, X (“X”), was born on \_\_\_\_\_ in \_\_\_\_\_, the capital of \_\_\_\_\_. Witness List Tab B, Supplemental affidavit of X in support of his application for asylum and withholding of removal (“X Dec.”) at ¶ 1. He is the eldest child in his family and his father’s only son. *Id.* at ¶ 3. As is custom in \_\_\_\_\_, tribal practice amongst X’s family is passed from father to son. *Id.* at ¶ 21; Witness List Tab J, Affidavit of country conditions expert Charles P. \_\_\_\_\_, Ph.D. (“\_\_\_\_\_ Expert Report” at ¶ 22). X’s father is both wealthy and powerful. Witness List Tab B, X Dec. at ¶ 9. His father grew up in a small village, subject to African influence. *Id.* at ¶¶ 1, 36; Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 28. X’s father has always followed that area’s very conservative traditional religious and tribal customs even when he moved away to \_\_\_\_\_. Witness List Tab B, X Dec. at ¶ 3. X and his family are also devout Muslims. *Id.* at ¶ 1.

### Female Genital Mutilation as Practiced by the X Family, as dictated by their Tribe

X and his father belong to the X, the second largest tribe in \_\_\_\_\_ and among its most conservative. *Id.* at ¶ 3; \_\_\_\_\_ Expert Report at ¶ 28. Their sub-tribe is known as the X. Witness

List Tab B, X Dec. at ¶ 3. X’s tribe has been heavily influenced by neighboring tribes in X where female genital mutilation’s (“Genital Mutilation”) “prevalence among newborn girls [i]s as high as 97.3 percent.” *See*, Country Conditions Tab C; Witness List Tab D, Report of Expert Witness EW (“EW Expert Report”) at ¶ 32; Witness List Tab B, X Dec. at ¶ 36. The X family universally practice what they call “cleansing” and is otherwise known as Genital Mutilation. Witness List Tab B, X Dec. at ¶ 23. On the spectrum of types of Genital Mutilation, the X family practices one of the most severe forms in which the clitoris and exterior tissue (such as the labia) is removed and interior tissue is excised. This extreme form of mutilation causes health complications even into adulthood. *Id.* at ¶ 23; Witness List Tab D, EW Expert Report at ¶ 33 (Explaining that “girls who undergo [this type] FGM. . . may experience FGM-related infection, as well as problems with menstruation, sex, fertility, and giving birth”); Evidence Tab W, Medical report of X’s sister\_\_\_\_, documenting adverse consequences of FGM; Evidence Tab G, Warning Email from X’s Sisters. The X family engages in this practice out of a belief that Genital Mutilation is required under Islam to purify a girl and protect her from the sin and the shame that her inappropriate sexual thoughts or actions would bring upon the family. Witness List Tab B, X Dec. at ¶ 25; Witness List Tab D, EW Expert Report at ¶ 35. While, ministerial decree prohibits the practice in government and private health facilities in \_\_\_\_\_, many families like X’s continue the custom, allowing a female elder, referred to as the “Big Woman” to perform it on girls as young as one week old. Country Conditions Tab C at p. 25; Witness List Tab B, X Dec. at ¶¶ 24-25. All but one of X’s sisters was subjected to Genital Mutilation (his youngest sister narrowly escaped because she was too weak as an infant with a congenital heart defect to have it performed and later her mother lied to the family claiming that it had been done). Witness List Tab B, X Dec. at ¶ 26; Evidence Tab G, Warning Email from X’s Sisters. To

this day, X’s father and his male relatives remain unaware that his youngest sister was spared from Genital Mutilation. Witness List Tab B, X Dec. at ¶ 26; Evidence Tab G, Warning Email from X’s Sisters. The only other female related to X that has successfully evaded Genital Mutilation is his niece, X, whose father’s tribe<sup>1</sup> does not practice Genital Mutilation and who negotiated an agreement with the X tribe allowing her to remain “uncleansed” in keeping with the controlling tribal customs of the girl’s father. Witness List Tab B, X Dec. at ¶ 28. Though this negotiated settlement maintained recognized social structures of deference to patriarchal tribal customs and allowed X’s father a face-saving resolution, it remains a great source of discontent for X’s father who nonetheless felt dishonored by the process and who vowed never to allow another female family member to avoid Genital Mutilation. *Id.* at ¶ 28.

### **X’s Education and Work Invokes His Active Opposition to Genital Mutilation**

It was not until X went to college that he learned about the many health risks, sorrow, and pain that Genital Mutilation forces on women. *Id.* at ¶ 29. Through volunteer work with NGOs, X attended workshops and trainings on reproductive health that addressed Genital Mutilation. *Id.* at ¶ 30. After undertaking a review of scholarly publications on the topic and speaking with his NGO colleagues, X realized that he did not agree with the beliefs of his father and his tribe that Genital Mutilation was permitted, let alone required by Islam. *Id.* at ¶ 30. To the contrary, X concluded that Genital Mutilation, like any other form of bodily mutilation is a “forbidden practice under Islamic law.” *Id.* X not only adopted this view for himself, but he took an active role in combating the practice, joining the \_\_\_\_\_ Coalition of NGOs for child’s rights care and interfacing with female survivors of Genital Mutilation who told him they felt the practice

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<sup>1</sup> Tribal affiliation is determined by the father’s tribe and only changes for females upon marriage, at which point by custom they adopt their husband’s tribe and practices as their own. Witness List Tab J, \_\_\_ Expert Report at ¶ 22; Witness List Tab C, X Dec. at ¶ 18; Witness List Tab B, X Dec. at ¶ 39.

“took their souls” and explained how as a result of mutilation “they lost the sensation of being a woman.” *Id.* at ¶ 31. X, felt “deep sorrow” and “pain” for family members subjected to Genital Mutilation. *Id.* At that time X vowed to “always stand up against Mutilation—no matter what the costs would be.” *Id.*

Sometime in 2005, X began work with the Ministry of Youth and through the Ministry of Health, joined the political struggle to end Genital Mutilation in \_\_\_\_\_. *Id.* at ¶ 33. X and his colleagues began educating the sheikhs about the dangers and problems with Genital Mutilation with the goal of both outlawing the practice publicly and preventing it underground. *Id.*, Evidence Tab B, X’s Corrected I-589 at p. 6. Additionally, X coordinated media interviews where the Advisory Committee for Childhood and Youth and partners like the National Committee for Women, discussed Genital Mutilation in the newspapers, TV and radio. *Id.* at ¶ 33. He also met with Parliament’s Legislative Committee to discuss the dangers of Genital Mutilation. *Id.*

Sensitive to the strong feelings of his father and his tribesmen, X never mentioned his opinions on Genital Mutilation to his father. *Id.* at ¶ 35. His family became aware of his anti-Genital Mutilation beliefs when a cousin, X, outed him in front of X’s father and several male relatives, claiming awareness of X’s “work[] against Mutilation.” *Id.* X’s father voraciously defended the practice and insisted that Genital Mutilation came from Sharia law. *Id.* at ¶36. Although X knew that Genital Mutilation in fact had been adopted by his tribe only after an Imam from the nearby village of \_\_\_\_\_ instructed his tribe that the Koran required Genital Mutilation; to appease his father X agreed to look into it and gave the impression that he was open to being convinced of its correctness by his father and tribe. *Id.*

**X Rejects a Traditional Arranged Marriage to Marry X, an Active Opponent of Genital Mutilation from Outside of his Tribe Who had not been “Cleansed”**

While, X was still in college, his father arranged for him to marry his 15 year-old-cousin. *Id.* at ¶ 38. Uncomfortable with their difference in age and the fact that she was so young, X rejected his father’s arrangement, which angered his father. *Id.* Instead, X proposed to marry the female Respondent, a woman named X (“X”) who he met in April 2008 at an NGO workshop. *Id.* at ¶ 39; Witness List Tab C, Supplemental affidavit of X in support of her application for asylum and withholding of removal (“X Dec.”) at ¶ 1.

X was born on \_\_\_\_\_, in \_\_\_\_\_. Witness List Tab C, X Dec. at ¶ 1. She considers Genital Mutilation “barbaric” and vehemently opposes it. *Id.* at ¶ 4; Witness List Tab B, X Dec. at ¶ 39. In X’s view, Islam does not permit self-harm and thus forbids mutilation of any part of the body. Witness List Tab C, X Dec. at ¶ 4. X, like X, is a devout Muslim. *Id.*

Hailing from a far more open-minded family and tribe, by \_\_\_\_\_ standards, than X, X had not been subjected to Genital Mutilation as a child. *Id.* at ¶ 4. She was also permitted by her father to attend college and was a Program Coordinator for the Red Crescent Society, an affiliate of the International Red Cross. *Id.* at ¶ 14; Evidence Tab J, \_\_\_\_\_ certificate of experience for X. X’s work there focused on raising awareness of issues like early marriage and Genital Mutilation and engaging youth in dialogues around these culturally taboo topics. Witness List Tab C, X Dec. at ¶ 17. Because X’s family practiced a far less strict version of Islam than X’s family, her father worried that marriage, and the customary adoption of her husband’s tribal practices would prevent X from practicing her faith as she wished. *Id.* at ¶ 18; Witness List Tab B, X Dec. at ¶ 39. X, who felt she knew X well, was confident that their views on Islam coincided and dismissed her father’s concerns as overly cautious. Witness List Tab C, X Dec. at ¶ 18.

At first, X's father rejected his request for permission to marry X. Witness List Tab B, X Dec. at ¶ 41. Only after months of X's efforts and support from respected men in his community through traditional tribal means of mediation was he able to persuade his father to allow him to marry X. *Id.* at ¶ 41. Even then, his father's consent to the marriage was conditioned upon X undergoing Genital Mutilation. *Id.* at ¶ 41. As is custom in \_\_\_\_\_ culture, X took on X's tribal affiliations upon marriage and was therefore expected to submit to Genital Mutilation. Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 22 (“[W]omen take on the tribal identity of their husbands following what are almost always arranged marriages.”); Witness List Tab C, X Dec. at ¶ 3. X wrongly assumed that he could tell his father that his wife would undergo Genital Mutilation without *actually* following through. Witness List Tab B, X Dec. at ¶ 41. When his father became aware that X had not fulfilled his promise to mutilate his wife his father began publicly expressing his disapproval of X. *Id.* at ¶ 42. X's father refused to take part in the traditional pre-wedding customs and publicly flaunted his disrespect for the couple at the wedding, elevating what might have been a family disagreement into a matter of tribal dispute. *Id.* at ¶ 41. For example, rather than seating guests as is the traditional role of the father at the groom's party, X's father arrived late and told guests: “He is not my son” and “He doesn't belong to me.” *Id.* at ¶ 41. These statements and the disruption of carefully orchestrated social rituals had highly charged meaning within the tribal structure. Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 12. This public shaming was emotionally difficult for X and caused X to feel shock and shame. Dec. at ¶ 41; Witness List Tab C, X Dec. at ¶ 19.

X and X did not give up, however, on trying to mend family and tribal ties. Intending to appease her new relatives and garner their approval, X took on some of X's family's tribal and religious practices such as covering her face when she visited with them. Witness List Tab C, X

Dec. at ¶ 20. This was no small sacrifice for X, as the women in her family only covered their hair outside the home. Witness List Tab C, X Dec. at ¶ 20. Additionally, she turned down opportunities for international travel hoping to keep the peace with X’s family. *Id.* However, nothing changed X’s family’s view of X or lessened the disgust they felt towards her. *Id.*

### **X’s Family Begins Threatening the Couple in order to Force X to Undergo Genital Mutilation**

Approximately two months after the wedding, X’s father started threatening to disown him and to send someone to “clean” his wife by performing Genital Mutilation. Witness List Tab B, X Dec. at ¶ 43. His father said things like “You put my head down. You took my dignity. Now no one in the family will follow me. No one will respect me.” *Id.*

Not long after this, X’s extended family also began threatening him for disregarding other tribal norms. In X’s tribe, a woman should never travel without the accompaniment of her husband, father, or brother, so when X traveled alone \_\_\_\_\_ to attend a conference, X’s extended family chastised him for disobeying tribal customs. Witness List Tab B, X Dec. at ¶ 44. While she was away they visited X at night, saying “You need to follow your father’s rules” and “We won’t let anybody bring the shame to us...even if it is you!” *Id.*

X, attempted to reconcile the relationship by approaching his father and uncles but they were too angry to listen. *Id.* at ¶ 45. During one such attempt, X’s father slapped him in the face while shouting “I will kill you if you humiliate me and make the family laugh at me!” *Id.* When news of X’s pregnancy came in June 2010, X was hopeful that giving his father a grandchild might lessen the strain on their relationship. *Id.* at ¶ 46. In \_\_\_\_\_ culture, women are expected to bear children to perpetuate the tribe, so a grandchild could serve as a symbolic peace offering amidst the conflict. *Id.* However, X’s family responded by threatening to take the child

away and impose a divorce upon the couple. *Id.* After hearing their reaction, X worried that a child might only serve to increase tensions. *Id.*

### **X and X Travel to the United States for Work and Learn they Will Have a Girl**

In September 2010, X was invited to attend a conference in New York. Witness List Tab B, X Dec. at ¶ 47; Witness List Tab C, X Dec. at ¶ 21. With every intention of returning to \_\_\_\_\_, X accompanied his wife to the conference and then she went on to Florida to visit her niece. Witness List Tab B, X Dec. at ¶ 47. The stresses of X's family's threats and the travel weighed heavily upon X and she had to be rushed to the hospital in an ambulance after she started experiencing contractions. Witness List Tab C, X Dec. at ¶ 21; Dec. at ¶ 48. In the hospital X first learned through an ultrasound that she was carrying a baby girl. Witness List Tab C, X Dec. at ¶ 21; Witness List Tab B, X Dec Dec. at ¶ 48. While X's community puts little value on female children, the couple was delighted that they would soon be able to raise a daughter together. Witness List Tab B, X Dec. at ¶¶ 15, 48. However, that joy was short-lived, as they reXzed their tribe would insist that Genital Mutilation be performed on their baby girl. Witness List Tab B, X Dec. at ¶ 49. To avoid Genital Mutilation, which X's tribe traditionally completed within one week of the birth, they resolved to have the child in the U.S. and return to \_\_\_\_\_ once things calmed down with X's family. *Id.*

### **The X Family Threatens to Perform Genital Mutilation on their Daughter Upon Return**

On \_\_\_\_\_, X gave birth to X, while staying with friends in Baltimore, Maryland. Witness List Tab B, X Dec. at ¶ 49; Evidence Tab N, Birth Certificate. As the date of their return flight to \_\_\_\_\_ in March 2011 neared, X applied for his daughter's passport so they could return as a family to \_\_\_\_\_. *Id.* at ¶ 51; Evidence Tab O, X's U.S. Passport. While they were excited to go home and introduce their child to the family, X and his wife became increasingly concerned by conversations with family members. *Id.* Upon learning of the birth X's father

reminded his son that the “cleansing” or Genital Mutilation to take place “as soon as” X returned to \_\_\_\_\_. *Id.* X’s sister had also warned him within weeks after his daughter’s birth not to return, because his father, brothers and cousins had sworn together to perform Genital Mutilation upon X. *Id.* at ¶ 52. When X tried to speak with his father on the phone, he heard his father say “I don’t want to talk to him. He destroyed me. He’s bringing the shame on us!” *Id.* at ¶ 54. His father’s refusal to speak with him signaled to the rest of the family that X had been disowned and that he could no longer rely on any protection from his father. *Id.* As tensions rose, X started to realize that his problems had spread beyond his father and were now reaching others in his tribe. *Id.* Even, X’s former ally, a paternal cousin named X, turned against him saying, “[Y]ou won’t clean your daughter. That is too far!” and threatening, “we will not let you do that to us! You bring the shame against our whole tribe!” *Id.* at ¶ 55.

In March 2011, determined to secure a safe return to \_\_\_\_\_ for their family, X and his wife, had her relatives request protection from the District Mayor in control of the area where X’s father resides. *Id.* at ¶ 56; Witness List Tab C, X Dec. at ¶ 24. However, the District Mayor informed them that he could not intervene in family matters. Witness List Tab B, X Dec. at ¶ 56; Witness List Tab C, X Dec. at ¶ 24. Seeing no other alternative, X and his wife applied for extensions on their visas and hoped that a delay in their return might give his family time to calm down. Witness List Tab B, X Dec. at ¶ 56. It was to no avail. As time passed, their family’s conversations turned into threats, which in turn escalated to full tribal condemnation. Witness List Tab C, X Dec. at ¶ 25. When X spoke with X’s sisters, they warned her that regular discussion at family lunches revolved around how they would punish X upon his return. Witness List Tab C, X Dec. at ¶ 25. X also learned through a friend in \_\_\_\_\_ who met members of

X's family at a gathering, that they believed that X was what cause of X disobedience to his father and vowed to discipline them both for it. Witness List Tab C, X Dec. at ¶ 25.

### **The X Family Threatens to Harm or Kill X and X for Defiance of Tribal Practices**

In August 2011, X spoke with X's sister, X, who informed her that after learning of X's pregnancy with their second child, X's father became even more upset at the potential for another girl in the family who would go "uncleansed." Witness List Tab C, X Dec. at ¶ 29.

Similarly, in September 2011, X's cousin X informed him of his father's vow to perform Genital Mutilation upon X's daughter even if it meant killing his only son to do so. Witness List Tab B, X Dec. at ¶ 59. Although Genital Mutilation was the initial spark of this tribal dispute, the issue was now much broader – and more serious – centering around X's disobedience (whatever the issue) to his father and tribe. *Id.* This larger issue, therefore, involved far more people and male uncles, cousins and other tribesmen would feel threatened by the disruption in tribal order. *Id.*

Recognizing that the situation had deteriorated beyond repair and that they could never return home and protect themselves or their newborn daughter, days later, X and his wife applied for asylum. *See* Form I-589, dated September 6, 2011. Still uncomfortable with speaking to anyone outside his family about such private matters as his tribal and familial issues, X and X did not hire an attorney to represent them in their affirmative asylum application. *Id.*; Witness List Tab B, X Dec. at ¶ 61. On January 3, 2012, U.S. Citizenship and Immigration Services referred X and his wife's applications for asylum to Immigration Court, finding they had failed to establish past persecution or future harm on account of one of the protected characteristics in the refugee definition. *See*, Referral Notice dated January 3, 2012. That same day, Notices to Appear charging them with removability for remaining in the U.S. longer than permitted pursuant to Section 237(a)(1)(B) of the Immigration and Nationality Act were issued. *See*, NTAs dated January 3, 2012. On \_\_\_\_\_ X and his wife appeared with undersigned *pro bono* counsel,

before this Honorable Court at a Master Calendar hearing. At the hearing, X and his wife admitted the factual allegations, conceded the charges of removability and asserted as relief from removal and defenses to removal their claims for asylum and withholding of removal.<sup>2</sup>

### **Threats Increase and Support Broadens to Punish X and X for Disobedience**

Since their asylum interview, the threats from X’s family have been unrelenting and intense. Witness List Tab B, X Dec. at ¶ 64. X’s sisters, who maintain secret monthly contact with X, inform her that his father has threatened to beat them if he finds them communicating with X. Witness List Tab C, Witness List Tab C, X Dec. at ¶ 31. In early 2012, X received a call from his cousin, X, who had been tasked by his father and cousins to convince X to return to \_\_\_\_\_. Witness List Tab B, X Dec. at ¶ 64. During that call, X threatened X, saying “I’m going to keep my dignity and my family’s dignity. I will kill you if you don’t do this!” *Id.* X’s sentiments confirmed that the dispute continued to be larger than one just between X and his father, and instead extended to their entire family and to their tribal affiliation. Worse yet, hoping that he could still resolve the conflict, X enlisted friends in \_\_\_\_\_ to approach his father, family, and tribe to seek forgiveness. *Id.* at ¶ 65. Unfortunately, those attempts had the opposite effect, and only further enraged his father and family who feel threatened by the fact that news of X’s disobedience had spread beyond their family. *Id.* In February 2012, X received word from his sister that his father’s anger “was harsher than it had ever been.” *Id.* at ¶ 67. Around that time, X spoke with X’s sister X, who reported that X’s male relatives had another large gathering to pressure X’s father to avenge his son’s disobedience, threatening “If you don’t do something, we will . . . .” Witness List Tab C, X Dec. at ¶ 32. X’s sister, X, reported that in March 2012, the

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<sup>2</sup> Respondents respectfully request leave to amend those pleadings to include claims of relief from removal under the Convention Against Torture.

men gathered again, chastising his father and asking for X's telephone number. Witness List Tab C, X Dec. at ¶ 33.

On \_\_\_\_\_, X and his wife gave birth to their second child, a boy named X, in Baltimore, Maryland. Witness List Tab B, X Dec. at ¶ 68. X's birth was particularly significant to X's father because he is the only direct male blood descendent of his father and therefore by custom and tradition, will inherit X's father's name and property. *Id.* at ¶ 68; Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 22 ("Only sons inherit property"). When X spoke to his father shortly after X's birth, his father was furious, saying "You are not my son. Don't call me," and threatening to punish X with death for what he'd done. Witness List Tab B, X Dec. at ¶ 69; Witness List Tab C, X Dec. at ¶ 35. He also vowed to take back his "blood" by kidnapping X's children and raising them better than he would. *Id.* When X spoke with X's father, he told her to "shut up" and threatened: "You are the one who convinced X not to follow the family rules. When you come back I will show you what I will do. I will take your children and I will throw you in the street!" Witness List Tab C, X Dec. at ¶ 34.

In April 2012, X received another call from his cousin X. Witness List Tab B, X Dec. at ¶ 70. This time, X informed him that his father had fallen ill, and that he was to blame for his father's illness. *Id.* X swore to personally avenge this at all costs and said the *entire* family would see to it that X's daughter was "cleansed" through Genital Mutilation. *Id.* In August 2012, X heard from his friend Wael X that his father had sworn to kill X if he ever saw him again for the humiliation that he had brought upon him. *Id.* at ¶ 71.

X learned from her mother that in December 2012 or January 2013, X's male cousins came to her home to ask for X's father's contact information. Witness List Tab C, X Dec. at ¶ 36. In July 2013, X's father called to warn her never to return to \_\_\_\_\_ as he had been visited by three of

X's male cousin's displaying weapons, normally concealed under clothing, a recognized sign of hostility and threat. *Id.* These men demanded that he order his daughter home in order to make X return to \_\_\_\_\_. *Id.* at ¶¶ 39-40. According to X's father, her life and her children's lives are in danger if they return, because X's relatives are capable of killing them to restore their honor. *Id.* at ¶ 40.

In March 2013, X's sister X, told X that her aunt had recently expressed to her that she wished she had thrown acid in X's face or beaten her to death when she was still in \_\_\_\_\_. Witness List Tab C, X Dec. at ¶ 37; *see also*, Evidence Tab H, Facebook Threat (“[B]ut I am sorry why I didn't hit X when I got the chance when she was here! [B]ut [I] promise when I will see her next time I will flash her face with Acid for all the pain she cause us and dividing the family parts.”). This aunt is the ranking female tribe member within X's family. Witness List Tab C, X Dec. at ¶ 38. She performs FGM on the family's newborn girls. *Id.* She is empowered with authority to punish offending family members and, given her role within the family and tribe, would see it as her obligation to reset the disequilibrium caused by X and X's decision-making by punishing X and making a visible example of her. Witness List Tab C, X Dec. at ¶ 38. X and his wife remain fearful that his family will take any opportunity upon return to avenge their honor by burning X with acid or undertaking other forms of honor crimes.

X's father now feels that as long as X lives, he cannot regain his dignity. Witness List Tab B, X Dec. at ¶ 74; Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 24 (“Violation of what a father believes are proper and required religious and customary practices, such as genital mutilation. . . , is [an] example of serious disobedience that would prompt public disgrace and shame. Such departures from tribal tradition are seen as an abandonment of the tribe, its religion, and its core beliefs, which brings great dishonor to the patriarch and is viewed as a basis

for punishment.”); Witness List Tab D, \_\_\_\_Expert Report at ¶ 37, (“Generally, a male elder will be the head of the family, and all younger generations are expected to be obedient to his will. Disobeying such a patriarch can be seen as bringing shame and dishonor to the family, possibly leading to retribution . . . rang[ing] from ostracism to physical punishments, including on occasion, death”). The last words X heard from his father in March 2013, were “I will kill you; I will have you beaten. I will let your cousins kill you and do whatever they want unless you follow the rules.” Witness List Tab B, X Dec. at ¶ 72.

X’s father continues to demand his family’s return and has committed himself to finding X and will deploy the tribal and family network to make sure this happens. Witness List Tab B, X Dec. at ¶ 82. Because a paternal cousin works at the airport as a policeman in the Ministry of Interior, X is fearful that as soon as his family’s name appears on a passenger list, his family and tribe will be alerted to his return. *Id.* Belonging to the second largest tribe in \_\_\_\_\_ that is spread out across the country assures that there is nowhere beyond his tribe’s reach where he could safely relocate within \_\_\_\_\_ even if he could return without detection. *Id.* at ¶¶ 82, 85. While Respondents’ never intended to make the United States a permanent home and have remained here at great personal and professional sacrifice, they believe it is now the only way to assure the safety of themselves and their children given the numerous harms they will confront upon return to \_\_\_\_\_. Witness List Tab C, X Dec. at ¶ 41; Witness List Tab B, X Dec. at ¶ 82; Evidence Tab I, Facsimile from X X substantiating threats (Sept. 20, 2013); Evidence Tab G, Warning Email from X’s Sisters; Evidence Tab T, Facsimile from X X (Sept. 7, 2013); Email from X corroborating X’s father’s threats (Sept. 20, 2013).

### **III. Legal Argument**

#### **A. Respondents Qualify for Asylum**

To qualify for asylum under Section 208 of the Immigration and Nationality Act, Respondents must show that they are refugees within the meaning of Section 101(a) (42) of the Act. INA § 208(a). The refugee definition includes a requirement that Respondents demonstrate either that they suffered past persecution or possess a well-founded fear of future persecution in their country of nationality on account of one of five statutory grounds. *Id.* The REAL ID Act specifies that the Respondents must establish that one of the five grounds was or will be “at least one central reason” for persecuting respondents. 8 U.S.C. § 1158(b)(1)(B)(i) (2008).<sup>3</sup> Finally, an applicant for asylum must also establish that asylum is warranted in the exercise of discretion. The burden of proof is on the Respondents to establish eligibility for asylum.

**a. Respondents Subjectively and Objectively Fear Future Persecution**

To establish a well-founded fear of future persecution, Respondents must show that they possess a subjective fear of persecution and that the fear has an objective basis. *Gandziami-Mickhou v. Gonzales*, 455 F.3d 351, 353 (4th Cir. 2006)(“The ‘well-founded fear of persecution’ standard contains both subjective and objective components.”). Credible testimony that the applicant genuinely fears persecution can satisfy the subjective component. *See* 8 CFR § 208.13(b)(2). As demonstrated in their sworn declarations and in Dr. P’s and Dr. M’s evaluations, Respondents fear future persecution. *See e.g.* Witness List Tab B, X Dec. ¶¶ 72-83; Witness List Tab C, X Dec. ¶¶ 9, 37, 43; Witness List Tab F, Psych Eval of X by Dr. P, at ¶ 2-4, 11, 19, 20, 22; Witness List Tab H, Psych Eval of X by Dr. M, at p. 7-8. Respondents’ experiences and diagnoses demonstrate genuine fear of future persecution at the hands of X’s father, family and tribe.

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<sup>3</sup> The provisions of the “REAL ID Act of 2005” apply to the respondents’ applications as they were filed on or after May 11, 2005.

The objective component is satisfied where an applicant’s fear has “some basis in objective reality” and is not “mere irrational apprehension.” *Rusu v. INS*, 296 F.3d 316, 324 (4th Cir. 2002); *Blanco de Belbruno v. Ashcroft*, 362 F.3d 272, 286 (4th Cir. 2004). The Supreme Court has found that a “reasonable possibility” of persecution may be satisfied if there is as little as a 10% chance of future persecution. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987). As demonstrated below in further detail, the harms that Respondents fear upon return to \_\_\_\_\_, namely the honor crimes and killings, imprisonment, kidnapping of their son and daughter, and forced Genital Mutilation against the female Respondent (and their daughter, X), are prevalent and pervasive throughout \_\_\_\_\_. According to, the president of the American Institute for \_\_\_\_\_ Studies, Charles P. \_\_\_\_\_, honor crimes including physical punishment like beating, disfigurement, torture, imprisonment, and killings of both men and women are “prevalent” in \_\_\_\_\_. Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 26.

Another scholar and published author on Women’s Issues in \_\_\_\_\_, Anne EW reports that in \_\_\_\_\_, the city from which X’s tribe derives its Genital Mutilation practice, Genital Mutilation has a prevalence rate of 97.3% among women. Witness List Tab D, EW Expert Report at ¶ 32; Country Conditions Tab A, 2011 U.S.State Dep’t Report at p. 34 (“FGM rates as high as 90 percent in some coastal areas, such as . . . Hudeidah”); County Conditions Tab J, 2001 U.S. State Dep’t Report on FGM at p.1 (“Findings of these studies revealed that over 96 percent of women in \_\_\_\_\_, had undergone” Genital Mutilation); *see also*, Witness List Tab B, X Dec. at ¶¶ 1, 36.

The high rates of these forms of persecution in \_\_\_\_\_ coupled with the propensity of Respondents’ persecutors to harm them has led both experts to conclude that upon return Respondents’ are at risk of “of losing their lives and safety, as well as the safety of their children,

and their ability to maintain custody of their children.” Witness List Tab J, \_\_\_\_\_ Expert Report at ¶30; Witness List Tab D, EW Expert Report at ¶ 42. Moreover, Anne EW, believes Respondents to be at risk of retribution that “may include physical punishment or death. Witness List Tab D, EW Expert Report at ¶ 42.

Respondents’ fears of returning are also objectively reasonable because “a reasonable person in [their] circumstances would fear persecution.” *Mogharrabi*, 19 I & N Dec. at 445 (1987). Based on the high rates of honor crimes and Genital Mutilation perpetrated against \_\_\_\_\_ is in Respondents’ circumstances, any reasonable person in their situation would be fearful of return. The reasonableness of Respondents’ fears are reflected in the advice of countless family members and friends who have advised them never to return to \_\_\_\_\_ including: several friends, X’s five sisters, X, X, Salam, X and X, and X’s mother and father. Witness List Tab B, X Dec. at ¶¶ 52, 56; Witness List Tab C, X Dec. at ¶¶ 24, 36; Evidence Tab I, Facsimile from X X substantiating threats (Sept. 20, 2013); Evidence Tab G, Warning Email from X’s Sisters; Evidence Tab T, Facsimile from X X (Sept. 7, 2013); Email from X corroborating X’s father’s threats (Sept. 20, 2013).

**i. Respondents are at Risk of Direct Victimization**

Unlike other “parent protector” claims for asylum that have focused on parents as the “indirect” victims of Genital Mutilation to be perpetrated against a child, Respondents are at risk of *direct* victimization. *See, e.g., Niang v. Gonzalez*, 422 F.3d 1187 (4th Cir. 2007); *Gumaneh v. Mukasey*, 535 F.3d 785 (8th Cir. 2008); *Bah v. Mukasey*, 529 F.3d 99 (2d Cir. 2008); *Oforji v. Ashcroft*, 354 F.3d 609 (7th Cir. 2003).<sup>4</sup> The present case is distinguishable from *Niang*, in that

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<sup>4</sup> Several international courts have considered direct victimization of parent protectors, overturning lower courts and suggesting that direct victim applicants should qualify for protection. In, *Ndegwa v. Canada* the Minister of Citizenship and Immigration found that the asylum applicant, a father of a child facing Genital Mutilation, was not just an “unwilling spectator of violence” against other members of his family as the Canadian Immigration and

the harms that X and X fear are largely *aimed at them* for having refused to submit X and X to Genital Mutilation.

Likewise, the risks of harm do not depend on whether or not Respondents' U.S. citizen daughter accompanies them upon return to \_\_\_\_\_. Instead, the Respondents' risk of experiencing beatings, imprisonment, disfigurement through the use of acid, and forced Genital Mutilation (X alone) and even death remain even if the couple return to \_\_\_\_\_ *without* their children. Indeed, tribal and family anger is so strong, it is possible, even likely, that X and X would be punished if they returned with their children *and* the children were taken from them, cleansed and raised in keeping with tribal customs. This is because Respondents' family and tribe view Respondents' opposition to and prior refusals of Genital Mutilation as forms of "serious disobedience" prompting "public disgrace and shame" upon his father, the family, and the tribe and therefore, consider them a basis for grave punishments. Witness List Tab B, X Dec. at ¶¶ 12, 34, 74-75; Witness List Tab J, \_\_\_\_\_ Expert Report at 24. Simply put, X's father now believes that as long as X is alive, his dignity will remain tarnished. Witness List Tab B, X Dec. at ¶ 74. Under such circumstances, Respondents' face independent fears of direct victimization apart from their fears of forced Genital Mutilation against their daughter upon return.

**ii. Respondents' Family and Tribe Are Inclined to Persecute Them.**

Respondents have for years rejected the X family's value system, derived from the tribe and embraced by X's father, the patriarch. As a result, X's father's honor and dignity will remain

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Refugee Review Board had characterized him, but instead that "he himself may be at risk" of future harm, and remanded the case for further consideration. (Minister of Citizenship and Immigration), [2006] F.C. 847 (Can.) at p. 11; *see also*, *Fornah v. Sec'y of State*, [2006] UKHL 46, 20-21 [2007] 1 A.C. 412, 416 (U.K.); *M.H. & Others v. Sec'y of State for the Home Dep't*, [2002] UKIAT 02691 (U.K. Asylum and Immigration Tribunal), available at <http://www.bailii.org/uk/cases/UKIAT/2002/02691.html> (conferring asylum relief in the United Kingdom for applicants persecuted "for reasons of their family group" and concluding that whether the persecutor's motives were benign or punitive has no relevance.).

tarnished until he can prove to the community that Respondents have re-adopted tribal norms and been punished for their transgressions. Similarly, the entire X tribe has an interest in punishing Respondents to deter others in the tribe from defying tribal order. Thus, X’s father is inclined to beat, imprison and kill X, force Genital Mutilation upon X and X, and kidnap Respondents’ children to be raised by those who follow the tribal practices. Likewise, X’s tribe is inclined to subject X—who is seen as the source of Respondents’ transgressions—to physical violence, including permanent disfigurement and Genital Mutilation.

At first, X’s father’s threats focused on forcing him to perform Genital Mutilation upon his wife and, later, his daughter. Witness List Tab B, X Dec. at ¶¶ 43, 45, 59. However, as time progressed and X’s disobedience became known first through his family and tribe and then to others in the community as X sought a truce with his father, his father’s feelings of shame and dishonor increased and the threats grew. *Id.* at ¶¶ 44, 54, 63, 65, 67. By August 2012, X’s father had sworn to kill X for the humiliation he brought upon him. *Id.* at ¶ 71. X’s father now feels that as long as X lives, he cannot keep his dignity. *Id.* at ¶ 74.

While killing one’s son to recoup one’s honor may seem extreme in Western culture, “it is not uncommon in \_\_\_\_\_ for dishonored families to perpetrate honor crimes on disobedient offspring where public shame has befallen a father and his family.” Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 25; Witness List Tab D, EW Expert Report at ¶ 39 (“Punishments for disobedience to the patriarch, such as torture and ‘honor killing’, are not unknown in \_\_\_\_\_.”). This is because, “[t]he threat to the stability of the tribal structure posed by a son’s disobedience to his father is considered too great to ignore.” Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 25. Failure to obey a patriarch’s command may result in torture, imprisonment, and even death as \_\_\_\_\_ society holds that only through punishment can a father fulfill his duty

to perpetuate the societal stability founded on obedience to strict patriarchy. Witness List Tab J, \_\_\_\_\_ Expert Report at ¶¶ 23-24.

Knowing that X’s years of disobedience have opened the door for others to disobey their fathers, his tribe cannot tolerate such acts without retribution so violent that all others in the tribe will be deterred from future transgressions. Witness List Tab B, X Dec. at ¶¶ 9, 63, 75; Witness List Tab C, X Dec. at ¶ 8. Expert, Charles P. Witness List Tab J, \_\_\_\_\_ Expert Report, explains that, “[v]iolation of what a father believes are proper and required religious and customary practices, such as genital mutilation” is an example of “serious disobedience that would prompt public disgrace and shame” and “bring[] great dishonor to the patriarch” thus forming “a basis for punishment.” Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 24. Similarly, X explains:

The entire tribe has been by my disobedience and feels the need to take vengeance against me. These tribesmen “puff up” my father by continuously reminding him of his shame and how I must be punished. They now openly mock him because my disobedience has gone unpunished for so long. Their interference ensures that my disobedience will not be forgotten, as I had hoped the passage of time might allow; instead, we continue to be the center of conversation at family and tribal gatherings.

Witness List Tab B, X Dec. at ¶ 63. Impatient with X’s father’s failure thus far to punish his son, other men of the tribe have threatened to “discipline X for you, even if that causes us to kill him.” Witness List Tab C, X Dec. at ¶ 28. Indeed, X’s sisters have reported increasing tribal gatherings in which the topic of conversation is how to punish Respondents. Witness List Tab C, X Dec. at ¶ 25, 33. Even X’s former ally, his paternal cousin X, turned against him saying, “[Y]ou won’t clean your daughter. That is too far!” and threatened, “we will not let you do that to us! You bring the shame against our whole tribe!” Witness List Tab B, X Dec. at ¶ 55. When X’s father fell ill in early 2012, another cousin, X, informed X that the family blames X for his father’s illness and that they would “get revenge” against him “at all costs.” *Id.* at ¶ 70.

Viewed as the source of X’s disobedience, X’s father and tribe are both inclined to harm X to tame her and “make[] her a ‘proper’ wife for [the] tribe.” Witness List Tab B, X Dec. at ¶¶ 50, 60. Her culpability in their eyes goes back to X’s initial rejection of the arranged marriage in order to marry X and continues through her refusal to undergo Genital Mutilation, allow her daughter not to undergo Genital Mutilation and raising their son—his father’s only male heir—outside of tribal practices. Witness List Tab C, X Dec. at ¶ 38. X’s aunt, who performs Genital Mutilation upon the tribe’s daughters, vowed to permanently disfigure X: “I will flash her face with Acid for all the pain she cause[d] us and [her] dividing [of] the family parts.” Evidence Tab H, Facebook threat received by X X (“Facebook Threat”); Witness List Tab B, X Dec. at ¶ 37. At this point X’s family and tribe seek to both punish and subject X to Genital Mutilation because to do otherwise risks destabilizing their control over the tribe. Witness List Tab C, X Dec. at ¶ 8; Witness List Tab B, X Dec. at ¶ 60.

Respondents’ children are blood relatives—their tribal affiliation is hereditary—hence, X’s father and tribe have a particular interest in reclaiming them and assuring their adherence to tribal practice. X’s father has vowed to take back his “blood” by kidnapping X’s children and raising them in the tribe’s customs and traditions. Witness List Tab B, X Dec. at ¶ 69; Witness List Tab C, X Dec. at ¶ 35. The tribe believes that subjecting Respondents’ daughter X to Genital Mutilation is the only way to “cleanse” the bloodline. Witness List Tab B, X Dec. at ¶¶ 50, 60. As X’s cousin X makes clear, the family will “never give up *their* daughter and the tribal practice of ‘cleaning.’” *Id.* at ¶ 70.

**iii. Respondents’ Family and Tribe have the Ability to Persecute Them.**

Empowered by tribal custom, practice, and religious authority, X’s family and tribe have far-reaching powers to harm Respondents upon return. Witness List Tab B, X Dec. at ¶¶ 9, 18. X’s wealthy and well-connected father has committed himself to finding X to restore his honor

and that of the tribe and can rely upon the tribal and family network to do so. *Id.* at ¶¶ 9, 82.

With a paternal cousin who works at the airport as a policeman in the Ministry of Interior, he may even learn of their unannounced arrival and encounter them upon their return. *Id.* at ¶ 82.

Further, X and X's prior activism with prominent NGOs such as the Red Crescent society elevated their visibility as opponents of Genital Mutilation and may lead others throughout society to recognize them. Witness List Tab B, X Dec. at ¶ 33; Witness List Tab C, X Dec. at ¶ 14,

Because X's tribe is the second largest in \_\_\_\_\_ and spread throughout the country, no region in \_\_\_\_\_ is beyond his tribe's reach and could serve as a safe haven. Witness List Tab B, X Dec. at ¶¶ 9, 82, 85. In fact, Expert Witness, Charles P. \_\_\_\_\_, opines that "tribal structure in \_\_\_\_\_ remains powerful, particularly in rural areas, where developing urban society and central government have little influence over the long-standing tribal traditions, including cultural practices and conflict resolution." Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 13. Due to the long history of political turmoil in \_\_\_\_\_ and the accompanying lack of effective centralized government, tribes function as mini-states, providing social stability and economic support for their members. Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 13. Considered experts on religion, culture and politics, village sheikhs wield "almost unlimited authority" in \_\_\_\_\_ and serve as decision-makers resolving both civil disputes and criminal proceedings. Witness List Tab J, \_\_\_\_\_ Expert Report at ¶¶ 15, 19; *see also*, Witness List Tab B, X Dec. at ¶ 13. While CP. \_\_\_\_\_ points out that any "father with a disobedient son could expect the full support of the village sheikh in resolving the dispute and restoring the father's honor in the form of restitution or retribution" (\_\_\_\_\_ at ¶ 25), X's father is also a "trusted friend of [his] village Sheikh". Witness List Tab B, X Dec. at ¶ 20. As such, and because the

village sheikh “respects his [father’s] judgment” there is no doubt that he will use his authority to assist him in restoring his honor. Witness List Tab B, X Dec. at ¶ 20. Moreover, a village sheikh’s authority and power is not limited to the geographical boundaries of his village but “extends throughout \_\_\_\_\_, including the capital of \_\_\_\_\_.” Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 19; Witness List Tab B, X Dec. at ¶ 13. Sheikhs are heavily armed and “so strong is the command of patriarchal obedience” that “some sheikhs will imprison an individual merely at the request of that person’s father.” Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 25; Witness List Tab B, X Dec. at ¶ 13; *see also*, Witness List Tab D, \_\_\_\_\_ Expert Report at ¶ 36 (“Many regions of \_\_\_\_\_ are almost entirely administered by tribes” whose “sheikhs wield tremendous authority and are often heavily armed.”)

To wit, three of X’s cousins were jailed for disobeying their fathers; one in a jail in \_\_\_\_\_ for two years while two others were held for six months as teenagers in \_\_\_\_\_ because they wanted to attend university despite their father’s demand that they become farmers. Witness List Tab B, X Dec. at ¶ 19. Ultimately, one cousin relented and became a farmer while the other, fearing death, fled to \_\_\_\_\_. *Id.* Even X’s “open-minded” father, chased her brother, shot at him, and then took him to jail and to be locked up for a month when he attempted to take a second wife without his permission. Witness List Tab C, X Dec. at ¶ 12. X’s relatives, with the backing of the village Sheikh, are similarly capable of jailing Respondents. Witness List Tab B, X Dec. at ¶ 76.

Similarly, physical harm and even death, are not beyond the limits of Respondents’ family and tribe’s capabilities. Witness List Tab B, X Dec. at ¶ 76. Article 233 of the \_\_\_\_\_ Penal Code addresses the crime of an ancestor murdering his offspring and states “If the ancestor assaults his offspring by way of murder or injury, there shall be no punishment...” Country

Conditions Tab D, \_\_\_\_\_ Penal Code, Sub-Section 1, General Provisions, Art. 233. Because honor crimes are common in \_\_\_\_\_ and sanctioned by law, there is nothing stopping X’s family and tribe from perpetrating such acts against he and his family.

In this absence of governmental protection, there are no private actors to protect Respondents upon return. Time and countless efforts on X’s part have made clear that no one in his family or community is capable of convincing his family to forgive his transgressions. Witness List Tab B, X Dec. at ¶ 80. Further, any future attempt by a tribesman to assist Respondents would run the risk of placing that individual in opposition to the tribe and he himself would be targeted as an enemy. *Id.* X’s family is similarly disempowered to protect them, as both parents have now warned her never to return because there is no way to guarantee their safety. X’s Dec. at ¶ 40; Witness List Tab B, X Dec. at ¶ 86. Seeking assistance from those outside X’s tribe would be futile as societal culture and traditions would inhibit anyone from siding with a disobedient son. Witness List Tab B, X Dec. at ¶ 9.

**iv. The Harms Respondents Fear Rise to the Level of Persecution.**

Although persecution is not defined in the INA, the BIA has defined persecution as a “threat to life or freedom of, or the infliction of suffering upon, those who differ in a way that is regarded as offensive.” *See Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985); *INS v. Stevic*, 467 U.S. 407, 428 n.22 (1984). Subjective intent to harm or punish the applicant is not required for a finding of persecution. *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996). Further, acts of harm should not be considered individually but instead “in the aggregate” when assessing whether or not they rise to the level of persecution. *Matter of O-Z- and I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998); *see also Baharon v. Holder*, 588 F.3d 228 (4th Cir. 2010); *Korablina v INS*, 158 F.3d 1038 (9th Cir. 1998). To constitute persecution, the infliction of harm or suffering must be brought about either by the government or by persons or groups that the government is unable or

unwilling to control (here X’s family and tribe). Where the persecutor is a non-governmental actor, an asylum applicant is eligible for asylum if the authorities are unable or unwilling to offer effective protection. *See, e.g., Matter of Kasinga*, 21 I&N Dec. 357, 365, 367 (BIA 1996).

As demonstrated in further detail below, the various harms Respondents face—Genital Mutilation, honor crimes, beatings, and deprivation of liberty like imprisonment, forced abandonment of their children, and forced divorce—separately and cumulatively rise to the level of persecution. Additionally, as referenced above and detailed below, the \_\_\_\_\_ government is unwilling to control a father or a tribe seeking to avenge the dishonor that their children have brought upon them in disobeying cultural, religious and traditional norms.

### **1. Forced Female Genital Mutilation Constitutes Persecution**

The BIA has found that Genital Mutilation constitutes persecution as it “permanently disfigures the female genitalia” and “exposes the girl or woman to the risks of serious, potentially life-threatening complications,” such as “bleeding, infection, urine retention, stress, shock, psychological trauma, and damage to the urethra and anus” and “can result in permanent loss of genital sensation and . . . adversely affect sexual and erotic functions.” *In re Kasinga*, 21 I&N Dec. 257, 261 (BIA 1996). Consequently, as in every other circuit that has considered the question, the Fourth Circuit has found that Genital Mutilation rises to the level of persecution. *See, Haoua v. Gonzales*, 472 F.3d 227, 231 (4th Cir. 2007) (“Genital Mutilation constitutes persecution within the meaning of the [INA.]”); *Barry v. Gonzales*, 445 F.3d 741 (4th Cir. 2006). Any type of Genital Mutilation constitutes persecution and Genital Mutilation in the past counts as past persecution. *Kourouma v. Holder*, 588 F.3d 234 (4th Cir. 2009).

X fears that “X’s tribe will force [her] to undergo Mutilation, not just to ‘cleanse’ [her], but to discipline [her] and demonstrate to others that defiance is useless.” Witness List Tab C, X Dec. at ¶ 9. Additionally, the type of Genital Mutilation practiced amongst X’s tribe is among the

most severe and leaves life-long complications. Witness List Tab B, X Dec. at ¶ 23; Witness List Tab D, EW Expert Report at ¶ 33. Often, during Genital Mutilation in \_\_\_\_\_, “people don’t use an anesthetic and they risk giving the girl both physical and psychological traumas.” Country Conditions, Tab I, IRIN Report FGM, at p.1. X’s sisters who underwent the procedure as infants, continue to experience repercussions including: “pain during sex and difficulty conceiving, as well as emotional issues and marital strains.” Witness List Tab C, X Dec. at ¶ 22; Evidence Tab G, Warning Email from X’s Sisters. Given the severity of the type of Genital Mutilation performed by X’s family, his sisters’ experiences and the case law, it seems certain that the Genital Mutilation that X faces upon return rises to the level of persecution.

Moreover, the Seventh Circuit has held that a husband can suffer persecution when his wife is subjected to Genital Mutilation, explaining:

If your house is burned down, or your child killed, in order to harm you, the fact that you are not touched does not mean that those acts cannot constitute persecution of you. *Abay v. Ashcroft*, 368 F.3d 634, 640-42 (6th Cir. 2004); *In re A-K-*, 24 I. & N. Dec. 275, 278 (BIA 2007); *Tchoukhrova v. Gonzales* 430 F.3d 1222, 1225 n. 2 (9th Cir. 2005) (dissent from denial of rehearing en banc); *but see Mame Fatou Niang v. Gonzales*, 492 F.3d 505, 512 (4th Cir. 2007). Genital mutilation of one’s wife, unless one happens to be a supporter of the practice, is a way to punish one, and so the menace to Mrs. Gatimi is a legitimate component of Mr. Gatimi's case. To send her back to Kenya to face female genital mutilation would be to enable persecution of him.

*Gatimi v. Holder*, 578 F.3d 611, 617 (7th Cir. 2009). Although the Fourth Circuit’s decision in *Niang*, makes clear psychological harm *alone* does not rise to the level of persecution, Genital Mutilation of one’s wife can inhibit a couple’s ability to procreate by rendering intercourse painful or impossible and resulting in complications at birth, which are more than mere psychological harms. *See*, Tab A, WHO FGM Sheet 2012 (copy attached) (“Immediate complications can include severe pain, shock, hemorrhage (bleeding), tetanus or sepsis (bacterial

infection), urine retention, open sores in the genital region” and “[l]ong-term consequences can include: recurrent bladder and urinary tract, infections; cysts; infertility; an increased risk of childbirth complications and newborn deaths; [and] the need for later surgeries.”) Hence, were Genital Mutilation performed upon one’s spouse, the experience would be more akin to forced sterilization than mere psychological harm. *See Matter of C-Y-Z-*, 21 I&N Dec. 915 (1997) (concluding that forced sterilization of the applicant’s wife constituted past persecution as to the applicant husband). As such, both X and X will be victims of persecution in the event of forced Genital Mutilation of X.

## **2. Honor Crimes like Acid Burning and Honor Killings Constitute Persecution**

Like Genital Mutilation, honor crimes such as acid throwing, permanently disfigure an individual and can cause a lifetime of pain and suffering. The Fourth Circuit, recognizes “the infliction or threat of death, torture, or injury to one’s person or freedom,” as persecution. *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (quoting *Kondakova v. Ashcroft*, 383 F.3d 792, 797 (8th Cir. 2004) cert. denied 543 U.S. 1053, 125 S.Ct. 894, 160 L.Ed.2d 775 (2005) (internal quotation marks omitted)); accord *Gormley v. Ashcroft*, 364 F.3d 1172, 1176 (9th Cir. 2004); *Liu v. Ashcroft*, 380 F.3d 307, 312 (7th Cir. 2004); see also *INS v. Stevic*, 467 U.S. 407, 418, 104 S.Ct. 2489, 81 L.Ed.2d 321 (1984). Further, courts have recognized the use of acid as a form of torture under the Convention Against Torture’s definition which requires “severe pain or suffering” 8 C.F.R. § 1208.18(a)(1). See, *Al-Saher v. INS*, No. 99-71308, 2001 U.S. App. LEXIS 30140 (9th Cir. Oct. 23, 2001) (finding, among other things, the use of acid dripped upon the skin to constitute torture under CAT). If acid throwing meets the heightened severity of pain and suffering for torture, then it certainly constitutes a form of persecution under the Fourth Circuit’s analysis. Tab B, Articles on Effects of Acid, WHO (“Acid burns can melt the skin away down to

the bone): NBC 2013 (“acid can burn through the full thickness of the skin in seconds, even eating into tissue and muscle below. As the skin heals, it develops scar tissue, which creates much of the disfigurement....skin grafts and plastic surgery are often required”).

X fears that X’s family will throw acid in her face to “permanently disfigure [her] so that [she] will serve as an example to other women who defy their religious and tribal practices.” Witness List Tab C, X Dec. at ¶ 9; *see also*, Evidence Tab H, Facebook Threat. Such permanent disfigurement constitutes torture and should be considered a form of persecution under Fourth Circuit law.

Similarly, X’s family has repeatedly threatened to kill him for the shame and dishonor that he has brought upon his tribe. Witness List Tab B, X Dec. at ¶¶ 45, 59, 64, 69, 70, 71, 72; Witness List Tab C, X Dec. at ¶¶ 28, 35. Those threats alone constitute persecution and there is tragically little that he could do to find protection from impending death upon return to \_\_\_\_\_. *See, Crespin-Vallardes v. Holder*, 632 F.3d 117, 126 (4th Cir. 2011)(death threats constitute persecution).

### **3. Beatings Constitute Persecution.**

Both Respondents fear beatings and physical harm at the hands of X’s family and tribe. Witness List Tab C, X Dec. at ¶¶ 9, 37, 43; Witness List Tab B, X Dec. at ¶ 72, 79; *see also*, Evidence Tab H, Facebook Threat. The BIA has found that beatings can amount to past persecution. *See Matter of O-Z-&I-Z-*, 22 I&N Dec. 23 (BIA 1998), *Matter of N-M-A-*, 22 I&N Dec. 312 (BIA 1998). Additionally, 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). Consequently, the beatings Respondents face upon return individually and collectively constitute persecution.

#### **4. The Threats to Respondents’ Freedom and Deprivation of their Liberty Constitute Persecution**

The BIA and six circuits have recognized that persecution encompasses “threats to freedom” and/or 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). Respondents face a threat to their freedom and deprivation of their liberty in the form of imprisonment, forced abandonment of their children (*i.e.*, kidnapping), and forced divorce.

##### **a. Imprisonment Constitutes Persecution.**

Respondents fear that upon return X will be imprisoned in a state or sheikh-owned prison for their disobedience. Witness List Tab B, X Dec. at ¶ 79; Witness List Tab C, X Dec. at ¶ 9. The “sheikh prisons” are “wholly unregulated (in fact, their presence is generally denied)” by the \_\_\_\_\_ government. Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 15. According to the U.S. State Department, “Unauthorized “private” prisons and detention centers in rural areas controlled by tribes continue[] to operate, holding persons subject to tribal justice. Tribal leaders sometimes misused the prison system by placing “problem” tribesmen in private jails . . . Persons often were detained in such circumstances for strictly personal or tribal reasons without trial, judicial sentencing, or other fundamental legal safeguards.” Country Conditions Tab A, 2011 U.S. State Dep’t Report at p. 7. Moreover, imprisoned individuals are “caged and tortured for having dishonored their tribe.” Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 15. A federal prison offers

X no less risk of severe mistreatment as the U.S. State Department points out, “[t]he use of torture by police and prison guards, particularly by National Security Bureau (NSB) officials, is common.” 2011 U.S. State Dep’t Human Rights Report on \_\_\_\_\_ at 5.

While not all detentions have been found by courts to constitute persecution, the Fourth Circuit has found that where a detention—even when brief—includes beatings and is accompanied by harm to other family members, it rises to the level of persecution. *Bahron v. Holder*, 588 F.3d 228 (4th Cir. 2009) (finding an individual jailed for 3 days and beaten and who received threats after brutality to other family members suffered persecution). Given the torture that X will face in either a sheikh run prison or government facility, it likely constitutes persecution.

**b. The Forced Abandonment of Respondents’ Children and the Alternative Kidnapping Constitute Persecution.**

Respondents are faced with the impossible decision of leaving their U.S. citizen children in foster care in the U.S. or returning with them to a place where they are in danger of kidnapping by X’s tribe and, in his daughter’s case, being subjected to Genital Mutilation by force. Witness List Tab B, X Dec. at ¶ 88; Witness List Tab C, X Dec. at ¶ 44. Aside from the fact that no parent would ever want to make that decision, either choice will result in what is tantamount to persecution for Respondents.

Forcing Respondents to abandon their children to the U.S. Foster Care system to avoid persecution in \_\_\_\_\_ would result in “forced abandonment” in 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. 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.*

In the present case, Respondents face deportation as a couple. *See* NTAs; *see also*, *Kone v. Holder*, 620 F.3d 760 (7th Cir. 2010) (remanding to the BIA to consider direct persecution of parents protecting their daughters from Genital Mutilation and who both faced deportation). Their children are very young—both under three-years-old— and hence completely dependent upon their parents for care. Witness List Tab B, X Dec. at ¶ 49; *see*, *Nwaokolo v. Ashcroft*, 314 F.3d 303 (7th Cir. 2002) (granting stay of removal to mother of young U.S. citizen daughters facing Genital Mutilation upon return). Additionally, there are no suitable guardians for Respondents’ children in the U.S. or anywhere outside of \_\_\_\_\_. Witness List Tab B, X Dec.

at ¶ 88; X at ¶ 44. Recent guidance from U.S. Immigration and Customs Enforcement instructs deportation officers to “accommodate, the extent practicable, the . . . parent or legal guardian’s individual efforts to make provisions for their minor children” including arranging travel documents for children to accompany parents to “their country of removal;” therefore, Respondents’ order of deportation will result in constructive deportation of their children. Tab C, ICE: *Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities* (Aug. 23, 2013) (copy attached). The Board of Immigration Appeals has similarly recognized constructive deportation of children in asserting, “normally a mother would not be expected to leave her child in the United States in order to avoid persecution.” *Matter of Dibba*, No. A73 541 857 (BIA Nov. 23, 2001) (mother’s argument that being forced to allow Genital Mutilation of daughter in Gambia would cause her mental suffering was sufficient to reopen case).

If Respondents return to \_\_\_\_\_ with their children, they face X’s relatives who have vowed to “take [his] daughter by force” and kidnap his son. X Dec at ¶¶ 76, 78. X’s tribe would prevent Respondents from seeing their son—a violation of all the fundamental rights to family unity described above—and a re-shaping of their son’s political and religious views “to match their extremist views.” X Dec at ¶ 78.<sup>5</sup> Essentially, X’s tribe would assume control of “every

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<sup>5</sup> 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 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

decision in his [son's] life such as his schooling and who [his son] would marry.” X Dec at ¶ 78; Witness List Tab C, X Dec. at ¶ 10. Denying Respondents’ parental involvement in such fundamental decisions as the religious context within which their children are raised violates their right to guide their children’s upbringing, and the kidnapping, results in the same violations of Respondents’ rights to family unity detailed above.

The Third Circuit has held that witnessing the “forcible seizure and removal of a parent to whereabouts unknown at the hands of a group that [the asylum applicant] c[ould] definitively identify as having directly and unambiguously threatened her with harm as well” rises to the level of persecution. *Camara v. Att’y Gen. of the U.S.*, 580 F.3d 196, 204-05 (3d Cir. 2009). It follows that if a parent were to witness the forcible seizure or kidnapping of their child by a group that has threatened to capture and torture him, that too would constitute persecution. The kidnapping and forced abandonment that Respondents face violate their basic rights as parents and constitute the type of deprivation of liberty that rises to the level of persecution.

**c. The Forced Divorce that Respondents Face Constitutes persecution**

The basic human right to family unity described above necessarily includes the right to remain married to the person of one’s choosing. Respondents fear that, upon return, X’s family and/or tribe will force a divorce upon them and forcefully remarry X to a woman of their choosing. Witness List Tab B, X Dec. at ¶ 46; Witness List Tab C, X Dec. at ¶ 10. Numerous

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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.

international human rights treaties recognize an individual's right to enter into marriage voluntarily.<sup>6</sup> Similarly, the Second Circuit has recognized that "forced marriage is a form of abuse that rises to the level of persecution." *Gao v. Gonzalez*, 440 F.3d 62, 66 (2006), *vacated on other grounds*, *Keisler v. Gao*, 552 U.S. 801 (2007). Because forcefully divorcing Respondents will violate their basic right to unity of the family and forcing X to remarry against his will violates his right to enter into marriage voluntarily, both acts should be considered as the kind of deprivation of liberty that rises to the level of persecution.

**v. The Civil Government in \_\_\_\_\_ is Unable and Unwilling to Protect Respondents and it is Useless for Them to Seek Government Protection as Familial Conflicts Involving Honor Fall Outside of its Control.**

Where the persecutor is a non-governmental actor, an asylum applicant is eligible for asylum if the authorities are unable or unwilling to offer effective protection. *See, e.g., Kasinga*, 21 I&N Dec. 357, 365, 367 (BIA 1996); *Acosta*, 19 I&N Dec. at 222 ("harm or suffering had to be inflicted either by the government of a country or by persons or an organization that the government was unable or unwilling to control"). Respondents have a well-founded fears of persecution by X's family and tribe, both of which the government of \_\_\_\_\_ is unwilling and unable to control. *See, e.g., Tab D, M.A. A26851062 v. INS*, 858 F.2d 210, 218 (4th Cir. 1988) (stating that asylum is warranted if petitioner can show the "government is unwilling or unable to

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<sup>6</sup> *See* Universal Declaration of Human Rights 1948 (UDHR) ("Article 16(2) Marriage shall be entered into only with the free and full consent of the intending spouses"); International Covenant on Civil and Political Rights ("Article 28 3. No marriage shall be entered into without the free and full consent of the intending spouses"); Declaration on Elimination of Discrimination Against Women ("Article 6, 3. Child marriage and the betrothal of young girls before puberty shall be prohibited, and effective action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory"); Convention on Consent to Minimum Age for Marriage and Registration of Marriages (1962) ("1. No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.") (signed but not ratified by the U.S.); and U.N. Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration (1965) (non-binding resolution).

control the offending group”)(copy attached). Finally, the BIA has found that where the record demonstrates that seeking help from the police would be futile, a respondent need not attempt to seek police protection to demonstrate a government’s inability or unwillingness to provide protection. *See In Re S-A-*, 22 I&N Dec. 1328, 1335 (BIA 2000).

The \_\_\_\_\_ government’s unwillingness to protect Respondents is evident in the lack of legal protections against honor crimes. As described above, the \_\_\_\_\_ penal code “allows leniency for persons guilty of committing an honor crime, violent assault, or killing” committed against one’s wife or ancestor for perceived “immodest” or “defiant” behavior. Country Conditions, Tab D, \_\_\_\_\_ Penal Code. As the U.S. State Department reports, \_\_\_\_\_ law simply does not criminalize “other types of honor crimes, including beatings, forced isolation, imprisonment, and forced early marriage.” 2011 State Department Human Rights Report on \_\_\_\_\_, at 30-31. None of the harms feared by Respondents have been criminalized under civil law and most are actually *sanctioned* by tribal and religious practices. Witness List Tab B, X Dec. at ¶ 87 (“Under the religious, tribal, and civil law of \_\_\_\_\_, whatever I own is under my father’s control, including me and my children.”).

Further, given the weakness of the central government, tribes fall entirely outside the civil government’s control. *See McMullen v. INS*, 658 F.2d 1312 (9th Cir. 1981) (noting concession by the U.S. Government that persecution for refugee purposes “includes persecution by non-governmental groups . . . where it is shown that the government of the proposed country of deportation is unwilling or unable to control that group”). Expert witness Charles P. \_\_\_\_\_ notes that “[w]hile the civil government intends that civil law will govern in the tribal regions, in reality, the tribes generally rule themselves, without interference from the secular government.” Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 18. In 2011, for example, the tribal sheikhs led an

uprising and attempted to kill the \_\_\_\_\_ president. Witness List Tab B, X Dec. at ¶ 14; Country Conditions Tab A, 2011 State Dep’t Report at p. 1-2 (“The political environment is unstable due to a transition of power” as “[n]ongovernmental actors engaged in internal armed conflict with government forces and proxies and committed abuses related to traditional tribal conflicts”). The civil government was so “fragile” that the President was forced to flee the country and resign. Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 20; Witness List Tab B, X Dec. at ¶ 14. “It is most often the sheikhs that instigate and support such uprisings against the civil government, demonstrating their strength and the dependence of the civil government on the support of the sheikhs for its viability.” Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 20. Because the civil government knows that most of the \_\_\_\_\_ population will “pick allegiance to tribal authorities over the civil government” (Witness List Tab B, X Dec. at ¶ 15), it “will not and cannot act in ways the sheikhs controlling a region or tribe do not sanction.” Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 21; Witness List Tab D, EW Expert Report at ¶ 38 (“The civil government in \_\_\_\_\_ wields very little control over rural, tribal regions.”).

Given its tenuous hold on power, “the civil government cannot afford a member of a tribe protection or recourse in the event a sheikh and tribal elders forcibly impose their traditions and practices on the member of the tribe, or punish the member of the tribe for disobedience or violations of tribal law and custom.” Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 21. Simply put, for the weak \_\_\_\_\_ civil government, Respondents’ lives are simply “not worth antagonizing the armed sheikhs” upon whom the government relies to maintain order in the villages. Witness List Tab B, X Dec. at ¶ 10. That weakness was evident in the Mayor’s refusal to afford protection to X and his family upon return. Witness List Tab C, X Dec. at ¶ 24.

Finally, X would “face additional difficulties” obtaining justice for honor crimes and Genital Mutilation perpetrated against her upon return, “because police stations and courts—which are always crowded with men—are commonly considered to be inappropriate places for ‘respected women.’” Country Conditions Tab C, Freedom House Report at p. 4 \_\_\_\_\_ society views women who are beaten by male relatives with suspicion, assuming they are at fault for having disobeyed cultural norms; therefore, studies related to “honor crimes” have found that “in \_\_\_\_\_, women who turn to the police for help are typically brought back to their male relatives.” *Id.* at pg. 5. As such, X cannot secure government protection from X’s family and tribe.

**b. Respondents Face Persecution on Account of their Political Opinions, Religion and Membership in Particular Social Groups.**

To qualify for asylum, an applicant must present “some evidence” – direct or circumstantial – that he or she fears harm “on account of” one of the five statutory grounds. *INS v. Elias-Zacarias*, 502 U.S. 478 (1992). Under the REAL ID Act, that statutory ground must be “at least one central reason for persecuting the applicant.” 8 U.S.C. § 1158(b)(1)(B)(i) (2008). While the statutory ground must be “a reason”, it need not be “the primary reason” for the persecution. *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007). Further, under Fourth Circuit law, an applicant need not show that the nexus to a protected ground was “even a dominant central reason for his persecution,” but must “demonstrate that these ties are more than an incidental, tangential, superficial, or subordinate reason” for her persecution.” *See, Crespin-Vallardes v. Holder*, 632 F.3d 117, 127 (4th Cir. 2011) (internal quotations omitted) (citing *Quinteros-Mendoza v. Holder*, 556 F.3d 159, 164–65 (4th Cir. 2009)). Finally, in *INS v. Elias-Zacarias*, the Supreme Court made clear that persecution must be on account of the victim’s belief or characteristic, not the persecutor’s. 502 U.S. 478 (1992).

**i. Respondents’ Face Persecution on Account of their Anti-Genital Mutilation Political Opinions**

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. For example, in *Fatin v. INS*, the Third Circuit held that there is “little doubt that feminism qualifies as a political opinion within the meaning of the relevant [asylum] statutes.” 12 F.3d 1233, 1244 (3d Cir. 1993); *Safaie v. INS*, 25 F.3d 636 (8th Cir. 1994). Similarly, USCIS’s own training materials recognize that “[f]eminism is a political opinion and may be expressed by refusing to comply with societal norms that subject women to severely restrictive conditions.”<sup>7</sup>

Genital Mutilation, as practiced by X’s tribe and others in \_\_\_\_\_, is performed to restrict a woman’s promiscuity. Witness List Tab D, EW Expert Report at ¶ 35 (the practice is “supported by traditional patriarchal beliefs, including the idea that it will make a woman more faithful to her husband because her temptation to fall into sin is reduced”); Witness List Tab C, X Dec. at ¶ 5. (“They believe that the Mutilation will ensure that a women will not give in to her urges to have sexual intercourse with a man who is not her husband.”); X Dec at ¶ 25 (“My father and his

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<sup>7</sup> 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>.

tribe, including the ruling Sheikh, believe that the Mutilation is required under Islam to purify a girl and protect her from sin. In their view, a woman who has not had Mutilation is an unclean woman with something inside her that may lead her to sin and bring shame to the family through inappropriate sexual thoughts or actions.”). In *Kasinga*, the BIA implied that opposition to the practice of Genital Mutilation could be a form of political expression. *Matter of Kasinga*, 21 I&N Dec 357, 365 (BIA 1996). By including the phrase “young women who . . . oppose the practice [of Genital Mutilation],” in the description of a social group, the court was “hinting at a possible political opinion ground for her asylum as well.” Victoria Nielson, *Homosexual or Female?: Applying Gender-Based Asylum Jurisprudence to Lesbian Asylum Claims*, 16 Stan. L. & Pol’y Rev. 417, 424 (2005). Given that the practice of Genital Mutilation can be considered an aspect of misogynistic cultural norms, opposition to Genital Mutilation is likewise opposition to pervasive paternalism in \_\_\_\_\_.

Both X and his wife, X, participated in public crusades to end the practice of Genital Mutilation in \_\_\_\_\_. X worked as Program Coordinator for a section of the Red Crescent Society that focused on raising awareness in society and engaging youth in dialogues related to Genital Mutilation. Witness List Tab C, X Dec. at ¶ 14. Given the taboo nature of the topic itself, every workshop that she conducted and every conference she attended would have signaled to others in society that she opposed Genital Mutilation. *Id.*; Witness List Tab D, EW Expert Report at ¶ 35 (“[I]n my experience, women rarely talked about FGM, and men never. Given that, it is not surprising that X’s [and X’s] public opposition to the practice was considered extremely transgressive.”)

After hearing horrifying tales of pain and suffering from Genital Mutilation survivors, X vowed to “always stand up against Mutilation- no matter what the costs would be.” Witness List

Tab B, X Dec. at ¶ 30. Consequently, X participated in educating sheiks to end the practice, coordinating media interviews and stories against the practice, and met with Parliament’s Legislative Committee to discuss the dangers of Genital Mutilation, as part of a broader successful effort to pass the law outlawing hospitals from performing Genital Mutilation. *Id.* at ¶ 33. His cousin, cited these actions in telling his male relatives, including X’s father, that X was working “against” Genital Mutilation. *Id.* at 35. This denouncement, spurred anger and opposition from his father. In the ensuing debate, X attempted to convince his father of the dangers of the procedure in front of his male elders – a discussion which was in effect an overt expression of his political opposition to such misogynistic cultural norms.

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).<sup>8</sup> Likewise, X’s years of refusing to compel his wife and daughter to undergo Genital Mutilation made clear to X’s family and tribe that his personal political opinion lay in opposition to their own on the matter. In this way, X’s abject defiance of familial and tribal norms spoke even louder than his words, and belies any sincerity in his noncommittal statements to his father – as his father clearly recognized in persecuting him.

Similarly, X’s refusal to submit herself to the practice was an unequivocal sign that she rejected the tribe’s customs and practices and was interpreted as such. Witness List Tab C, X Dec. at ¶ 4. For this reason, X’s father initially refused to consent to his son’s marriage to X, and only

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<sup>8</sup>*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 institutionXzed 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.”).

relented when X agreed to have X undergo Genital Mutilation. Witness List Tab B, X Dec. at ¶¶ 40-41. Likewise, X’s family traces his defiance of their family norms to X’s influence. Witness List Tab C, X Dec. at ¶ 25. X’s father confirmed those sentiments when he told X in the spring of 2012, “You are the one who convinced X not to follow the family rules. When you come back I will show you what I will do. I will take your children and I will throw you in the street!” Witness List Tab C, X Dec. at ¶ 34.

The link, between X’s relatives’ motivation to harm them and their public displays of opposition to the practice of Genital Mutilation could not be clearer. Nearly every threat to X and his wife issued by his family and tribe has referenced their failure to follow the “rules” regarding Genital Mutilation or failure to “cleanse” X and their daughter. *E.g.*, Witness List Tab B, X Dec. at ¶¶ 43, 46, 51, 52, 55, 59, 64, 69, 70, 71, 72; Witness List Tab C, X Dec. at ¶¶ 25, 32, 35.

**ii. Respondents’ Face Persecution on Account of their Religion.**

Religion may form the nexus for claim to asylum. INA § 101(a)(42)(A); *Rizal v. Gonzales*, 442 F.3d 84, 90 (2d Cir. 2006); *see also Chen v. INS*, 359 F.3d 121, 126 (2d Cir. 2004). However, an applicant is not required to establish that the persecution was solely on account of her religious beliefs. *See In Re S-A-*, 22 I&N Dec. 1328, 1329 (BIA 2000). Genital Mutilation “rises from tribal practices” and “has become closely tied to all manners of custom, with some \_\_\_\_\_is believing that it is tied to the practice of Islam.” Witness List Tab D, EW Expert Report at ¶ 34.. While X’s father and tribe believe that Genital Mutilation is mandated by Islam, X strongly believes that “mutilation of any part of the body is a forbidden practice under Islamic law.” Witness List Tab B, X Dec. at ¶¶ 25, 30. Similarly in X’s view, Islam does not permit self-harm, and mutilation of any part of the body is religiously forbidden. Witness List Tab C, X Dec. at ¶ 4. Thus, not only do Respondents disagree that Islam mandates Genital Mutilation, they believe that Islam *prohibits*

the practice and that to perform or undergo Genital Mutilation would cause them to violate their profession of faith.

That Respondents and their various persecutors both identify as Muslim is of no import to the force of their claims for asylum based on religion. *See In Re S-A-*, 22 I&N Dec. 1328, 1336 (BIA 2000) (holding that an applicant qualified for asylum where she was persecuted by her father “on account of her [progressive] religious beliefs, as they differed from those of her father.”); see also, *Maini v. INS*, 212 F.3d 1167, 1175 (9th Cir. 2000) (noting the fact “[t]hat a person shares an identity with a persecutor does not . . . foreclose a claim of persecution on account of a protected ground.”) In *In Re S-A-*, the BIA granted asylum, after finding that the young woman had suffered and would face persecution because her religious beliefs differed from those of her father. 22 I&N Dec. at 1335-37. Here, Respondents clearly have well-founded fears of persecution on account of their practice of a more liberal form of Islam than that prescribed to by X’s family and tribe.

It is precisely these differences in views of the Islamic faith that have endangered Respondents. As X describes:

I came to discover after marrying into X’s family, my life, under the relatively open-minded views of tribal and religious practices of my father was a paradise as compared to the life a woman in X’s family. I could no longer openly practice my faith in a way that differed from my husband’s family without facing severe repercussions.

Witness List Tab C, X Dec. at ¶ 3. Similarly, X explains “[b]ecause the tribe dictates what Islam means for that tribe, it is not possible to practice an interpretation of Islam that differs from one’s tribe without suffering retribution.” Witness List Tab B, X Dec. at ¶ 11. This is confirmed by expert witness \_\_\_\_\_, who states “[t]ribal leadership does not tolerate differing interpretations of Islamic belief and practice, just as they do not tolerate other violations of tribal law and

tradition.” Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 16. He adds that “[v]iolation of what a father believes are proper and required religious and customary practices, such as genital mutilation. . . , is [an] example of serious disobedience that would prompt public disgrace and shame. Such departures from tribal tradition are seen as an abandonment of the tribe, its religion, and its core beliefs, which brings great dishonor to the patriarch and is viewed as a basis for punishment.” *Id.* at ¶ 24. Respondents’ interpretations of Islam led them to refuse to submit X and their daughter to Genital Mutilation, which is precisely what angers X’s family and tribe and motivates them to levy severe sanctions to restore their honor. X’s one-time supporter, his cousin X, put is most clearly when he stated, “[Y]ou won’t clean your daughter. That is too far!” threatening, “we will not let you do that to us! You bring the shame against our whole tribe!” Witness List Tab B, X Dec. at ¶ 55. Respondents’ differing views of Islam and practices in conformity with those views are the basis for his his father, family and tribe to threaten and harm them.

**iii. Respondents Face Persecution on Account of their Membership in Particular Social Groups**

To qualify as a social group, members of the group must “share a common, immutable characteristic.” *Matter of Acosta*, 19 I&N Dec. at 233; *see also Crespin-Vallardes*, 632 F.3d at 124 (recognizing the BIA’s long-standing interpretation requires that group members share a characteristic 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.”). In addition to the immutable characteristic requirement of *Matter of Acosta*, the BIA considers two other factors: social visibility and particularity. *Matter of S-E-G-*, 24 I&N Dec. 579, 583 (BIA 2008)

(referencing *Ucelo-Gomez v. Mukasey*, 509 F.3d 70 (2d Cir. 2007), as “affirming our social visibility and particularity requirements.”).<sup>9</sup>

Social visibility does not require that an individual be *physically* identifiable as a member of the group, but rather that the group is “perceived as a group by society,” considering both country conditions and feared persecution. *Matter of A-M-E & J-G-U*, 24 I&N Dec. 69, 77 (BIA 2007) (quoting *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006)). Social distinctions as evidenced and enforced through the lack of laws protecting certain classes or groups of people, official tolerance of abuse aimed at distinct groups and distinct norms for different cohorts within society, therefore constitute evidence of a social group’s visibility within society.

Particularity is a means for determining “whether the proposed group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons.” *S-E-G-*, 24 I&N Dec. at 584. So, while the BIA envisions particularity as a means “to create a benchmark for determining group membership” (*id.*), it has never placed any sort of numerical limitation or minimum on the actual size of the group in question. *See also Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010); *Ucelo-Gomez v. Mukasey*, 509 F.3d at 73 n.3 (the BIA’s

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<sup>9</sup> For more than two decades, courts followed *Acosta*, applying the immutable and fundamental characteristics tests to particular social groups. Then, suddenly the BIA announced that visibility of members was an “important consideration” in identifying the existence of a particular social group. *C-A-*, 23 I&N Dec. at 951 (. On remand, the BIA further defined these criteria in *Matter of A-M-E & J-G-U*. 24 I&N Dec. 69, 73-74 (BIA 2007). The BIA then began treating social visibility and particularity as *requirements* for a viable social group. *S-E-G-*, 24 I&N Dec. at 583. This unexplained departure from over two decades of interpretation does not warrant *Chevron* deference under *Nat’l Cable & Telecom. Ass’n v. Brand X Internet Services*, 467 U.S. 837, 981 (1984), as implicitly recognized by the Fourth Circuit’s decision not to pass on the requirement. *See Lizama v. Holder*, 629 F.3d 440 (4th Cir. 2011); *Crespin-Valladares*, 632 F.3d at 117 (applying social visibility and particularity but declining to rule on the vXdity of these factors as requirements); *see also, Valdiviezo-Galdamez v. Att’y Gen*, 663 F.3d 582 (3rd Cir. 2011) (“Since the ‘social visibility’ requirement is inconsistent with past BIA decisions, we conclude that it is an unreasonable addition to the requirements for establishing refugee status where that status turns upon persecution on account of membership in a particular social group.”).

particularity requirement “must not mean that the group’s size can itself be a sound reason for finding a lack of particularity”). Because particularity addresses how easily the parameters of the group are identified, groups defined by “subjective,” “variable,” or “indeterminate” traits will likely not be particularized enough for asylum purposes. *Matter of A-M-E-* at 76 (finding “affluence” not particularized enough because wealth is subjective and indeterminate, rendering determination of who group membership impossible).

Here, Respondents’ social groups are defined by multiple objective, immutable and fundamental characteristics including: nationality, family, tribe, their decision not to subject X or X to Genital Mutilation in contravention of X’s father’s dictate, broader tribal commandments, and their outspoken activism to make Genital Mutilation illegal and to convince others that it contravenes Islamic law. Collectively and individually these characteristics form the basis for cognizable social groups that are both socially visible and particular as set forth below.

Framed in the broadest terms, Respondents face persecution as \_\_\_\_\_ is who violate sacred and strictly-enforced cultural, tribal and religious norms. While sufficiently visible and particular, additional immutable/fundamental characteristics specify the persecuted subset of the population to which Respondents belong and qualify as a particular social group for asylum purposes.

**1. X Faces Persecution on Account of her Membership in the Social Group of \_\_\_\_\_ Women who Married into the X Family and X Tribe, Who Have not Undergone Genital Mutilation, as Practiced by the Tribe, and Who Oppose the Practice.**

As a \_\_\_\_\_ women who married into the X family and X tribe without previously undergoing Genital Mutilation as Practiced by the Tribe, while being an opponent of the Practice, X’s claim falls squarely within BIA precedent. In *Kasinga*, the BIA found a viable

social group of “Young women of the Tchamba-Kunsuntu tribe of northern Togo who had not undergone female genital mutilation as practiced by that tribe and who opposed the practice.” 21 I&N Dec. 357 (BIA 1996);<sup>10</sup> *see also*, *Hassan v. Gonzales*, 484 F.3d 513 (8th Cir. 2007) (using nationality and gender as immutable characteristics in the social group of “Somali Females”).

Like the Respondent in *Kasinga*, X faces forced Genital Mutilation at the hands of X’s family and tribe not only because she is seen as sexually and morally “unclean” (for not having undergone the procedure as an infant or after her marriage into X’s family), but also as a means to punish her for opposition to the practice. Witness List Tab B, X Dec. at ¶ 43. *See Kasinga*, 21 I&N Dec. at 358 (opposition to FGM). Moreover, because X is perceived as culpable for X’s opposition to the practice and, more fundamentally, disobedience to the hierarchy of father, family and tribe, X’s father and tribe have vowed to mutilate X as a means to “tame her” and “make[] her a ‘proper’ wife for [the] tribe.” Witness List Tab B, X Dec. at ¶¶ 50, 60. The men in X’s family and tribe now believe that failure to punish X for her opposition to the practice and to subject her to Genital Mutilation risks destabilizing their control over the tribe. Witness List Tab C, X Dec. at ¶ 8; Witness List Tab B, X Dec. at ¶ 60. Consequently, the forced Genital Mutilation that X faces upon return is motivated by her membership in this social group of unmutliated women who oppose the practice, and is particular personalized vehicle for correcting the breach of tribal order.

This social group meets the requirements of social visibility and particularity. Social visibility of uncut women is evident in X’s family and tribe’s labeling of X (and other uncut women) as “unclean” and the discriminatory treatment aimed at such women. Witness List Tab

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<sup>10</sup> Because the BIA had not yet introduced the concepts of social visibility and particularity, neither were considered by the BIA in *Kasinga*.

B, X Dec. at ¶ 25; Witness List Tab C, X Dec. ¶ 5. \_\_\_\_\_ society and law further distinguishes women treating them as a distinct sub-class, viewed as both weaker and lesser in worth than men.<sup>11</sup> Moreover, individuals, like X, who disobey ancestral (and hence tribal) cultural norms are afforded no protection by \_\_\_\_\_ law and patriarchal society. Country Conditions Tab D, \_\_\_\_\_ Penal Code, Sub-Section 1, General Provisions, Art. 233. Given the distinct treatment of un mutilated women from X’s tribe and family and the adverse treatment of women who disobey patriarchal order in \_\_\_\_\_, it is clear that X’s social group is visible.

Particularity comes from the group’s unambiguous characteristics including: being un mutilated, belonging to a specific family and tribe, and expressing open opposition to Female Mutilation. There is no subjectivity in interpreting whether a woman has experienced Mutilation, belongs to a tribe/family, or acts in opposition to the practice when she rejects it entirely and campaigns against it. Because determining whether or not a person possess one of these attributes does not rely on subjective value judgments, they form the particular benchmarks such that the group can be readily defined. *Cf., X v. Holder*, 611 F.3d 90, 95 (1st Cir. 2010) (rejecting the social group of “secularized and westernized Pakistanis perceived to be affiliated with the United States” because “[a]djectives like ‘secularized’ and ‘westernized’ reflect matters of degree and . . . call for subjective value judgments.”).

## **2. Respondents Face Persecution on Account of their Membership in Social Groups Defined in Varying Degrees of Specificity with the Characteristics of Faith, Nationality, Tribe,**

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<sup>11</sup> See Country Conditions Tab C, Freedom House Report at pp. 3-4 (Article 31 of civil law, states that “women are the sisters of men” and “[a]ccording to \_\_\_\_\_’s application of Shari’a, an adult woman is not recognized as a full person before the court. Article 45 of the Evidence Law (No. 21 of 1992) posits that a woman’s testimony is not accepted in cases of adultery and retribution, or in cases where corporal punishment is a possible penalty. Also under Article 45, a woman’s testimony is given half the weight of a man’s in financial cases. A woman’s testimony is accepted in instances where only women are involved, or when the act in question occurred in their segregated places (Article 30).”)

**Family, Gender, Parenthood, and Opposition to Female Mutilation.**

In the broadest terms, Respondents will be subjected to persecution on account of their membership in the social group of \_\_\_\_\_ is of the X tribe and X Family who violate social norms by refusing to abide by tribal edicts and authority over issues at the intersection of gender and faith.

Nationality,<sup>12</sup> tribe,<sup>13</sup> and family<sup>14</sup> are all immutable because they are innate and an individual does not have the power to alter them. *See* Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 12 (tribal membership defines the individual, is used by society as a “marker of identity” and “can never be shed.”); Witness List Tab B, X Dec. at ¶ 11 (“A tribe is who someone *is*, it is part of their very self and we can never shed it.”).

Opposition to gender-specific social norms, such as Genital Mutilation, forms a fundamental characteristic because abandonment of one’s values and moral convictions should not be a prerequisite for safety. As the Third Circuit articulates:

[F]or if a woman’s opposition to the Iranian laws in question is so profound that she would choose to suffer the severe consequences of noncompliance, her beliefs may well be characterized as so fundamental to [her] identity or conscience that [they] ought not be required to be changed.

*Fatin v. INS*, 12 F.3d 1233, 1241 (3d Cir. 1993), *quoting Acosta*, 19 I&N Dec. at 234 (BIA 1985)).<sup>15</sup> Although the *Fatin* Court ultimately rejected the petitioner’s claim, it did so because

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<sup>12</sup> *See, Matter of V-T-S-*, 21 I&N Dec. 792 (BIA 1997) (nationXty immutable in social group of Filipinos of mixed Filipino-Chinese ancestry).

<sup>13</sup> *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”).

<sup>14</sup> 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.

<sup>15</sup> *See also, Safaie*, 25 F.3d at 640 (asserting a social group “defined as those Iranian women who advocate women’s rights or who oppose Iranian customs relating to dress and behavior.”); *Al-Ghorbani v. Holder*, 585 F.3d 980, 995 (6th Cir. 2009) (recognized “young, westernized people who have defied traditional, Islamic values by marrying without paternal permission” as a characteristic on which a social group may be based); *Sarhan v Holder*, 658 F.3d 649, 654 (7th Cir. 2011) (accepting social group of “Jordanian women who, in accordance with social and

while the petitioner had taken “some affirmative steps to articulate her opposition,” to gender-specific laws, she had followed norms related to her dress and only claimed that upon return, she would “try to avoid practicing religion as much as she could.” *Fatin*, 12 F.3d at 1237 (emphasis added). Conversely, X not only refused to submit herself and her daughter to Genital Mutilation at great social and psychic cost, but dedicated her professional career to ending the practice.

Witness List Tab C, X Dec. at ¶ 17. As a direct result of her open opposition to the practice of Genital Mutilation, X’s family and tribe have vowed to punish X through honor crimes, like throwing acid in her face, and forcefully subjecting her to the practice of Genital Mutilation. Evidence Tab H, Facebook Threat; Witness List Tab B, X Dec. at ¶¶ 37, 50, 60 (viewing X as the source of X’s disobedience, his father and tribe want to tame her and “make[] her a ‘proper’ wife for [the] tribe.”). Likewise, X has made his opposition to Genital Mutilation known to his family, tribe and even those outside of it, through his steadfast refusal to subject his wife and daughter to the practice, his professional activism against it, and discussions with his father and other male family elders.

Every threat the couple has received thus far references either their failure to perform Genital Mutilation or the shame that their open opposition to the practice has brought upon his father, the family and his tribe. Witness List Tab B, X Dec. at ¶ 36, 41, 43, 46, 51, 52, 55, 59, 64 (reflecting X’s cousin X’s threat: “I will kill you if you don’t do this!” in reference to Genital Mutilation), 69, 70, 71, 72 (reflecting X’s father’s threat: “I will kill you; I will have you beaten. I will let your cousins kill you and do whatever they want unless you follow the rules.”); Witness List Tab C, X Dec. at ¶¶ 25, 32, 35; Evidence Tab G, Warning Email from X’s Sisters; Evidence

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religious norms in Jordan, are accused of being immoral criminals and, as a consequence, face the prospect of being killed without any protection from the Jordanian government”).

Tab I, Facsimile from X X substantiating threats (Sept. 20, 2013); Evidence Tab Z, Email from X corroborating X’s father’s threats (Sept. 20, 2013).

To understand the level of social visibility of group members who oppose social norms one need look no further than \_\_\_\_\_ law, which sanctions honor crimes *against family and tribal members*, as evidence of social disparity. Country Conditions Tab D, \_\_\_\_\_ Penal Code, Sub-Section 1, General Provisions, Art. 233]. Moreover, because “[m]embers of \_\_\_\_\_ society can easily identify an individual’s tribal and familial membership and rely on those affiliations as that individual’s marker of identity” respondents’ family and tribe render them socially visible. Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 12; *see also, Crespin-Vallardes*, 632 F.3d at 125-26 (finding the “BIA itself has previously stated that ‘[s]ocial groups based on innate characteristics such as...family relationship are generally and easily recognizable and understood by others to constitute social groups’”).

Further, group membership is “adequate[ly] benchmark[ed]” by the X tribe, X family, and Respondents’ active opposition to Genital Mutilation. *See, In re A-M-E- & J-G-U*, 24 I & N Dec 69, 74 (BIA 2007). Alterations of this broader group that include a specific familial role (*i.e.*, Fathers or Mothers of un mutilated daughters or husbands of un mutilated wives) further particularize the group at hand by providing additional benchmarks for membership.<sup>16</sup> For example, while it is clear, that X is a member of the X family, he is even more readily identified

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<sup>16</sup> In so much as this Honorable Court is concerned by adverse precedent in “parent protector” cases, it is essential to note that Respondents *also* fear a threat to *their own* lives and freedom. *Cf. Niang v. Gonzales*, 492, F.3d 505 (4th Cir. 2007) (finding psychological harm to a parent of un mutilated daughter insufficient as persecution); *In re A-K-*, 24 I&N Dec. 275 (BIA 2007) (reversing grant of withholding where father did not establish threats to his own life or freedom). Further, based on the young age of Respondents’ U.S. citizen daughter, it is likely that she would *have to* return to \_\_\_\_\_ with her parents. *See, Nwaokolo v. Ashcroft*, 314 F.3d 303 (7th Cir. 2002) (granting stay of removal to mother of young USC citizen daughters facing Genital Mutilation upon return). Moreover, because both Respondents face deportation, it would result in “constructive deportation” of their children. *See, Kone v. Holder*, 620 F.3d 760 (7th Cir. 2010).

as the father and husband of the family’s un mutilated women.<sup>17</sup> Consequently, the social groups articulated by respondents are defined by immutable and fundamental characteristics and meet the social visibility and particularity requirements for asylum, including:

- 1) Parents Who Refuse to Perform Genital Mutilation on a daughter as Mandated by Family and/or Tribe;
- 2) \_\_\_\_\_ Husbands of Wives Who Have not been Subjected to Genital Mutilation and Who Are Outspoken Opponents of the Practice;
- 3) \_\_\_\_\_ Fathers of Daughters Who Have not been Subjected to Genital Mutilation and Who Are Outspoken Opponents of the Practice;
- 4) \_\_\_\_\_ Mothers of Daughters Who Have not Been Subjected to Genital Mutilation and Who Are Outspoken Opponents of the Practice; and
- 5) \_\_\_\_\_ Men of the X Family Whose Wives and Daughters have not been Subjected to Genital Mutilation, and Who Are Outspoken Opponents of the Practice.

**c. As Victims of Past Past Persecution Respondents are Entitled to a Presumption of a Well-Founded Fear of Future Persecution.**

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<sup>17</sup> In *Gatimi v. Holder*, the Seventh Circuit considered a Kenyan man’s claim for asylum based upon a claim of persecution from kidnapping and torture after defecting from a religious/political group known as the Mungiki and refusing to subject his wife to Genital Mutilation as practiced by the Mungiki. 578 F.3d 611 (7th Cir. 2009). The *Gatimi* Court found a cognizable social group, noting that Mungiki defectors “constitute a group with as much coherence as children of the bourgeoisie . . . had in the Soviet Union: breakaway factions that were relentlessly persecuted.” 578 F.3d 616. Unfortunately, unlike petitioner in *Gatimi*, X cannot defect from his tribe as his membership is immutable. Witness List Tab B, X Dec. at ¶ 1; Witness List Tab J, \_\_\_ Expert Report at ¶ 12. Nonetheless, X’s actions—refusal of the marriage arranged by his father, rejection of Genital Mutilation upon his wife and daughter, and open opposition to the tribal practice of Genital Mutilation—result in a constructive form of “defection” from the tribe as the Respondent in *Gatimi*. X’s father’s statements that X “is not my son” (X Dec. at ¶ 41) and vows to persecute him reflect his breakaway from the tribe.

While it is undeniable that Respondents' darkest days in \_\_\_\_\_ lay before them, they have also been the victim of past persecution. Although an applicant for asylum need not demonstrate both past and future persecution, and a court may grant asylum solely on the basis of future persecution, it bears noting that Respondents' have been persecuted in the form of threats to their life and in X's case, threat of forced Genital Mutilation. While persecution must be more than mere harassment, it can be based on the accumulation of discriminatory actions. *Li v. Gonzales*, 405 F.3d 171 (4th Cir. 2005); *Matter of O-Z- and I-Z-*, 22 I&N Dec. 23 (BIA 1998); *see also Baharon v. Holder*, 588 F.3d 228 (4th Cir. 2010). Respondent's claims of past persecution should therefore be viewed in the aggregate.

After refusing to submit his wife to Genital Mutilation, X's father slapped him across the face and shouted, "I will kill you if you humiliate me and make the family laugh at me!" Witness List Tab B, X Dec. at ¶ 45. In *Crespin-Vallardes*, the Fourth Circuit overturned the BIA's determination that mere threats and harassment only showed a generalized fear of harm and noted that such an interpretation would have "contravene[d] our express holding that the 'threat of death' qualifies as persecution." 632 F.3d at 126 (citing *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005)) (addressing an applicant who had witnessed MS-13 gang members fleeing the scene after murdering his cousin, and was threatened by other MS-13 members with death if he continued cooperating with the police/prosecutors in his cousin's murder case). Furthermore the Court noted that "the parallel threats directed at Crespin's aunt and uncle strengthened the objective reasonableness of his fear." *Id.* (citing *Baharon*, 588 F.3d at 232). Approximately two months after Respondents' wedding, X's father started threatening to send someone to "clean" his wife by having Genital Mutilation forcefully performed upon her. Witness List Tab B, X Dec. at ¶ 43. If a credible threat of death constitutes persecution under Fourth Circuit law, then

Genital Mutilation, in the severe form that X’s family practices it—potentially resulting in death and a lifetime of suffering—should also constitute persecution. Tab A, WHO FGM Sheet 2012 (copy attached) (“Immediate complications can include severe pain, shock, hemorrhage (bleeding), tetanus or sepsis (bacterial infection), urine retention, open sores in the genital region” and “[l]ong-term consequences can include: recurrent bladder and urinary tract, infections; cysts; infertility; an increased risk of childbirth complications and newborn deaths; [and] the need for later surgeries.”)

Where an asylum applicant has established past persecution on account of a statutorily protected ground, as Respondents have, they are presumed to have a well-founded fear of future persecution. 8 C.F.R. § 208.13(b)(1). To rebut this presumption, the Government must prove, by a preponderance of the evidence, that: (1) conditions in \_\_\_\_\_ have changed to the extent that Respondents no longer have a well-founded fear of future harm if they were to return; or (2) Respondents could avoid future persecution by relocating to another part of \_\_\_\_\_ and, under the circumstances, it would be reasonable to do so. 8 C.F.R. § 208.13(b)(1)(i). The Government cannot meet this burden. Conditions in \_\_\_\_\_ have not changed since Respondents’ left in September 2010, and requiring Respondents to relocate to another part of the country would be ineffective and unreasonable because X’s family and tribe would likely find them and harm them again in order to restore family/tribal honor and to punish Respondents’ for having contravened patriarchal and tribal orders.

**i. Conditions in \_\_\_\_\_ have not improved**

The country conditions in \_\_\_\_\_ that enabled Respondents’ family to persecute him and his wife prior to their departure in September 2010 still persist. If anything, the \_\_\_\_\_ civil government has become even less stable and capable of controlling tribal factions since their violent coup of 2012. Country Conditions Tab A, 2011 State Dept Report at p. 1-2 (“The

political environment is unstable due to a transition of power” as “[n]ongovernmental actors engaged in internal armed conflict with government forces and proxies and committed abuses related to traditional tribal conflicts”). The civil government was so “fragile” that the President was forced to flee the country and resign. Witness List Tab J, \_\_\_\_\_ Expert Report at ¶ 20. *See infra* at part (A)(v).

**ii. Relocating in \_\_\_\_\_ Would be Ineffective**

As described above in part (A)(iii), Respondents’ family can find them anywhere within \_\_\_\_\_ and, given the central governments weak control, Respondents cannot turn to the \_\_\_\_\_ government or others within society to protection them. *See infra* at part (A)(iv)(v).

**iii. Requiring Respondent to Relocate in \_\_\_\_\_ Would be Unreasonable**

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). Given the far reach of Respondents’ tribe, his father’s wealth and resources, and family ties in numerous cities, Respondents’ 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). Similarly, internal relocation would be unreasonable and unavailing for Respondents.

**d. Asylum merited in Exercise of Discretion**

Asylum is merited in the exercise of discretion as there are no adverse factors present to counter the favorable and humanitarian factor of the young age of respondents’ U.S. citizen children who will be constructively deported. *Matter of Pula*, 19 I&N Dec. 467 (BIA 1987). Further Respondents are not barred from seeking asylum by any exceptions to asylum listed in

INA § 208 (b)(1), including: (1) participation in persecution; (2) conviction of a serious crime; (3) commission of a serious nonpolitical crime outside of the United States; (4) support of terrorist activity; and (5) attainment of firm resettlement in a third country before arriving in the United States. 8 C.F.R. § 208.13 (c).

**e. Respondents Qualify for Withholding of Removal**

Alternatively, Respondents are eligible for withholding of removal under INA § 241(b)(3), because the facts outlined above show a clear probability that their “life or freedom would be threatened in [\_\_\_\_\_] on account of [their], membership in a particular social group, [religion] [and/]or political opinion.” *See INS v. Stevic*, 467 U.S. 407, 429-30 (1984).

**f. Respondents Qualify for CAT Relief**

An applicant is entitled to withholding of removal under the Convention Against Torture (“CAT”) if he or she demonstrates that it is “more likely than not” that he or she would be tortured if removed to the proposed country of removal. 8 C.F.R. § 1208.16(c)(2). Under CAT, “torture” is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person . . . with the consent or acquiescence of a public official or other person acting in an official capacity.” 8 C.F.R. § 1208.18(a)(1). The motivation for the infliction of torture is irrelevant. *Lizama v. Holder*, 629 F.3d 440, 449 (4th Cir. 2011). However, the BIA has held that in order to constitute torture, there must be “specific intent” to inflict pain or suffering. *Matter of J-E-*, 23 I&N Dec. 291 (BIA 2002) (indefinite detention of criminal deportees by Haitian authorities in prisons with substandard conditions does not constitute torture because there is no intention to inflict pain or suffering).

In the present case, X fears beatings and death in light of the constant death threats from members of his family and tribe. Witness List Tab B, X Dec. at ¶ 45; Witness List Tab H, Psych

Eval of X by Dr. M, at p. 7-8. There is no indication that these threats will cease if he were to return and, if anything, his presence in \_\_\_\_\_ will only enflame his relatives by making his defiance of his father, his family, and his tribe that much more inescapable. Witness List Tab B, X Dec. at ¶ 72 (X’s father’s threat, “I will kill you; I will have you beaten. I will let your cousins kill you and do whatever they want unless you follow the rules.”) Even if, despite all evidence to the contrary, X’s family miraculously chose not to actually kill him, constant threats of death constitute the type of “acute mental anguish” that courts have found to rise to the level of torture. *Comollari v. Ashcroft*, 378 F.3d 694, 697 (7th Cir. 2004) (finding that “[e]ven if death itself is painless, . . . the anticipation of it can be a source of acute mental anguish; if the threat of imminent albeit painless death were deliberately employed to cause such anguish, it would be a form of torture.”); *see also Habemicael v. Ashcroft*, 370 F.3d 774, 782 (8th Cir. 2004) *vacated on other grounds and remanded* (torture includes “prolonged mental pain or suffering [that] either is purposefully inflicted or is the foreseeable consequence of a deliberate act”).

X fears torture in the form of forced Genital Mutilation and acid burning at the hands of X’s relatives and tribal members. Witness List Tab C, X Dec. at ¶¶ 9, 37; *see also*, Evidence Tab H, Facebook Threat (“[I] promise when I will see her next time I will flash her face with Acid for all the pain she cause us and dividing the family parts.”); *Tunis v. Gonzales*, 447 F.3d 547, 550 (7th Cir. 2006) (reaffirming determination that Genital Mutilation constitutes torture)<sup>18</sup>; *Kone v. Holder*, 620 F.3d 760, 765-66 (7th Cir. 2010) (where a child may be subject to Genital Mutilation a parent may suffer direct psychological harm cognizable under CAT); *Al-Safer v.*

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<sup>18</sup> X’s fear of Genital Mutilation are distinguishable from those of the respondent in *Haoua* because the \_\_\_\_\_ i government remains unwilling to stop the practice, whereas in *Haoua* the government of Niger was willing to stop Genital Mutilation, but unable to do so. *See*, Country Conditions Tab I (“Nearly a decade after a ban on health workers performing female genital mutilation/cutting (FGM/C) in \_\_\_\_\_, the harmful practice continues unabated, with the government saying more research is needed before an outright ban can be imposed.”); *see also*, *Haoua v. Gonzales*, 472 F.3d 227, 233 (4th Cir. 2007).

*INS*, No. 99-71308, 2001 U.S. App. LEXIS 30140 (9th Cir. Oct. 23, 2001) (finding, among other things, the use of acid dripped upon the skin to constitute torture under CAT). The “willful blindness” of the \_\_\_\_\_ government to all of the aforementioned honor crimes—beatings, threats of death, Genital Mutilation, acid throwing— constitutes the necessary “acquiescence” under CAT. Country Conditions Tab D, \_\_\_\_\_ Penal Code (decriminalizing murder if carried out by ancestors to restore honor); Country Conditions Tab C (“According to police officers cited in a study on such ‘honor crimes’ in \_\_\_\_\_, women who turn to the police for help are typically brought back to their male relatives.”); *see also X v. Reno*, 237 F.3d 591, 598 (6th Cir. 2001) (opining that the “Convention appears to compel protection for a victim” in “a situation in which the authorities ignore or consent to severe domestic violence”). Consequently, Respondents qualify for relief under the Convention Against Torture.

#### **IV. Conclusion**

For the above reasons, Respondents case warrants asylum, withholding of removal or relief pursuant to the Convention Against Torture.

Dated: September 25, 2013

Respectfully submitted,

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