

[REDACTED]

NOT DETAINED

Attorney

[REDACTED]

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

IN THE MATTER OF:

[REDACTED]

In removal proceedings

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File No. [REDACTED]
INDIVIDUAL HEARING:

[REDACTED]

[REDACTED]

**RESPONDENT'S PRE-HEARING BRIEF AND EXHIBITS A-GG IN SUPPORT OF HER
APPLICATION FOR ASYLUM AND WITHHOLDING OF REMOVAL UNDER
SECTION 241(b)(3) OF THE IMMIGRATION AND NATIONALITY ACT OR THE
CONVENTION AGAINST TORTURE**

[REDACTED]

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

In the Matter of:

[REDACTED]

File No. [REDACTED]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ___th day of [REDACTED], I caused to be served a true copy of Respondent's Witness List and Respondent's Pre-Hearing Brief and its supplemental materials:

_____ in a sealed envelope, with postage thereon fully prepaid and causing the same to be mailed by first class mail to the person at the address set forth below.

_____ personally delivered to the person at the address set forth below.

 X by FedEx to the person at the address set forth below.

_____ by certified mail-return receipt requested to the person at the address set forth below.

_____ by regular mail to the person at the address set forth below.

Ms. [REDACTED]
Office of the Chief Counsel
Department of Homeland Security

[REDACTED]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on [REDACTED]

[REDACTED]

RESPONDENT'S PRE-HEARING BRIEF

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I. PRELIMINARY STATEMENT

[REDACTED] ("Ms. [REDACTED]), applicant for political asylum, withholding of removal, and withholding of removal under the Convention Against Torture, by her attorney, hereby presents the following Pre-hearing Brief in support of her application. In addition to this Brief, Ms. [REDACTED] relies upon her application for asylum, including declaration and supporting exhibits, filed [REDACTED], pursuant to §208 of the Immigration and Nationality Act with the United States Citizenship and Immigration Services. She also relies upon her supplemental declaration and supporting exhibits filed with this Brief. The aforementioned documents are hereby incorporated by reference into this Brief.

Ms. [REDACTED] has a well-founded fear of persecution in her native [REDACTED] ([REDACTED]) on account of her political opinion and race. As explained in the supporting documentation, Ms. [REDACTED] is a [REDACTED] female native of [REDACTED]. Ms. [REDACTED] has a history of political activism and involvement in the [REDACTED]. Ms. [REDACTED] was imprisoned twice, beaten, and gang raped by soldiers because of her [REDACTED] activities. Additionally, Ms. [REDACTED] family members were threatened, abused, and imprisoned because of their involvement with the [REDACTED]. In [REDACTED] her home was searched for [REDACTED] campaign materials, as was the store that she and her husband owned. While searching her home, the police threatened Ms. [REDACTED]'s family, saying that her family would regret what the police would do if they found [REDACTED] goods.

Ms. [REDACTED] and her family have also suffered persecution as a result of their race. Ms. [REDACTED] was born into the [REDACTED] tribe in the Pool region of [REDACTED]. When she was 18 years old, the [REDACTED] region was subjected to "ethnic cleansing" by the government. The military attempted to evacuate the entire [REDACTED] region, believing that the tribes there would support [REDACTED] a political opponent of then-president [REDACTED] who drew

support from the [REDACTED] region. The military murdered Ms. [REDACTED]'s parents, raped her sisters, and shot Ms. [REDACTED] in the hip—a wound that required Ms. [REDACTED] to be hospitalized for three months and continues to give her physical pain, even today.

The conditions resulting in Ms. [REDACTED]'s persecution in [REDACTED] have not changed since she fled the country on [REDACTED] and it is clear that Ms. [REDACTED] cannot be safe anywhere within [REDACTED]. Ms. [REDACTED] fears that if she returns, she will be arrested, beaten, raped, and possibly killed by the [REDACTED] ([REDACTED]) and the police because of her involvement in the [REDACTED]. Ms. [REDACTED]'s fear of persecution is heightened by her belief that both her sister and brother-in-law were killed for their involvement with the party after Ms. [REDACTED] fled.

Part II of this brief demonstrates the factual background of Ms. [REDACTED]'s past persecution because of her political opinion (as a member of the [REDACTED] [REDACTED] and race (as a member of the [REDACTED] Group in the [REDACTED] tribe) in [REDACTED].

Part III demonstrates Ms. [REDACTED]'s eligibility for asylum under the Immigration and Naturalization Act (the "INA"), 8 U.S.C. § 1158, and the compelling reasons why this Court should grant her request. These reasons include: (i) actions taken by [REDACTED] officials and police to persecute and abuse Ms. [REDACTED] on account of her political opinion and race; and (ii) her well-founded fear of persecution should she return to [REDACTED].

Part IV demonstrates that, regardless of Ms. [REDACTED]'s well-founded fear of future persecution, the severity of her past persecution qualifies her for a grant of humanitarian asylum under § 1208.13(b)(1)(iii).

Part V demonstrates that the severity of Ms. [REDACTED]'s past persecution also makes her eligible for a grant of humanitarian asylum under the Convention Against Torture.

Finally, Part VI demonstrates that discretionary factors strongly favor granting asylum to Ms. [REDACTED]

II. FACTUAL BACKGROUND

Ms. [REDACTED]'s declaration provides a detailed explanation of her personal background, political involvement over the years, and the persecution she suffered. *See* Ex. F. Ms. [REDACTED]'s asylum claim is further supported by the attached documentation (Ex. G-EE), including an initial and supplemental psychiatric evaluation by Dr. [REDACTED] (Ex. H-I), an analysis of Ms. [REDACTED]'s mental condition provided by her therapist Dr. [REDACTED] (Ex. J), an initial and supplemental forensic analysis provided by Dr. [REDACTED] (Ex. K-L), an initial and updated report of a country conditions expert, Dr. [REDACTED] (Ex. R-S), and additional country conditions information in the form of reports and news articles (Ex. T-EE). The country conditions documents corroborate Ms. [REDACTED]'s declaration and her well-founded fear of persecution on account of both her race and her political opinions against the government in [REDACTED].

A. Ms. [REDACTED]'s Experience as a Member of the [REDACTED] Group in the [REDACTED] Region of [REDACTED]

Ms. [REDACTED] first suffered harm from the government when, in [REDACTED], a group of [REDACTED] (the militia of then-president [REDACTED]) attacked Ms. [REDACTED]'s family in their home as part of an ethnic cleansing ordered by [REDACTED] Ex. F ¶ 6. Ms. [REDACTED] and her family are members of the [REDACTED] ethnic group, who traditionally live in the [REDACTED] region of [REDACTED]. As described in Ms. [REDACTED]'s Declaration, the [REDACTED] region, inhabited by the [REDACTED] and [REDACTED] tribes, has undergone "ethnic cleansing" twice in Ms. [REDACTED]'s lifetime. *Id.* ¶ 5-6. One of these ethnic cleansings occurred in [REDACTED] resulting in the attack on Ms. [REDACTED] and her family. While Ms. [REDACTED] was in the bedroom with her siblings, a group

of [REDACTED] (military troops under the direction of [REDACTED] broke into their home, began interrogating Ms. [REDACTED]'s parents, and shot and killed her father. *Id.* ¶ 7. When Ms. [REDACTED] ran out of the bedroom, she witnessed one of the [REDACTED] shoot and kill her mother. *Id.* A [REDACTED] shot Ms. [REDACTED] in the leg. *Id.* Ms. [REDACTED] still has a scar from the bullet, as documented by the medical report of Dr. [REDACTED]. See Exs. K-L. While lying injured on the floor, Ms. [REDACTED] witnessed the [REDACTED] rape her sisters. Ex. F ¶ 7.

Ms. [REDACTED]'s account of the ethnic cleansing is supported by the attached Updated Country Conditions Report ("Updated Report" prepared by [REDACTED]. See generally Ex. S. As Mr. [REDACTED] Updated Report explains in greater detail, throughout [REDACTED] and [REDACTED] [REDACTED] used the remains of his [REDACTED] militia to subjugate the southern regions of [REDACTED] emptying entire neighborhoods house by house, killing men, and raping women on account of their [REDACTED] ethnicity. See Ex. S ¶ 19.

B. Ms. [REDACTED] Experience as a Member of the [REDACTED]

Ms. [REDACTED] joined the [REDACTED] in [REDACTED] to be part of the movement to remove [REDACTED]'s regime, a desire in large part due to her parents' murder at his hands in [REDACTED]. See Ex. F ¶ 19. She was also drawn to the [REDACTED] because the party was trying to bring democracy to [REDACTED] and wanted the tribes to work together to alleviate poverty. See *id.* ¶¶ 19-21.

Ms. [REDACTED] began to experience harm from government officials because of her political views in [REDACTED]. *Id.* ¶ 24. On approximately [REDACTED], [REDACTED] police came to Ms. [REDACTED]'s home in [REDACTED]. Ms. [REDACTED]'s husband was away on business, and Ms. [REDACTED] was home with their children. The men informed her that they were the police, and accused her of having [REDACTED] election materials in her house. Ms. [REDACTED] replied that there were no materials in her home. The police informed Ms. [REDACTED] that they were going to search her house and that she

would be sorry if they found anything. When they found nothing, they placed Ms. [REDACTED] under arrest. When Ms. [REDACTED]'s son and nephew tried to prevent the police from handcuffing Ms. [REDACTED], the police struck the children. The police also grabbed and groped her daughters. Ms. [REDACTED] was then taken to the police station and held in a cell overnight. *Id.* ¶ 24-25. Ms. [REDACTED] was forced to sleep on the bare floor and was refused food and water. While she was imprisoned, the police told her that what she and her husband [REDACTED] were doing "was bad for the government" and that "it would be bad for [REDACTED] to continue supporting the [REDACTED]". *Id.* ¶ 25. The police continued to give her open-ended threats, saying that what she and her husband were doing was bad for the government and that the police chief would decide what should be done with them, and that she would "pay the consequences" for supporting the [REDACTED]. *Id.*

Following that incident, the government's actions continued to intensify between [REDACTED]. Ms. [REDACTED] and her husband owned a store together called [REDACTED]. *Id.* ¶ 26. Over the course of a month from [REDACTED] to [REDACTED] the police made approximately six visits to the store. The police would enter the store and accused Ms. [REDACTED] and the other employees of hiding [REDACTED] materials. Under the pretense of looking for materials, they would steal various items from the store. Despite their failure to find [REDACTED] materials, the police repeatedly returned to the store, intimidating Ms. [REDACTED] and stealing various items under the pretense of searching for [REDACTED] materials, and telling Ms. [REDACTED] she would be sorry if they found anything. *Id.* ¶¶ 26-27.

Ms. [REDACTED]'s situation further deteriorated when she was brutally raped by multiple soldiers under the command of the president of [REDACTED]. On [REDACTED] during the presidential election, Ms. [REDACTED] and other [REDACTED] members were campaigning in [REDACTED] where the election was taking place. *Id.* ¶ 28. Ms. [REDACTED] and four

other female members of the [REDACTED] were wearing t-shirts featuring the face of the [REDACTED] party's president, [REDACTED]. *Id.* As the women handed out [REDACTED] campaign materials, they were accosted by soldiers, who told them they were supporting the wrong candidate. *Id.* ¶ 29. When Ms. [REDACTED] replied that she could support whichever candidate she wanted, the soldiers arrested her, along with the other four [REDACTED] supporters. The soldiers took the women to a military camp and put them all in a room. *Id.* ¶ 30. Over the course of the night they were imprisoned, the women were systemically raped by the soldiers that arrested her and others at the military camp. *Id.* When Ms. [REDACTED] struggled against her multiple rapists, she was assaulted with the handle of a gun, wounding her head and leaving a scar. *See* Exs. K-L (confirming that the scar on Ms. [REDACTED]'s forehead is consistent with a forceful blow such as the butt of a gun). In total, Ms. [REDACTED] was raped by six different soldiers.

Shortly after Ms. [REDACTED]'s arrest and rape, her husband [REDACTED] was arrested and imprisoned. *See* Ex. F ¶ 32. Two days later, police vandalized Ms. [REDACTED]'s store and arrested the manager when they mistook her for Ms. [REDACTED]. *Id.* ¶ 34. Following these incidents, a family friend urged Ms. [REDACTED] and her family to flee the country, which they did. *Id.* ¶ 35. Ms. [REDACTED] has been living in the United States with her children ever since. Ms. [REDACTED] fears that she will never be safe in [REDACTED] because of her support of the [REDACTED].

III. MS. [REDACTED]'S REQUEST FOR ASYLUM SHOULD BE GRANTED

Ms. [REDACTED] has timely filed for asylum. Ms. [REDACTED]'s original application was filed within one year of her arrival in the United States, making her subsequent applications timely. This timely request for asylum should be granted, as Ms. [REDACTED] meets all of the required elements of an asylum claim. Ms. [REDACTED] is a "refugee" under INA §101(a)(42)(A), 8 U.S.C. §1101(a)(42)(A), and she qualifies for asylum. She is presently in the United States; she is unable and unwilling to return to her country because she fears for her life and safety; and she is

unable to seek the protection of the government of [REDACTED] She has suffered past persecution on account of her race and political opinion and has a well-founded fear of future persecution on the same grounds.

A. Ms. [REDACTED] Timely Filed for Asylum, Making Her Subsequent Applications Timely. In the Alternative, Ms. [REDACTED]'s Late Filing Should be Excused Due to the Extraordinary Circumstances of Re-filing a Rejected Application That Was Timely Filed Within a Reasonable Time and Post-Traumatic Stress Disorder Which Hindered Her Ability to Pursue Her Claim

1. Ms. [REDACTED]'s Initial Application Was Timely Filed on [REDACTED] and the Subsequent Applications Were Filed Within a Reasonable Time After the Prior Applications' Rejection

Ms. [REDACTED] arrived in the United States on [REDACTED] and mailed her initial I-589 application for asylum on [REDACTED]. See Ex. M. She filed this application on her own and without the help of counsel. Her application was received at U.S. Citizenship and Immigration Services on [REDACTED]. This application was returned to Ms. [REDACTED] on [REDACTED] because she failed to complete each question and failed to include passport-style photos for her children. See Ex. N. Ms. [REDACTED]'s initial application was timely filed within the one-year deadline on [REDACTED]. She filed a second application on [REDACTED], also pro se, but this application was returned on [REDACTED] because she failed to include an additional photocopy of the application for each of her children and did not fill in every box on the supplement page to the I-589. See Exs. O-P. Her current application was filed on [REDACTED] with the assistance of legal counsel and was ultimately received. See Ex. Q. The current application was filed within six months of USCIS's return of her second application. These subsequent applications were filed within a reasonable time after she was alerted that the prior applications were not sufficient.

Filing an initial application, which is later rejected, within the one-year deadline, and then refiling within a reasonable time thereafter is both an exception to the one-year bar requirement

in the Immigration and Nationality Act, and an enumerated part of the extraordinary circumstances exception in the regulations set forth by the Department of Homeland Security. 8 C.F.R. § 208.4(a)(5)(v) (“the applicant filed an asylum application prior to the expiration of the 1-year deadline, but that application was rejected by the service as not properly filed, was returned to the applicant for corrections, and was refiled within a reasonable period thereafter”). Ms. [REDACTED] arrived in the United States on [REDACTED], and she filed her application for asylum on [REDACTED]. An application for asylum must be filed within one year of the asylum seeker’s arrival in the United States except when extraordinary or changed circumstances exist. 8 U.S.C. § 1158(a)(2)(B); 8 C.F.R. § 208.4(a)(2). The immigration regulations related to the one-year filing deadline state, “when the last day of the period so computed falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday.” 8 C.F.R. § 208.4(a)(2). [REDACTED] was one year from the date of Ms. [REDACTED]’s arrival in the United States, but it was a Saturday. Ms. [REDACTED] application was timely submitted to USCIS on the fifth because it was the first day following her one-year anniversary of arrival in the United States that was not a Sunday, Saturday, or legal holiday.

2. Ms. [REDACTED]’s Subsequent Applications Were Filed Within a Reasonable Time After the Initial Application Was Rejected

Ms. [REDACTED] filed her subsequent application pro se on [REDACTED] which was a reasonable time after her application was rejected. *See* Ex. O. Though the Department of Homeland Security does not clarify what a reasonable time would be in this circumstance, in a related extraordinary circumstances exception, the Department of Justice noted in determining reasonable time after an occurrence that “waiting six months or longer after expiration or termination of status would not be considered reasonable,” but that “shorter periods of time

would be considered on a case-by-case basis, with the decision-maker taking into account the totality of the circumstances.” See Asylum Procedures, 65 Fed. Reg. 76,121-01 (Dec. 6, 2000).

No matter how the time periods are applied, Ms. [REDACTED] is entitled to a presumption that she filed her asylum application within a reasonable period of time. Ms. [REDACTED] second application was received on [REDACTED] (see Ex. O) and rejected on [REDACTED]. See Ex. P. She filed that application within two months of her prior application being rejected. Her current application was filed on [REDACTED] (see Ex. Q); this filing took place within six months of her prior application being rejected. Ms. [REDACTED] after her prior struggles in applying for asylum pro se, found a social services agency that identified pro bono legal counsel to help her complete the application and assisted her in overcoming the language barrier. With the help of legal counsel she completed her application, received therapy and counseling to cope with the intense trauma she experienced, and applied for asylum.

3. In the Alternative, Ms. [REDACTED] Qualifies for the Extraordinary Circumstances Exception to the One-Year Bar Because of Her Untreated PTSD and Major Depressive Disorder Related to the Trauma She Suffered Caused the Delay in Filing

In the event that this Court finds that Ms. [REDACTED] filed her asylum application outside of the one-year filing deadline, Ms. [REDACTED] qualifies for the extraordinary circumstances exception to the one-year bar because she suffered from untreated PTSD and Major Depressive Disorder during the one-year period, causing her to be delayed in filing the application. Generally, an application for asylum may not be considered if not filed within one year of when the applicant first entered the United States. U.S.C. § 1158(a)(2)(B). However, “an application for asylum of an alien may be considered . . . if the alien demonstrates . . . extraordinary circumstances relating to the delay in filing an application within the [one year] period.” 8 U.S.C. § 1158(a)(2)(D). An extraordinary circumstance as codified in the regulations includes a “serious illness or mental or

physical disability, including any effects of persecution or violent harm suffered in the past, during the 1-year period after arrival.” 8 C.F.R. § 208.4(a)(5)(i). See *Goromou v. Holder*, 721 F.3d 569, 576-77 (8th Cir. 2013); *Munoz v. Holder*, 407 F. App’x 185, 186 (9th Cir. 2010). This exception includes post-traumatic stress disorder (“PTSD”) as a reason that would prevent timely filing of the application. *Munoz*, 407 F. App’x at 186.

Ms. [REDACTED] suffered serious trauma and depressive disorder which prevented her from filing her application earlier within the one-year period after she arrived in the United States. Because of her depression and PTSD, she is unable to focus or think clearly, and has difficulty taking care of her children. As noted by her mental health therapist, Dr. [REDACTED], Ms. [REDACTED] presented symptoms related to PTSD during her sessions, including “recurrent, intrusive, and distressing thoughts, nightmares, and flashbacks of the event, efforts to avoid thoughts, difficulty falling or staying asleep, difficulty concentrating, and hyper vigilance.” Ex. J. Dr. [REDACTED] stated further that her ongoing assessment of Ms. [REDACTED] based on their multiple therapy sessions is that she is experiencing PTSD.

Dr. [REDACTED], a licensed physician, corroborated Dr. [REDACTED]’s findings. Dr. [REDACTED] examined Ms. [REDACTED] at the [REDACTED] Clinic on [REDACTED] [REDACTED] and noted that “Ms. [REDACTED] has difficulty sleeping . . . she has nightmares about the detention and witnessing the death of her parents and the rape of her sisters . . . she has frequent flashbacks to these events when she is home alone.” Ex. K. Dr. [REDACTED] concluded that “[h]er symptoms of difficulty sleeping, nightmares, and flashbacks are all consistent with post traumatic syndrome.” *Id.* at 2. Dr. [REDACTED] examined Ms. [REDACTED] again on [REDACTED] and provided an updated evaluation. Dr. [REDACTED] confirmed that Ms. [REDACTED]’s mental state continues to be greatly affected by the trauma of her past. See Ex. L.

This diagnosis is also supported by Dr. [REDACTED], a board-certified psychiatrist who conducted a psychiatric evaluation of Ms. [REDACTED] on [REDACTED]. Based on the evaluation, Dr. [REDACTED] found that Ms. [REDACTED] is suffering from PTSD, with symptoms that include intrusion, avoidance, negative alterations in mood and cognition, and alterations in arousal and reactivity. See Ex. H at 2-3. Dr. [REDACTED] stated further that "[i]n addition to PTSD, Ms. [REDACTED] meets criteria for Major Depression. Her symptoms include sad mood, frequent suicidal ideation, fatigue, anxiety, poor appetite, insomnia and poor concentration." *Id.* at 3. Dr. [REDACTED] concluded:

It is my opinion that Ms. [REDACTED] is suffering from PTSD as a result of the traumatic detention and gang rape she endured in [REDACTED]. Her symptoms have likely been exacerbated by ongoing financial and legal insecurity as well as separation from her husband and eldest daughter. Major Depression is commonly comorbid with PTSD and while partly directly related to trauma, is also a product of loss- loss of home, culture, stability, social standing, financial security and family, in addition to her prior traumatic loss of her parents ... It is my opinion that the severity of her PTSD symptoms with the added burden of her depression combined with the daily stress of trying to care for her children with few resources in a strange country has likely impacted her ability to effectively navigate the process of seeking asylum.

Id. at 5. Dr. [REDACTED] provided an updated evaluation on [REDACTED]. Dr. [REDACTED] found that Ms. [REDACTED] continues to suffer from Major Depression as well as continued symptoms of PTSD. See Ex. I.

The effects of Ms. [REDACTED]'s PTSD and depression caused her to be delayed in completing the application and made it difficult for her to respond to the letters from USCIS rejecting her application. Additionally, she is without a support system and has struggled to find competent help to complete her application. Her mental disorders went untreated until she sought the assistance of a social services agency, [REDACTED]

Ms. [REDACTED]'s condition and serious illness are, therefore, extraordinary circumstances permitting Ms. [REDACTED]'s application to be considered at this time.

B. Ms. [REDACTED] Qualifies for Asylum Under § 1208.13(b)(1) Based on Her Past Persecution

An applicant shall be found to be a refugee on the basis of past persecution if the applicant can establish that he or she has suffered persecution in the past in the applicant's country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion, and is unable or unwilling to return to, or avail himself or herself of the protection of, that country owing to such persecution. 8 C.F.R. § 1208.13(b)(1).

1. Ms. [REDACTED] Has Suffered Past Persecution by Government Officials in Her Home Country of [REDACTED]

The actions taken against Ms. [REDACTED] in [REDACTED] meet the legal definition of persecution. Although no statute or regulation provides a precise definition of *persecution*, the term has been held by courts to mean “the infliction of suffering or harm, under government sanction, upon persons who differ in a way regarded as offensive (*e.g.*, race, religion, political opinion, etc.), in a manner condemned by civilized government.” *Abdel-Masieh v. INS*, 73 F.3d 579, 583 (5th Cir. 1996) (quoting *Matter of Laipenieks*, 18 I&N Dec. 433, 456-57 (BIA 1983), *rev'd on other grounds*, 750 F.2d 1427 (9th Cir. 1985)). Persecution is more than mere harassment, but includes many harms that might fall short of a threat to a person's life. *INS v. Stevic*, 467 U.S. 407 (1984); *Tamas-Mercea v. Reno*, 222 F.3d 417, 424 (7th Cir. 2000).

The Fourth Circuit has recognized that persecution can be the “infliction or threat of death, torture, or injury to one's person or freedom.” *Li v. Gonzales*, 405 F.3d 171, 175 (4th Cir. 2005). The Fourth Circuit has also stated that “actions must rise above the level of mere harassment to constitute persecution.” *Id.* at 177 (citations omitted). While the action must be more than mere harassment, persecution can be based on an accumulation of discriminatory actions. See *Matter of O-Z- and I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998); see also *Baharon v.*

Holder, 588 F.3d 228, 232 (4th Cir. 2010); *Korablina v. INS*, 158 F.3d 1038, 1044 (9th Cir. 1998). Persecution has been defined as harm “of a deliberate and severe nature and such that is condemned by civilized governments.” *Matter of T-Z-*, 24 I&N Dec. 163, 173 (BIA 2007). Persecution may come in either the form of individualized threats or as a “pattern or practice of persecution against persons similarly situated.” See 8 C.F.R. 208.13(b)(2)(i) and 208.116(b)(3).

As stated in detail above, Ms. [REDACTED] has been subjected to gross mistreatment by the government in [REDACTED]. She was imprisoned, beaten, and repeatedly raped by soldiers. She and her family have been harassed and their store has been vandalized. Soldiers and police have threatened serious harm to both Ms. [REDACTED] and her family. These actions were not only condoned by the government, they were performed by government actors.

These acts fall squarely within the meaning of persecution as interpreted by the Fourth Circuit and other courts. Serious threats made against an applicant may constitute persecution even if the applicant was never physically harmed. See *Salazar-Paucar v. INS*, 281 F.3d 1069, 1074 (9th Cir. 2002). Such a finding is bolstered when the persecutor has also attacked, harassed, or threatened the applicant’s family, as is the case here. See *Sangha v. INS*, 103 F.3d 1482, 1487 (9th Cir. 1997) (finding that applicant suffered persecution when militants beat his father in his presence when demanding that the applicant be turned over to them). Violence or threats to an applicant’s close relatives has been found to be a factor in determining whether mistreatment constitutes persecution. See *Lin v. Mukasey*, 517 F.3d 685, 689 (4th Cir. 2008) (assessing threats to petitioner’s in-laws in determining past persecution); *Belbruno v. Ashcroft*, 362 F.3d 272, 284-85 (4th Cir. 2004) (considering mistreatment of petitioner’s husband and other family members). The fact that Ms. [REDACTED] was imprisoned also supports the argument that these actions rise to the level of persecution. See *Camara v. Ashcroft*, 378 F.3d 361, 370

(4th Cir. 2004) (imprisonment can “indisputably” constitute persecution) (citations omitted). Moreover, cumulative instances of harassment considered in totality may constitute persecution, so long as each discrete instance of harassment was inflicted on account of a protected characteristic. *See Chand v. INS*, 222 F.3d 1066, 1073 (9th Cir. 2000); *Singh v. INS*, 94 F.3d 1353, 1360 (9th Cir. 1996); *Korablina v. INS*, 158 F.3d 1038, 1045 (9th Cir. 1998).

Rape and other severe forms of sexual harm may constitute persecution, as rape is regarded as a human rights violation causing severe physical and psychological harm. *See Lopez-Galarza v. INS*, 99 F.3d 954, 959 (9th Cir. 1996). As courts have noted, rape is a uniquely heinous and injurious form of assault, recognized by a variety of scholars and international human rights tribunals as tantamount to torture in certain instances. *See Prosecutor v. Delalic, Mucic, Delic, and Landžo*, Case No. IT-96-21-T, Judgment (Nov. 16 1998) (Celebici) (finding that rape constitutes torture when it: “1) causes severe pain or suffering, whether mental or physical, 2) which is inflicted intentionally; 3) and for such purposes as obtaining information or a confession from the victim, or a third person, punishing the victim for an act he or she or a third person has committed or is suspected of having committed, intimidating or coercing the victim or a third person, or for any reason based on discrimination of any kind, 4) and [is] committed by, or at the instigation of, or with the consent or acquiescence of, an official or other person acting in an official capacity.”). Accordingly, rape and sexual assault, standing alone, constitute persecution when those acts are motivated by the victim’s race, political opinion, or other grounds protected under the INA. *See, e.g., Ali v. Ashcroft*, 394 F.3d 780, 784-84 (9th Cir. 2005) (finding that United [REDACTED] militia’s gang-rape of applicant constituted persecution because it was motivated by her political opinion and membership in the [REDACTED] clan).

2. Ms. [REDACTED] Has Suffered Past Persecution in Her Home Country of [REDACTED] by Government Officials on Account of Her Political Opinion

Ms. [REDACTED] suffered the persecution discussed above on account of her actual political opinion. An asylum applicant can establish an affirmative political belief through her testimony or as evidenced by her past activities. *Sangha v. INS*, 103 F.3d 1482, 1488 (9th Cir. 1997) (citations omitted). A political opinion may be one actually held by the petitioner or one that is imputed to her by persecutors. *See* 8 U.S.C. § 1101(a)(42)(A); *Abdel-Rahman v. Gonzales*, 493 F.3d 444, 450-51 (4th Cir. 2007). Persecution must be on account of a protected ground. *See Saldarriaga v. Gonzales*, 402 F.3d 461, 468 (4th Cir. 2005) (“an applicant must tie the persecution to a protected cause ... [and] show the persecutor had a protected basis ... in mind in undertaking the persecution.”) (internal citations omitted). As discussed here, Ms. [REDACTED] suffered persecution on account of her political opinion.

Ms. [REDACTED] has affirmatively established her political opinion through her involvement with the [REDACTED]. Ms. [REDACTED] has been an active member of the [REDACTED] since [REDACTED]. Ms. [REDACTED] was a registered, card-carrying member of the political party. *See* Ex. C. She distributed flyers, t-shirts, and other campaign materials and spread the word about the party in her community. Ms. [REDACTED] also attended rallies for the president of the [REDACTED]. Additionally, Ms. [REDACTED]'s husband, [REDACTED] was an active card-carrying member as well as the supplier of campaign materials for the [REDACTED] as part of his business. *See* Ex. F ¶ 19. Dr. [REDACTED]'s reports corroborate the nexus between Ms. [REDACTED]'s political activities and her persecution. As noted in the Updated Country Conditions Report, to discourage activism, “[REDACTED] supporters were incarcerated, tortured, raped, and killed.” *See* Ex. S ¶ 27.

In conclusion, Ms. [REDACTED] was repeatedly harassed and arrested, her home and place of business were raided, and she was brutally beaten, raped, and detained, on account of her political opinion against the government of [REDACTED]

3. Ms. [REDACTED] Has Suffered Past Persecution in [REDACTED] by Government Officials when They Attacked Ms. [REDACTED] and her Family on Account of Their [REDACTED] Race

In addition to her persecution on account of her political beliefs, Ms. [REDACTED] has also suffered persecution on account of her race. Race is one of the protected grounds that can be used to establish a petitioner's status as a refugee. 8 U.S.C. § 1101(a)(42)(A).

The attack on Ms. [REDACTED] and her family members in [REDACTED] clearly meets the definition of persecution. "Persecution involves the infliction or threat of death, torture, or injury to one's person or freedom, on account of one of the enumerated grounds in the refugee definition." *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (quoting *Kondakova v. Ashcroft*, 383 F.3d 792, 797 (8th Cir. 2004)). The physical violence inflicted on Ms. [REDACTED] by the [REDACTED] constitutes injury to her person. Moreover, the murder of her parents and the violent rape of her sisters also support Ms. [REDACTED] claim of persecution. See *Baharon v. Holder*, 588 F.3d 228, 232 (2009) (noting that "violence or threats to one's close relatives is an important factor in deciding whether mistreatment sinks to the level of persecution"). Dr. [REDACTED]'s reports corroborate Ms. [REDACTED]'s account of her parent's death and her own persecution. As noted in the Initial Report:

In [REDACTED] a segment of the armed resistance based in Pool and affiliated with the [REDACTED] ethnic group—known as the [REDACTED] militia, under the command of Pastor [REDACTED]—penetrated the [REDACTED] and [REDACTED] neighborhoods of [REDACTED]. Greeted by neighborhood residents as liberators, the [REDACTED] militia was soon rebuffed by the [REDACTED] government. The government proceeded to again empty the [REDACTED] and [REDACTED] neighborhoods house by house, targeting ethnic [REDACTED] citizens with particular ferocity.

See Ex. R ¶22. Dr. [REDACTED] also notes that “Government forces simply killed most men and boys; women were more likely to be raped.” *Id.*

While Ms. [REDACTED]’s status as a member of the [REDACTED] ethnic group in the [REDACTED] region does not in itself demonstrate that Ms. [REDACTED]’s attackers were racially motivated, underlying racial tension at the time and place of an attack provides circumstantial evidence of motivation. See *Sinha v. Holder*, 564 F.3d 1015, 1021 (9th Cir. 2009) (noting that the ethnicity of attackers provided circumstantial evidence of motivation, “particularly given the high level of racial tension during and after the coup of [REDACTED], when most of these incidents occurred”). As noted in Dr. [REDACTED]’s Initial Report, throughout [REDACTED] and into [REDACTED] the government continued to arrest, beat, rape, and kill its citizens, targeting them primarily based on regional origins. See Ex. R ¶ 39. Dr. [REDACTED]’s Updated Report confirms that into [REDACTED] the government continues to arbitrarily arrest and torture citizens, and that the arrests “increasingly target...citizens from the southern regions.” Ex. S ¶ 50. The Updated Report also notes that, with regard to the [REDACTED] attacks, the government targeted Ms. [REDACTED] racial group: “Composed primarily of ethnic [REDACTED] the government simply assumed that residents supported the [REDACTED] offensive. While most men were killed, women were more likely to be raped as punishment.” *Id.* ¶ 57.

C. Ms. [REDACTED] Qualifies for Asylum Under § 1208.13(b)(2) Based on Her Well-Founded Fear of Persecution

1. Ms. [REDACTED]’s Past Persecution Creates a Presumption of Future Persecution

A showing of past persecution gives rise to a presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1); see also *Gonahasa v. INS*, 181 F.3d 538, 541 (4th Cir. 1999). Because Ms. [REDACTED] was subjected to past persecution, she is entitled to the presumption that she will be persecuted in the future if forced to return to [REDACTED]

Conditions in [REDACTED] have not fundamentally changed as to political opponents so as to rebut this presumption of future persecution. *See* 8 C.F.R. § 1208.13(b)(1). Those who oppose or criticize the government of [REDACTED] continue to remain subject to persecution in the form of arrest, physical abuse, detention, and torture. As Dr. [REDACTED] reports, “these arrests increasingly target [REDACTED] citizens from opposition strongholds, regardless of whether they are politically active.” *See* Ex. R ¶ 38. Continuing into [REDACTED], the government has continued to demonstrate its capacity for violence and, according to Dr. [REDACTED], has made it clear that “the government would not hesitate to employ force against citizens if they protested the impending constitutional revision.” *See* Ex. S ¶ 40. The Updated Report notes that the military opened fire on [REDACTED] citizens who opposed the constitutional revision. *See id.* ¶ 42. Between [REDACTED] and [REDACTED] the government undertook a military assault against the [REDACTED] region, “featuring ground troops, armored tanks, and helicopters fitted with missiles.” *Id.* ¶ 48. The attack resulted in over 100 casualties, and possibly many more. *Id.* The Report confirms that “to discourage opposition, the government continues to grossly violate its citizens’ human rights.” *Id.* ¶ 50. The U.S. Department of State 2015 Human Rights Report for the [REDACTED] [REDACTED] provides further support, stating that “The most significant human rights problems included arbitrary or unlawful killings by security forces; arbitrary arrests, beatings, and torture of detainees by police; and refugee abuse.” *See* Ex. T at 1; *see also* Ex. U ([REDACTED] Report for [REDACTED]). The Human Rights Report notes further that, “[t]he government seldom took steps to prosecute or punish officials who committed abuses, whether in the security services or elsewhere in the government, and official impunity was a problem.” *See* Ex. T at 2.

2. Ms. ██████ Cannot Avoid Persecution by Relocating Within ██████

Additionally, Ms. ██████ is unable to relocate internally within ██████. See 8 C.F.R. § 208.13(b)(1). For internal relocation to be reasonable, the asylum office must find not only that the applicant could avoid persecution by relocating, but also that “under all the circumstances it would be reasonable to expect the applicant to do so.” *Gao v. Gonzales*, 440 F.3d 62, 71 (2d Cir. 2006) (citing 8 C.F.R. § 208.13(b)(2)(ii)). Moreover, where the persecutor is a government or a government-sponsor, a rebuttable presumption arises that “internal relocation would not be reasonable.” 8 C.F.R. § 208.13(b)(3)(ii). Ms. ██████ would face similar threats of persecution anywhere in ██████. The Initial Country Conditions Report (“Initial Report”) notes that the dynamics surrounding the ██████ election in ██████ were replicated across the country. See Ex. R ¶ 36. The report also states that human rights violations continue unabated, and that the government has continued to arrest political opponents. See *id.* ¶¶ 38-39. The Updated Country Conditions Report also explains that, should Ms. ██████ be forced to return, she would likely be monitored by the domestic surveillance apparatus. See Ex. S ¶ 60.

Furthermore, even if Ms. ██████ were able to escape detection upon returning to ██████ and were able to move to some remote part of ██████, she would not be able to live there. First, she would have to live in hiding, to avoid detection of the government or any of its supporters, including police forces anywhere in the country. Second, Ms. ██████ would have no support from family or friends: Ms. ██████’s family and friends are either abroad because they have also been persecuted by the regime or they have been killed. Third, Ms. ██████’s parents were killed by the regime many years ago and could not assist in hiding her. If returned to ██████, Ms. ██████ would have to spend her entire life hiding

from discovery by any officials, guards, or ordinary people under the influence of the government--a difficult task in a country where the government seeks out and persecutes political opponents and keeps private citizens under surveillance. *See Essohou v. Gonzales*, 471 F.3d 518 (4th Cir. 2006) (holding that hiding is not a reasonable internal relocation option).

3. Conditions in [REDACTED] Have Not Fundamentally Changed Since Ms. [REDACTED] Fled the Country in [REDACTED]

As detailed in the Initial and Updated Country Conditions Reports, conditions in [REDACTED] have not changed since [REDACTED]. The Initial Report notes that into the first months of [REDACTED] (when the Report was authored), “the government has continued to arrest its political opponents, both real and imagined.” *See* Ex. R ¶ 39. Once arrested, citizens are “routinely beaten, raped, and occasionally killed.” *Id.* The report also notes that those in the [REDACTED] group are common targets, as they generally opposed the [REDACTED] regime. *Id.* The Supplemental Report, authored in [REDACTED], confirms that conditions have not changed since Ms. [REDACTED]’s initial asylum application. The Supplemental Report states that “the government has continued to grossly violate its citizens’ human rights.” *See* Ex. S ¶ 50.

4. Ms. [REDACTED] Has an Independent Well-Founded Fear of Future Persecution

Even in the event that the government was able to rebut the presumption of future persecution, Ms. [REDACTED] has an independent well-founded fear of future persecution. A well-founded fear must be objectively and subjectively reasonable. *Crespin-Valladares v. Holder*, 632 F.3d 117, 126 (4th Cir. 2011); *see also Li v. Gonzales*, 405 F.3d 171, 176 (4th Cir. 2005) (a “reasonable person in like circumstances would fear persecution”). A reasonable person in Ms. [REDACTED]’s position, having been arrested, detained, and raped by the government operatives of [REDACTED] on account of her political opinion in the past, would fear similar persecution in the future. Additionally, Dr. [REDACTED] stated in his Initial Country Conditions Report

that “[a]s a result of her political views, Ms. [REDACTED] may be arrested upon her return to [REDACTED]. The [REDACTED] government records dissidents and frequently arrests them upon their return to the country, either at [REDACTED] airport in [REDACTED] or at the [REDACTED] in [REDACTED].” See Exhibit R ¶ 47. Dr. [REDACTED] noted additionally that “[i]f [REDACTED] security authorities believed that she continued her involvement with the [REDACTED] she would almost certainly again be arrested, raped, or otherwise physically mistreated, or even killed.” *Id.* Even if Ms. [REDACTED] successfully reentered the [REDACTED] the Initial Report states, she might still be vulnerable: “She would likely be monitored by the [REDACTED] [REDACTED]—the domestic surveillance apparatus—upon her return. If [REDACTED] security authorities believed that she was engaged in anti-regime activities, real or not, she could be arrested and again mistreated.” See *id.* ¶ 48. In his Updated Report from 2016, Dr. [REDACTED] reiterated this concern. See Ex. S ¶¶ 59.-60

Further, Ms. [REDACTED] has a subjectively well-founded fear of persecution. See Ex. F and Ex. H. Since leaving [REDACTED] Ms. [REDACTED]’s younger sister and brother-in-law, who are also members of the [REDACTED], have both been murdered, presumably for their political involvement. See Ex. F ¶ 49.

Because Ms. [REDACTED] has shown past persecution, a well-founded fear of future persecution is presumed as a matter of statutory law. 8 C.F.R. § 1208.13(b)(1). Thus, the government bears the burden of rebutting the presumption by showing either changed country conditions or the possibility of internal relocation by a preponderance of the evidence. 8 C.F.R. § 1208.13(b)(1)(ii). Moreover, once past persecution is established, “it shall be presumed that internal relocation would not be reasonable, unless the Service establishes by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to

relocate.” 8 C.F.R. § 1208.13(b)(3)(ii). The Government will not be able to sustain this burden of proof, based on what Ms. [REDACTED] has suffered and in light of the fact that the relevant conditions in [REDACTED] have not materially changed with respect to the persecution of political dissidents since [REDACTED]

5. Discretionary Factors Weigh in Favor of Granting Ms. [REDACTED]’s Asylum Request; Ms. [REDACTED]’s Brutal Treatment At The Hands Of [REDACTED] Officials Is Consistent With The Typical Treatment Of [REDACTED] Members Who Opposed [REDACTED]

a. Ms. [REDACTED] Is Unable to Avail Herself of the Protection of Her Home Country

Ms. [REDACTED] is unable to seek government protection, as her persecutors were government actors. Where the persecution comes from a government source, the requirement that the applicant be unable or unwilling to seek government protection is “satisfied without further analysis.” *See Baballah v. Ashcroft*, 367 F.3d 1067, 1078 (9th Cir. 2004). In both [REDACTED] and [REDACTED], Ms. [REDACTED]’s persecutors were government actors. When soldiers raped Ms. [REDACTED] and murdered her parents in [REDACTED], Ms. [REDACTED] identified her attackers as [REDACTED] militia. *See* Ex. F ¶ 5. The Initial Country Conditions Report corroborates that [REDACTED] held power at this time and dispatched his [REDACTED] militia to subjugate the southern regions. *See* Ex. R ¶ 21. Her arrest in [REDACTED] as well as the repeated robberies of her store were all executed by government actors (the police). *See* Ex. F ¶¶ 24-27. Additionally, her arrest and rape in [REDACTED] in [REDACTED] were at the hands of [REDACTED]’s military. *See id.* ¶¶ 28-31. The Country Conditions Reports corroborate Ms. [REDACTED]’s declaration. The Updated Report notes that “The electoral race in [REDACTED] District 1, was particularly tense, as it pitted [REDACTED] against [REDACTED] a [REDACTED] son-in-law.” *See* Ex. S ¶ 33. The Updated Report notes further:

██████████ thus authorized his political supporters and the regime's security forces to deliver electoral victory by any means necessary. Opposition parties were often simply forbidden from holding campaign rallies; when they were permitted, their supporters were routinely harassed and arrested without charge. As such, Ms. ██████████ has satisfied the requirement that an applicant be unable to seek government protection.

Id. ¶ 34.

b. Ms. ██████████ Provided a Credible Declaration and Properly Included Her Husband's Children in Her Asylum Application

The Immigration Judge, in determining credibility, “must take into account both the petitioner’s testimony and his or her corroborating evidence, whether documentary or testimonial...and thus may not deny asylum merely on the basis of incredible testimony without considering any corroborating evidence.” *Kourouma v. Holder*, 588 F.3d 234, 241 (4 Cir. 2009). The requirement that an alien provide a reasonable explanation for the lack of corroborating evidence presumes that the Immigration Judge offers the alien an opportunity to explain the absence. *See Lin-Jian v. Gonzales*, 489 F.3d 182, 192 (4th Cir. 2007).

The REAL ID Act’s credibility provision “is intended to allow Immigration Judges to follow a ‘commonsense’ approach while ‘taking into consideration the individual circumstances of the specific witness and/or applicant.’” *In Re J-Y-C*, 24 I&N Dec. 260, 262 (BIA 2007); REAL ID Act § 101(a)(3), codified at 8 U.S.C. § 1158(b)(1)(B)(iii). When a trier of fact is not fully satisfied with the credibility of an applicant’s testimony standing alone, the trier of fact may require the applicant to provide corroborating evidence “*unless* the applicant does not have the evidence and cannot reasonably obtain the evidence.” 8 U.S.C. § 1158(b)(1)(B)(ii); see also *In Re J-Y-C*, 24 I&N Dec. at 263.

Ms. ██████████’s Declaration is corroborated by the Initial and Updated Country Conditions Reports as well as additional country conditions materials. As Dr. ██████████ stated in his Updated

Report, "I have read Ms. [REDACTED]'s affidavit, and I find it to be entirely credible. With [REDACTED] citizens increasingly outraged about the government's economic mismanagement, the government has become increasingly intolerant of political opposition." See Ex. S ¶ 55. Dr. [REDACTED] also states that "As a [REDACTED] activist – however low level – it is entirely likely that Ms. [REDACTED] was harassed, detained, and repeatedly raped while in government custody, particularly surrounding the [REDACTED] legislative elections." Moreover, multiple articles corroborate Ms. [REDACTED]'s account of the [REDACTED] attacks in which her parents were murdered, her sisters were raped, and she was shot. See Ex. DD (noting that sexual abuse and violence were particularly severe in [REDACTED] during the civil war beginning in [REDACTED] [REDACTED]; See Ex. EE (noting renewed fighting in the [REDACTED] region of [REDACTED] in [REDACTED]).

Ms. [REDACTED] properly listed her husband's children as her children on her Form I-589. In order to ensure that her application was submitted in a reasonable time following USCIS's rejection of her second application, Ms. [REDACTED]'s legal counsel advised her to forgo the inclusion of her children as derivative asylum applicants and to apply only for her own asylum. As such, Ms. [REDACTED]'s children are not included as derivatives to her [REDACTED] application.

Regardless of whether the children were included in the application as derivative asylum applicants, it was proper for Ms. [REDACTED] to include all of her children, including those for whom she is not the biological mother, on her Form I-589. Under immigration law, her three adopted children [REDACTED] and [REDACTED] are considered Ms. [REDACTED]'s children. Pursuant to INA § 101(b), the term "child" means an unmarried person under twenty-one years of age who is a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred or that the child

was adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years. As stated in Ms. [REDACTED]'s Declaration, she adopted all three children in or around [REDACTED], while all three children were under the age of 16. Ms. [REDACTED] has made all reasonable attempts to obtain their adoption certificates from the [REDACTED]. See Ex. F ¶¶ 10, 16, and Ex. G ¶¶ 20-26.

Even if the court does not find sufficient proof that the children were legally adopted, the children were all under the age of 18 when Ms. [REDACTED] legally married her husband in [REDACTED], and, therefore, are her stepchildren. See Ex. GG.

As noted by Dr. [REDACTED] it is "entirely plausible" that Ms. [REDACTED] would have allowed her husband to change the children's birth certificates without question: "As a woman, Ms. [REDACTED] would have been instructed, from an early age, to accept the decisions of the male members of her family." See Ex. S ¶ 61. Dr. [REDACTED] also notes that "it is very likely that she would have come to view her husband's children from a previous relationship as her own."

Dr. [REDACTED] also confirms the plausibility that Ms. [REDACTED] possessed two passports. Dr. [REDACTED] notes that "it is very common for [REDACTED] citizens to possess multiple passports, and not simply for business reasons." See Ex. S ¶ 58. Dr. [REDACTED] explains that "[t]he [REDACTED] government does not reliably collect expired passports. The government also seldom collects older, still-current passports that have been retired for lack of space. Record keeping for these sorts of administrative documents is very poor." See *id.*

IV. REGARDLESS OF MS. [REDACTED]'S WELL-FOUNDED FEAR OF FUTURE PERSECUTION, THE SEVERITY OF HER PAST PERSECUTION QUALIFIES HER FOR A GRANT OF HUMANITARIAN ASYLUM UNDER § 1208.13(B)(1)(III)

In addition to her bases for asylum discussed above, Ms. [REDACTED] qualifies for a grant of humanitarian asylum based on the severity of her past persecution, regardless of whether she has

established a well-founded fear of future persecution. An asylum applicant who has established past persecution is eligible for asylum on humanitarian grounds where the “applicant has demonstrated compelling reasons for being unwilling or unable to return to the country arising out of the severity of the past persecution,” or the applicant “has established that there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country.” 8 C.F.R. § 1208.13(b)(1)(iii)(A)-(B).

In Ms. [REDACTED]’s case, the severity of her past persecution, most notably witnessing the murder of her parents, qualifies her for humanitarian asylum. *See Matter of Chen*, 20 I&N Dec. 16 (BIA 1989) (granting asylum based on the severity of the past persecution suffered). Additionally, Ms. [REDACTED]’s rape and imprisonment by government officials qualify her for humanitarian asylum. Rape and sexual assault have been considered such “atrocious forms of persecution” that they justify granting asylum even when there is little fear of future persecution. *Garcia-Martinez v. Ashcroft*, 371 F.3d 1066, 1072 (9th Cir. 2004) (citation omitted). Because of the past arrests, rapes, and detention by government officials on account of Ms. [REDACTED]’s political opinion, there is a reasonable opportunity that Ms. [REDACTED] may suffer other serious harm upon return to the [REDACTED] including rape, torture, and possibly even death.

V. IN THE ALTERNATIVE, THE SEVERITY OF MS. [REDACTED]’S PAST PERSECUTION QUALIFIES HER FOR A GRANT OF HUMANITARIAN ASYLUM UNDER THE CONVENTION AGAINST TORTURE.

Moreover, the persecution Ms. [REDACTED] suffered at the hands of government actors, including imprisonment and gang rape, qualifies her for asylum under the Convention Against Torture. To establish entitlement to such relief, an applicant must prove “that it is more likely than not that he or she would be tortured if removed to the proposed country of removal.” *Singh v. Ashcroft*, 398 F.3d 396, 404 (6th Cir. 2005) (citing *Pilica v. Ashcroft*, 388 F.3d 941, 951 (6th Cir. 2004) (in turn quoting 8 C.F.R. § 208.16(c)(2))). To assess the risk of torture, the

adjudicator must consider the possibility of future torture, including (1) evidence of past torture inflicted upon the applicant; (2) evidence that the applicant can relocate to a part of the country of removal where he is not likely to be tortured; (3) evidence of gross, flagrant, or mass violations of human rights within the country of removal; and (4) other relevant information regarding conditions in the country of removal. *Ali v. Reno*, 237 F.3d 591, 596- 97 (6th Cir. 2001). *See also Singh*, 398 F.3d at 405; *Karomi v. Gonzales*, 168 F. App'x 719, 728 (6th Cir. 2006).

As noted previously, rape is a uniquely heinous and injurious form of assault, recognized by a variety of scholars and international human rights tribunals as tantamount to torture in certain instances. *See Prosecutor v. Delalic, Mucic, Delic, and Landžo*, Case No. IT-96-21-T, Judgment (Nov. 16 1998). As is made clear in Ms. [REDACTED]'s declaration, she was raped, repeatedly, by six different government actors. This gang rape was inflicted on Ms. [REDACTED] because of her support of [REDACTED]. *See Ex. F ¶¶ 29-30*. Such actions rise to the level of torture. *See, e.g., Ali v. Ashcroft*, 394 F.3d 780, 784-84 (9th Cir. 2005) (finding that United [REDACTED] Congress militia's gang-rape of applicant constituted persecution because it was motivated by her political opinion and membership in the [REDACTED] plan). Dr. [REDACTED]'s reports and the supplementary country conditions information clearly demonstrate that the current country conditions in [REDACTED] make it very likely that Ms. [REDACTED] would be subject to human rights violations should she be forced to return.

VI. DISCRETIONARY FACTORS WEIGH HEAVILY IN FAVOR OF GRANTING ASYLUM TO [REDACTED]

Although we are not aware of any factors that counsel against a grant of asylum to Ms. [REDACTED], any balancing of factors would weigh heavily in favor of a grant of asylum. 8 C.F.R. § 1208.14(a) (sound exercise of discretion depends upon a balancing of the fact that that the

applicant qualified as a refugee against any factors that counsel against granting asylum); *see also Matter of Pula*, 19 I. & N. Dec. 467, 474 (B.I.A. 1997) (ordinarily courts should grant asylum to refugees because they otherwise would likely have to return to a country that they fled in order to escape persecution). This Court should deny asylum only if one or more specific factors are sufficiently serious to justify an unfavorable exercise of discretion. The Board of Immigration Appeals has admonished that "the danger of persecution should generally outweigh all but the most egregious of adverse factors." *Id.* In this case, no adverse factors are known, much less any that would justify an unfavorable exercise of discretion.

The extent of Ms. [REDACTED]'s persecution at the hands of government officials warrants a favorable exercise of discretion for humanitarian reasons. She has suffered significantly at the hands of guards, government officials, and police officers. Further, the [REDACTED] government has demonstrated their inability and unwillingness to protect her. Ms. Okombi is not statutorily barred from asylum.

Ms. [REDACTED] is taking steps to establish a life here in the United States. She has obtained a work authorization and is making efforts to learn English. *See* Ex. FF. Her wish is to gain employment as a nanny or housekeeper. She is seeking psychiatric treatment for the anguish and trauma caused by her experiences in [REDACTED], and medical treatment for the injuries she sustained in captivity, including injuries resulting from the repeated rapes to which she was subjected while being held prisoner. *See* Exs. H-J. Ms. [REDACTED] wants to work and give back to the community. If necessary this Court should exercise its discretion to issue a grant of asylum to Ms. [REDACTED]

VII. CONCLUSION

In sum, Ms. [REDACTED] qualifies for asylum. She meets the definition of "refugee," has suffered past persecution, and has a well-founded fear of persecution on account of her political opinion. Ms. [REDACTED]'s account of her injustices in [REDACTED] is corroborated by multiple reports and articles. See Exs. R-EE. Ms. [REDACTED] applied for asylum within one year of her arrival in the United States, and thus her first application was timely; her subsequent applications were filed within a reasonable time after her previous applications were rejected, thus should be deemed timely. However, even if her first application is not considered timely, the extraordinary circumstances delineated above should permit Ms. [REDACTED]'s asylum application to proceed at this time.

Ms. [REDACTED] was forced to leave her country and her family because she needed to save her own life. We respectfully request that you grant her petition for asylum so that she may remain in the United States in safety.

Yours Sincerely,

[REDACTED]