



Practice Advisory

Options for Relief Under Asylum Law for LGBTQ Applicants¹

October 2025

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I. Introduction

This advisory explores the possibility of filing Lesbian, Gay, Bisexual, Transgender or Queer-based² (LGBTQ) applications for asylum, withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (INA), and protection under the Convention Against Torture (CAT).

The Trump administration has shown its hostility to members of the LGBTQ community since its return to power in January 2025, with animus particularly directed towards transgender individuals. On its first day in office, the Trump administration issued an executive order titled “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”³ This executive order purported to recognize two sexes – male and female – with the term “sex” referring to “an individual’s immutable biological classification as either male or female.”⁴ Since that executive order was issued, the administration has scrubbed references to the LGBTQ community from its asylum training materials including from the Affirmative Asylum Procedures Manual;⁵ has updated immigration forms to remove any reference to a person’s “gender;”⁶ and has refused to issue documents that match the applicant’s correct gender.⁷ It is against the backdrop of extreme hostility to both LGBTQ individuals and immigrant communities that practitioners must prepare to litigate aggressively in defense of their LGBTQ asylum-seeking clients.

The advisory is not intended to be a comprehensive guide to asylum and other protection claims generally but rather to aid advocates representing LGBTQ clients both before the asylum office and in immigration court. Section II provides an overview of asylum law in the LGBTQ context. Section III gives an overview of the law pertaining to withholding of removal and CAT for LGBTQ applicants. Section IV discusses the particular issues that may arise in proving and corroborating LGBTQ protection-based claims. Finally, section V provides guidance on conducting country condition research for LGBTQ claims.

If an LGBTQ individual is already in removal proceedings, the practitioner should advance every meritorious asylum and related relief argument on their behalf. For LGBTQ individuals who are

² This practice advisory uses the term “LGBTQ” throughout, unless it is referring to the Lesbian, Gay, Bisexual, Transgender or Inter-sex (LGBTI) training module issued previously by USCIS.

³ See [Exec. Order No. 14,168](#), “Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” 90 Fed. Reg. 8615 (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>

⁴ *Id.*

⁵ CLINIC, Changes to Asylum Procedures Manual, <https://mailchi.mp/cliniclegal/tips-4-1-25#APM> (last visited July 17, 2025).

⁶ USCIS, All Forms, <https://www.uscis.gov/forms/all-forms> (last visited July 17, 2025).

⁷ USCIS, USCIS Updates Policy to Recognize Two Biological Sexes, <https://www.uscis.gov/newsroom/news-releases/uscis-updates-policy-to-recognize-two-biological-sexes> (last visited July 17, 2025).

not in removal proceedings, practitioners and clients must fully evaluate the pros and cons of filing affirmatively for asylum based on the strength of the case, including potential one-year filing deadline (OYFD) exceptions and overall likelihood of success in the jurisdiction where the individual resides. To assess the overall likelihood of success in a specific jurisdiction, practitioners should reach out to local asylum practitioners to inquire how the local adjudicators may respond to particular arguments.

II. Overview of Asylum Law

Under the Immigration and Nationality Act (INA), the term “refugee,” which uses the same standard as that used to evaluate applications for asylum, is defined as:

Any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.⁸

Breaking this definition down further, there are several elements that an asylum applicant must establish to succeed in their claim. To qualify for asylum an applicant must:

- Possess one of the following protected characteristics, a combination of protected characteristics, or imputed protected characteristics which are: race, religion, nationality, membership in a particular social group (PSG), or political opinion.
- Have suffered past persecution or have a well-founded fear of future persecution.
- Have suffered or fear persecution by the government, or by private actors the government is unable or unwilling to control.
- Have suffered or fear persecution “on account of” the protected characteristic, that is, have a “nexus” to the protected characteristic;⁹ this means that the protected characteristic must be “at least one central reason” for persecuting the applicant.¹⁰
- Have filed an application within one year of the applicant’s last arrival in the United States¹¹ (or the applicant must qualify for an exception to the OYFD).¹²
- Not be otherwise ineligible due to criminal, security, or persecutor bars.¹³

⁸ INA § 101(a)(42)(A).

⁹ *Id.*

¹⁰ INA § 208(b)(1)(B)(i).

¹¹ INA § 208(a)(2)(B).

¹² See CLINIC, *Overcoming the One Year Filing Deadline for Asylum for DACA Recipients* (June 25, 2020), <https://cliniclegal.org/resources/asylum-and-refugee-law/practice-advisory-overcoming-asylum-one-year-filing-deadline-daca> [hereinafter, CLINIC, *Overcoming the OYFD*]. While this advisory is somewhat outdated, the rules on the OYFD have not changed substantially since 2020.

¹³ Applicants are barred from asylum under 8 CFR § 1208(b)(1)(2) if: “(i) the [noncitizen] ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion; (ii) the [noncitizen], having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States; (iii) there are serious reasons for believing that the [noncitizen] has committed a serious nonpolitical crime outside the United States prior to the

Practitioners must also be familiar with the regulations that govern asylum law, found at 8 CFR §§ 208.1 and 1208.1 et seq. Since asylum applications may be filed both affirmatively and defensively, there are parallel citations with the 208 regulations governing affirmative asylum process and the 1208 regulations governing Executive Office of Immigration Review (EOIR) process.¹⁴ Practitioners should be aware that during the first Trump administration, DHS and EOIR issued regulations which sought to significantly curtail asylum seekers' rights, such as the regulations which asylum advocates dubbed the "Death to Asylum" rule.¹⁵ Although that rule was enjoined prior to going into effect, the litigation is ongoing and searching the asylum regulations online will yield results which include a mix of enjoined regulations and regulations that are in effect.¹⁶ Asylum practitioners may find it helpful to use this cheat sheet prepared by Department of Justice attorneys for their own use¹⁷ or access older versions of the federal regulations.¹⁸ Practitioners must also be familiar with the Circumvention of Lawful Pathways rule, which severely restricts asylum eligibility for noncitizens who entered the United States at the southern border without pre-authorized permission between May 11, 2023, and May 11, 2025.¹⁹ See Section II.G *infra*.

Over the course of the past decade, one of the most valuable resources in approaching a potential LGBTQ asylum claim has been the Asylum Office Training Module on Lesbian, Gay, Bisexual, Transgender, and Intersex²⁰ Refugee and Asylum Claims (hereinafter "LGBTI training

arrival of the alien in the United States; (iv) there are reasonable grounds for regarding the [noncitizen] as a danger to the security of the United States; (v) the [noncitizen] is . . . [engaging in terrorist activities]; or (vi) the [noncitizen] was firmly resettled in another country prior to arriving in the United States." Practitioners should screen for all bars before filing any asylum application. The following practice advisory, while focused on Afghans, includes helpful information on screening for the mandatory bars to asylum. CLINIC, American Bar Association, Conklin Immigration, and Clinical Programs Trinity Law School, *Common Obstacles when Representing Afghans in Immigration Proceedings* (Sept. 12, 2023), <https://www.cliniclegal.org/resources/asylum-and-refugee-law/practice-advisory-common-obstacles-when-representing-afghans>.

¹⁴ The DHS and EOIR regulations are generally identical although there are occasional variations if a procedure only applies before the asylum office or only applies in immigration court. This practice advisory will generally cite to the EOIR regulations unless there is a specific reason to discuss DHS procedures.

¹⁵ Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 FR 36264-01, (June 15, 2020), <https://www.regulations.gov/document?D=EOIR-2020-0003-0001>.

¹⁶ See Victoria Neilson, *The Death to Asylum Regulations Continue to Harm Asylum Seekers Even Though They Are Enjoined*, AILA Blog (Dec. 9, 2022) <https://www.aila.org/the-death-to-asylum-regulations-continue-to-harm-asylum-seekers-even-though-they-are-enjoined>.

¹⁷ See, National Immigration Project, *Enjoined Asylum Regulations "Cheat Sheet"* (Feb. 23, 2023) <https://niphng.org/work/resources/enjoined-asylum-regulations-cheat-sheet>.

¹⁸ Most enjoined Trump-era regulations were published in 2020, so accessing the 2019 version of the regulations online prevents the accidental use of those regulations. <https://www.govinfo.gov/app/collection/cfr/2019/title8/chapterI/subchapterB/part208/subpartA>. However, the Biden administration also issued some asylum regulations, including regulations governing the Asylum Processing Rule (Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 Fed. Reg. 18078, 18226 (March 29, 2022) (amending 8 C.F.R. §§ 208, 212, 235, 1003, 1208, 1235, 1240), Circumvention of Lawful Pathways (8 CFR § 208.33 and 1208.33), and Securing the Border (8 CFR § 208.35 and 1208.35). These regulations are obviously not available in the 2019 version of the rules.

¹⁹ National Immigration Project, *Biden's Asylum Ban* (May 15, 2023) <https://niphng.org/work/resources/practice-advisory-bidens-asylum-ban>.

²⁰ There are no published decisions on asylum claims based on having an intersex condition. Since intersex asylum claims are relatively rare, this practice advisory will focus on LGBT claims. For more information, generally, on intersex issues, see Advocates for Informed Choice, <https://aiclegal.wordpress.com/>.

module”).²¹ It is not clear whether this training module remains in use by the asylum office. Nonetheless, there are still asylum officers who have been trained using this module and the reasoning underlying the guidance should remain sound. It is worth noting that the LGBTI training module has never been binding on EOIR. Practitioners may still find it useful to cite the LGBTI training module both before the United States Citizenship and Immigration Services USCIS (USCIS) and before EOIR, even if it is only cited as persuasive authority. Additionally, anti-transgender Executive Orders²² issued by the Trump administration may affect how adjudicators consider transgender claims.²³

A. The Persecution Analysis

An asylum applicant must prove a well-founded fear of persecution. The term “persecution” is not defined in the INA but has been clarified through case law. The LGBTI training module laid out typical types of harm that may be present in LGBTQ asylum cases. Examples of potential past persecution discussed in the LGBTI training module as well as in case law include:

- Criminal penalties;²⁴
- Rape and sexual violence;²⁵
- Beatings, torture, and inhumane treatment;
- Forced medical treatment;
- Forced psychiatric treatment or other efforts to “cure” homosexuality;
- Discrimination, harassment, and economic harm;
- Forced marriage;
- Threats of harm;²⁶ and

²¹ USCIS, *Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTQ) Refugee and Asylum Claims Training Module* (Dec. 20, 2019), https://web.archive.org/web/20210806012201/https://www.uscis.gov/sites/default/files/document/foia/LGBTQ_Claims_LP_RAIO.pdf [hereinafter AO LGBTI training module]. The Training Module is no longer available on the USCIS website but the most recent publicly available version, from 2019, can be downloaded from the Wayback Machine (url above.)

²² See [Exec. Order No. 14,168](#), “Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” 90 Fed. Reg. 8615 (Jan. 20, 2025); see also [Exec. Order 14,183](#), “Prioritizing Military Excellence and Readiness,” 90 Fed. Reg. 8757 (Jan. 27, 2025); [Exec. Order 14,201](#), “Keeping Men Out of Women's Sports,” 90 Fed. Reg. 9279 (Feb. 5, 2025). While all three of these executive orders seek to normalize discrimination and infringe on the rights of trans people, this Practice Advisory will primarily cite to [Exec. Order No. 14,168](#), (hereinafter the “Anti-Trans Executive Order”) which is most relevant to the issues discussed herein.

²³ See Immigration Equality and National Immigration Project et al., *Practice Advisory: Considerations in Asylum Claims for Transgender People* (May 30, 2025) <https://nipnlg.org/work/resources/practice-advisory-considerations-asylum-claims-transgender-people>.

²⁴ But note, courts may reject this ground if they find that the criminal laws are not enforced. See *Osman v. Garland*, No. 21-60893, 2022 WL 17352570, at *2 (5th Cir. Dec. 1, 2022) (unpublished) (rejecting claim of lesbian couple from Ghana in part because, “same-sex conduct is rarely enforced and does not apply to female-only relationships.”).

²⁵ *Santos-Zacaria v. Garland*, 126 F.4th 363, 366 (5th Cir. 2025) (BIA concluded that rape was sufficiently severe to constitute past persecution, remanding case where BIA engaged in impermissible factfinding). See also, the LGBTI training module, which acknowledges that LGBTQ applicants are uniquely vulnerable to rape and sexual violence. AO LGBTI training module *supra* note 21, at 21.

²⁶ *Antonio v. Garland*, 58 F.4th 1067, 1073 (9th Cir. 2023) (remanding the case of a Guatemalan lesbian who wore men’s clothes, finding past persecution based on “the frequency, escalation, and seriousness of threats, as well as the fact that persecutors threatened a petitioner in close confrontations and confronted petitioner’s family, can be sufficient to compel the conclusion that the threats rise to the level of persecution.”); but see, *Escobedo Marquez v. Barr*, 965 F.3d 561, 565 (7th Cir. 2020) (finding that “five anonymous threats [against a Mexican lesbian]—as unsettling as

- Gender-based mistreatment.²⁷

Less severe harm often will not constitute past persecution.²⁸ An applicant may put forward an asylum claim based on past persecution, fear of future persecution, or both. Past persecution claims may be stronger since it can be more difficult to prove that something is likely to happen in the future than that it did happen in the past.

1. Past Persecution

If an asylum applicant can establish past persecution on account of one of the protected grounds, it is presumed the asylum seeker has a well-founded fear of future persecution, and the burden of proof shifts to the government to prove that conditions have changed and the applicant can now safely return to the country of persecution.²⁹ It is therefore much easier to prevail on asylum cases where an individual is found to have suffered persecution in the past than in cases based solely on fear of future persecution.

USCIS has recognized the special vulnerabilities of children and, at least in the past, has employed special guidelines in considering harm suffered by children.³⁰ Additionally, the United Nations High Commissioner for Refugees has issued guidance on children's claims that states:

Actions or threats that might not reach the threshold of persecution in the case of an adult may mount [sic] to persecution in the case of a child ... Immaturity, vulnerability, undeveloped coping mechanisms and dependency as well as the differing stages of development and hindered capacities may be directly related to how a child experiences or fears harm.³¹

Federal courts have also found that adjudicators should take age into account in assessing past harm. In *Liu v. Ashcroft* the Seventh Circuit found that “[a]ge can be a critical factor in the adjudication of asylum claims and may bear heavily on the question of whether an applicant was persecuted or whether she holds a well-founded fear of persecution.”³² The “harm a child fears

they are—do not describe sufficiently grave harm that would compel a finding of past persecution. She was not physically harmed, and no evidence suggests that the sender attempted to follow through on the threats.”).

²⁷ AO LGBTI training module *supra* note 21, at 19-24.

²⁸ See *Hernandez-Ramos v. Garland*, No. 23-60188, 2023 WL 7921200, at *1 (5th Cir. Nov. 16, 2023) (unpublished) (denying Salvadoran lesbian's claim, finding that “[o]ver nine months, Hernandez experienced verbal denigration, objects thrown at her home, and one instance of physical harm that resulted in bruising. Although she suffered obvious mistreatment, the evidence does not compel concluding her past harm rose to the level of persecution.”); *Juarez-Vicente v. Garland*, 85 F.4th 1258, 1261 (8th Cir. 2023) (denying bisexual Guatemalan's claim of past persecution where the applicant suffered “repeated sexual harassment by classmates and coworkers over more than ten years” as not sufficiently severe to meet the persecution standard.)

²⁹ See 8 CFR § 1208.13(b)(1).

³⁰ See USCIS, *Asylum Office Lesson Plan, Guidelines for Children's Asylum Claims* (Nov. 30, 2015) at 44 https://www.uscis.gov/sites/default/files/files/natedocuments/Legal_standards_governing_Asylum_claims_and_issues_related_to_the_adjudication_of_children.pdf beginning at p 1181. See also, *Matter of C-G-T-*, 28 I&N Dec. 740, 743 (BIA 2023) (recognizing that it may be more difficult for a child to report abuse to the police than for an adult to do so.)

³¹ The United Nations High Commissioner for Refugees, *Child Asylum Claims under Articles 1(A)(2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees Child Asylum Guidelines* (Dec. 22, 2009), at ¶ 15, <http://www.unhcr.org/en-us/publications/legal/50ae46309/guidelines-international-protection-8-child-asylum-claims-under-articles.html>.

³² *Liu v. Ashcroft*, 380 F.3d 307, 314 (7th Cir.2004). The Ninth and Second Circuit later issued decisions including the same language. See *Hernandez-Ortiz v. Gonzalez*, 496 F.3d 1042, 1045 (9th Cir. 2007); *Jorge-Tzoc v. Gonzales*, 435 F.3d 146, 150 (2d Cir.2006) (per curiam).

or has suffered ... may be relatively less than that of an adult and still qualify as persecution.”³³ Therefore, harm experienced as an adult that may not rise to the level of persecution may suffice as persecution for those who suffered the harm as children.

In LGBTQ claims, asylum seekers may have suffered past physical or sexual abuse, particularly by family or community members, and maybe even law enforcement. These types of claims are discussed in Section II.B.2 Non-Governmental Actors, *infra*.

Note, as discussed below, that to establish past persecution the applicant must demonstrate not only that the harm was sufficiently severe to rise to the level of persecution, but also that the harm was on account of a protected characteristic and that the government committed the harm or was unable or unwilling to protect the asylum seeker from the harm. If the applicant suffered harm as a child in the past, the fact that they are now an adult may lead to a finding that the fear of future harm has been rebutted.³⁴

a. Presumption of a Well-Founded Fear

Once an asylum applicant has successfully established past persecution, they are entitled to a presumption of a well-founded fear of future persecution.³⁵ The burden then shifts to the government to rebut this presumption, by establishing one of two things:

- Reasonable internal relocation, or
- Fundamental change in circumstances.³⁶

i. Internal Relocation

The internal relocation analysis has two components. The first part of the analysis is determining whether an asylum applicant can safely relocate within the country of persecution.³⁷ For example, if the persecutor harmed the applicant in one region of the country, could the applicant safely live somewhere else? Does the persecutor have the means or networks (for example a member of a transnational gang or cartel) to find the applicant anywhere in the country? Once it is determined that an applicant can internally relocate safely, the next part of the analysis is to determine if the applicant can *reasonably* relocate. For applicants who come from large countries with some cities that are more accepting of LGBTQ people, it may be more difficult to show that it is not reasonable to relocate in a relatively more accepting city or region.³⁸ While large countries have the potential to reflect a diverse viewpoint on LGBTQ issues that could weaken the internal relocation element, the opposite is often true for smaller countries.

For determining the ability to reasonably internally relocate, the regulations suggest a non-exhaustive list of factors to consider such as gender, age, health, language, geography, and ability

³³ *Liu*, 380 F.3d at 314 (quoting Jeff Weiss, U.S. Dep’t of Justice, Guidelines for Children’s Asylum Claims, 1998 WL 34032561, at *14 (Dec. 10, 1998)).

³⁴ *Iraheta-Martinez v. Garland*, 12 F.4th 942, 958 (9th Cir. 2021) (finding no error by the agency which determined that the applicant who was abused by his father based on his perceived sexual orientation as a child would not face harm in the future when no one else in El Salvador perceived him as gay).

³⁵ 8 CFR § 1208.13(b)(1).

³⁶ 8 CFR § 1208.13(b)(1)(i)(A) & (B).

8 CFR § 1208.13(b)(1)(i)(A) & (B).2)(ii).

³⁸ See AO LGBTI training module, *supra* note 21, at 25-26 for a discussion of cases involving internal relocation in Mexico.

to support oneself.³⁹ The Board of Immigration Appeals (BIA) has held that the IJ must balance these factors against any evidence that the applicant previously resided safely in another part of the country, or the government's argument that another part of the country is safe.⁴⁰

ii. Fundamental Change of Circumstances

Another way the government can rebut well-founded fear is to show there has been a fundamental change of circumstances that would materially affect the applicant's well-founded fear.⁴¹ One example would be where the persecutor, who was a family member or other private actor, has died, moved away, or not been in contact with the asylum applicant for many years.⁴² Furthermore, if the persecution happened while the applicant was a child, and the applicant is now an adult, the fact that they are no longer a child could be considered a fundamental change in circumstances.⁴³ Another example could be if conditions in the country of origin have changed significantly such that the applicant could live safely anywhere, for example, if a country has recently decriminalized same-sex sexual activity. Courts have found, however, that it is error to rely on improving country conditions for lesbian and gay people in denying an asylum claim by a transgender applicant, given how severely transgender people are harmed in many countries.⁴⁴ If there is a possibility the government may argue changed country conditions, the practitioner should submit current country of origin information and potentially engage a country expert to establish that LGBTQ persons are still at risk of persecution in the country of origin.

b. Humanitarian Asylum

In some cases, it may be possible for an asylum applicant who has suffered past persecution to prevail even if they no longer have a well-founded fear of persecution through a grant of

³⁹ 8 CFR § 1208.13(b)(3).

⁴⁰ See *Matter of M-Z-M-R-*, 26 I. & N. Dec. 28 (BIA 2012) (directing IJ to apply the factors in the regulations to the facts of the case); see also, *Garcia-Cruz v. Sessions*, 858 F.3d 1, 9 (1st Cir. 2017) (remanding for BIA to consider reasonableness of internal relocation where applicant might face violence, severe economic difficulties, and only speaks Quiché).

⁴¹ 8 CFR § 1208.13(b)(1)(i)(A).

⁴² While the government may try to rebut the presumption of future persecution in such cases, it is not always successful. See *Ortez-Cruz v. Barr*, 951 F.3d 190, 199 (4th Cir. 2020) (finding, in the context of heterosexual domestic violence, that DHS had not met its burden of rebutting the presumption of future harm based solely on the passage of time, 15 years, since the applicant had left Honduras, when the respondent testified that she believed her persecutor was still looking to harm her.)

⁴³ See *Ixtlilco-Morales v. Keisler*, 507 F.3d 651, 652 (8th Cir. 2007) (concluding that the presumption of future persecution was rebutted by a changed circumstance, namely the fact that the petitioner was no longer a child and failed to show that he would be persecuted as an "HIV-positive adult homosexual" in Mexico).

⁴⁴ See *Barrera v. Barr*, 798 F. App'x 312, 316 (10th Cir. 2020)(unpublished) (remanding Salvadoran transgender woman's asylum application on motion by the government); *Lorenzo-Lopez v. Whitaker*, 747 F. App'x 587, 588 (9th Cir. 2019)(unpublished)(remanding transgender Mexican woman's claim for withholding and CAT while denying asylum claim based on OYFD); *Medina v. Sessions*, 734 F. App'x 479, 482 (9th Cir. 2018)(unpublished) (remanding case of Mexican transgender woman where BIA failed to consider transgender claim separately from her sexual orientation claim); *Ramos v. Lynch*, 636 F. App'x 710, 711 (9th Cir. 2016), as amended (Feb. 18, 2016) (unpublished) (remanding the case of a Salvadoran transgender woman where the IJ "improperly conflated Ramos's gender identity and sexual orientation"); *Mondragon-Alday v. Lynch*, 625 F. App'x 794, 795 (9th Cir. 2015) (unpublished) (remanding case of transgender Mexican woman to consider fear of future persecution based on country conditions specific to transgender Mexicans rather than gay or lesbian Mexicans). But see *Jeune v. U.S. Att'y Gen.*, 810 F.3d 792, 803 (11th Cir. 2016) (dismissing appeal where court found applicant had failed to advance separate argument for potential harm based on transgender identity as distinct from sexual orientation, before the immigration judge).

“humanitarian asylum.” Under U.S. asylum law, an individual who has suffered past persecution may qualify for humanitarian asylum if:

- 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 they may suffer other serious harm upon removal to that country.⁴⁵

Humanitarian asylum is not a separate form of relief under the INA; rather, it is a discretionary form of relief that the asylum office or immigration judges (IJs) may grant to certain asylum seekers who have met all of the elements of past persecution but can no longer demonstrate a fear of future persecution.⁴⁶ Thus it is important for practitioners to argue humanitarian asylum in any case with a past persecution claim if there is any possibility that future fear could be rebutted.

i. Severe Past Persecution and Unable or Unwilling to Return

If an applicant has suffered severe past persecution, they may argue that they should not be required to ever return to the home country.⁴⁷ For example, in *Matter of Chen*, the BIA granted asylum to a Chinese asylum applicant who had suffered severe harm during the Chinese Cultural Revolution, even though there had been a change in regime and the applicant no longer had a “well-founded fear” of future persecution in China. Mr. Chen was the son of a Christian minister who had been tortured for his beliefs. Mr. Chen himself suffered harm that included being locked in a room for six months as a child, sustaining a head injury that required a month-long hospitalization, and being sent to a rural village for re-education.⁴⁸ The BIA relied in part on the applicant’s continuing physical disability — he had to wear a hearing aid due to injuries sustained when rocks were thrown at his head at a young age, was “always anxious and fearful, and [was] often suicidal” — in deciding to exercise discretion and grant him humanitarian asylum.⁴⁹ While the harm in *Chen* was especially egregious, practitioners should always consider the possibility of humanitarian asylum in cases with past persecution. Given that LGBTQ asylum seekers often suffer harm from private actors, including family members, and that this harm often includes sexual abuse or violence, practitioners should be sure to make humanitarian asylum arguments where appropriate.

ii. Other Serious Harm

If the applicant cannot demonstrate especially severe past persecution but still has suffered past persecution, they may qualify under the other humanitarian asylum prong: “other serious harm.” Humanitarian asylum based on other serious harm provides “a second avenue of relief, a clearly liberalized alternative route to humanitarian asylum.”⁵⁰ In *Matter of L-S-*, the BIA addressed the “other serious harm” standard and emphasized that while the feared harm does have to be

⁴⁵ 8 CFR § 1208.13(b)(1)(ii)(A) or (B).

⁴⁶ *Id.* See also *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989).

⁴⁷ 8 CFR § 1208.13(b)(1)(iii)(A).

⁴⁸ *Matter of Chen*, 20 I&N Dec. 16.

⁴⁹ *Id.* at 20-21. While the severe past harm in *Matter of Chen* was physical, it may be possible to demonstrate that very severe psychological harm suffices for a grant of humanitarian asylum.

⁵⁰ *Sheriff v. Atty. Gen. of U.S.*, 587 F.3d 584, 595 (3d Cir. 2009).

serious enough to rise to the level of persecution it does not have to be on account of a protected ground.⁵¹ The BIA stated:

[A]djudicators considering “other serious harm” should be cognizant of conditions in the applicant’s country of return and should pay particular attention to major problems that large segments of the population face or conditions that might not significantly harm others but that could severely affect the applicant. Such conditions may include, but are not limited to, those involving civil strife, extreme economic deprivation beyond economic disadvantage, or situations where the claimant could experience severe mental or emotional harm or physical injury.⁵²

Practitioners may also encounter cases where the asylum applicant suffered past persecution unrelated to their LGBTQ identity; for example, there may have been severe domestic violence in the home. If the asylum applicant has recently become open about their LGBTQ identity, they may fear “other serious harm” if returned to the home country based on being LGBTQ and feared mistreatment or lack of rights on that basis. Similarly, an HIV-positive person may have suffered past persecution based on their LGBTQ identity and now would suffer serious harm if they could not receive adequate medical care in their home country.

 **Example:** *Raul came to the United States from Peru when he was 14. Raul’s father died when he was young, and his mother remarried an abusive and alcoholic man. Raul’s stepfather often called Raul “sissy” and told him he was glad Raul was not his son because he would never be “man enough.” Raul’s stepfather beat him regularly, on one occasion rupturing Raul’s spleen. Raul almost died and was hospitalized for several weeks after that attack. Raul’s stepfather died last year. If Raul succeeds in demonstrating that the abuse by his stepfather constitutes past persecution, the government may rebut the presumption of future persecution by arguing that there is a fundamental change in circumstances, based on the death of Raul’s stepfather. Here, however, Raul could argue he meets the standard for humanitarian asylum based on the severity of the persecution and its lasting effects on him, and/or that he would face other “serious harm” if returned to Peru where violence and discrimination against LGBTQ people often go unpunished. If Raul needed specialized medical care that he could only obtain in the United States, that could also be a serious harm factor in the humanitarian asylum analysis because the other serious harm does not have to be related to his protected characteristic.*

2. Well-Founded Fear of Future Persecution

Even if an asylum applicant has not suffered past persecution, they may be able to prevail by demonstrating a well-founded fear of future persecution.⁵³

In *INS v. Cardoza-Fonseca*, the U.S. Supreme Court held that an asylum applicant need not prove a “clear probability” of persecution, but instead could establish a well-founded fear if they had a one in ten chance of facing persecution.⁵⁴ A one in ten chance of facing persecution sounds like a low threshold. However, it is generally more difficult to win future fear cases than past

⁵¹ See *Matter of L-S-*, 25 I&N Dec. 705 (BIA 2012); *Chen*, 20 I&N Dec. 16.

⁵² *Matter of L-S-*, 25 I&N Dec. at 714.

⁵³ 8 CFR § 1208.13(b)(2).

⁵⁴ *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987).

persecution cases both because the applicant does not receive a presumption of future persecution and because, as a practical matter, it is often more difficult for an applicant to provide compelling testimony about what they believe will happen in the future than what they lived through in the past. In future fear cases it can therefore be especially important to include testimony from an expert witness.

The regulations allow for asylum based on well-founded fear under two categories: the applicant must prove either that they will be singled out or that there is a pattern and practice of persecuting similarly situated people.⁵⁵ U.S. courts of appeals are often reluctant to grant pattern and practice claims because doing so would mean every person from a particular country who has the protected characteristic could be eligible for asylum.⁵⁶ In some decisions, it is difficult to discern whether the court's decision is based on being singled out, on pattern and practice, or on some combination of the two. For example, without explicitly finding that he would be "singled out" for persecution, the Ninth Circuit found a well-founded fear in the case of a gay, HIV-positive Lebanese man who had been "outed" in Lebanon and whose prominent family name would make him easy to identify.⁵⁷ Here, the Ninth Circuit found the applicant's subjective fear of return to be objectively reasonable based on both country conditions in Lebanon and the fact that his family name would make him readily identifiable.⁵⁸

Several unpublished U.S. courts of appeals cases uphold the BIA's decision that the applicant had not proven a well-founded fear in cases based on LGBTQ identity.⁵⁹ It is generally advisable, if possible under the facts, to demonstrate why an applicant would be singled out for persecution if returned and to provide strong background country conditions and, whenever possible, expert testimony.

a. Internal Relocation

Asylum applicants who apply for asylum based on a well-founded fear of future persecution must also demonstrate that they are unable to safely relocate internally within the country of feared harm, or if they can internally relocate safely, that it would not be reasonable to be required to do so.⁶⁰ In cases where the applicant has experienced past harm, there is no need for

⁵⁵ 8 CFR § 1208.13(b)(2)(i).

⁵⁶ Circuit courts have found in asylum seekers' favor in some LGBTQ asylum cases. *Aguilar v. Garland*, 29 F.4th 1208, 1210 (10th Cir. 2022) ("On the asylum claim, any reasonable adjudicator would be compelled to find a pattern or practice of persecution against transgender women in Honduras."); *Bromfield v. Mukasey*, 543 F.3d 1071, 1079 (9th Cir. 2008) (finding "a pattern or practice of persecution of gay men in Jamaica"). But see *D'Souza v. U.S. Att'y Gen.*, No. 23-10023, 2024 WL 3466573, at *9 (11th Cir. July 19, 2024) (unpublished) ("we empathize with D'Souza's case. But while the inferences that D'Souza draws from the record evidence may be reasonable, the record does not *compel* the conclusion that, if she returns to India, she will be singled out for persecution on the basis of her sexuality or that there is a pattern or practice of persecution against lesbians in India."); *A.P.A. v. U.S. Att'y Gen.*, 104 F.4th 230, 243 (11th Cir. 2024) (upholding agency finding that Mexican transgender applicant did not meet the "demanding standard" for a pattern and practice claim).

⁵⁷ *Karouni v. Gonzales*, 399 F.3d 1163, 1178 (9th Cir. 2005).

⁵⁸ *Id.*

⁵⁹ See, e.g., *Osejo-Romero v. Sessions*, 689 F. App'x 815, 816 (5th Cir. 2017) (per curiam) (unpublished) (finding that past harm did not rise to the level of persecution and that the applicant "points to nothing showing that anything worse would happen in the future"); *Silva v. Lynch*, 654 F. App'x 508, 510 (2d Cir. 2016) (unpublished) (denying asylum claim for gay man from Angola based solely on future fear where the record contained conflicting evidence about violence against gay people).

⁶⁰ 8 CFR § 1208.13(b)(2)(ii).

the applicant to demonstrate that the harm they suffered was “country-wide,”⁶¹ although the government can seek to rebut the presumption of future harm by proving that the harm does not exist throughout the country.⁶² In cases where the feared harm is at the hands of the government, there is a presumption that the harm will be country-wide.⁶³ However, in cases where the applicant fears future harm by a private actor, they will have to demonstrate why it would not be reasonable for them to relocate elsewhere in the country.⁶⁴

The internal relocation analysis is important both in applying the past persecution standard, where the government can rebut the presumption of a well-founded fear, and in cases based solely on a well-founded fear. Thus, in both past persecution cases and well-founded fear cases, adjudicators may ask whether the applicant has ever lived anywhere else in the country and make inferences based on whether the individual suffered harm in more than one location.⁶⁵ Where the persecutor is a private actor, it is important that asylum applicants supplement the record with background country condition information to establish that the asylum applicant will face persecution throughout the country and cannot internally relocate safely and reasonably.⁶⁶ Note also that the attorney general recently designated *Matter of S-S-F-M*⁶⁷ as precedent, reinstating *Matter of A-B- II*.⁶⁸ *Matter of A-B- II* includes language that conflicts with the regulation, aiming to undermine the rule that there is a presumption against future relocation, by stating that even where local authorities do not provide protection, the “applicant may receive effective government protection by relocating within their home country, where the attitudes of local authorities may be different.”⁶⁹ Thus practitioners should carefully check their own circuit court precedent to determine whether it is different from these decisions and should be sure to build a record of country-wide feared harm.

 **Example:** *Juana has been gender-nonconforming since she was a child, preferring to wear masculine clothes and engage in “rugged” activities like soccer and farming in the small village where she grew up in her native Guatemala. Her uncle who resided with her family ridiculed Juana as a child, telling her that she “shamed her family by pretending to be a boy.” Juana came to the United States three years ago when she was 20, entered without inspection, and has been in the affirmative backlog awaiting an asylum interview. In the time she has been in the United States, she has met a woman with whom she is in a serious relationship. She is afraid to return to Guatemala since she now lives openly as a gender-nonconforming lesbian. She may be able to win*

⁶¹ USCIS, Asylum Office Well-Founded Fear Training Module, (July 8, 2012) https://www.uscis.gov/sites/default/files/files/nativedocuments/Legal_standards_governing_Asylum_claims_and_issues_related_to_the_adjudication_of_children.pdf at internal page numbers 25-26 [hereinafter AO Well-Founded Fear Training Module].

⁶² 8 CFR § 1208.13(b)(1)(i)(B).

⁶³ AO Well-Founded Fear Training Module, *supra* note 61, at internal page number 26.

⁶⁴ *Id.* at 26-27.

⁶⁵ See *Rodriguez v. Lynch*, 643 F. App'x 365, 367 (5th Cir. 2016) (per curiam) (unpublished) (finding that gay male applicant could safely relocate within Honduras because he had moved to San Pedro Sula in the past and only suffered name calling and discrimination).

⁶⁶ Note, under the prior Trump administration USCIS issued guidance requiring asylum officers to employ a legal standard in determining relocation issues that is more restrictive than the standard in the regulations. The USCIS website currently states that this material is archived. USCIS, Asylum and Internal Relocation Guidance, July 26, 2019, <https://www.uscis.gov/news/news-releases/asylum-and-internal-relocation-guidance>

⁶⁷ *Matter of S-S-F-M*-, 29 I&N Dec. 207 (A.G. 2025).

⁶⁸ *Matter of A-B- II*, 28 I&N Dec. 199 (A.G. 2021).

⁶⁹ *Id.* at 207.

asylum based on a well-founded fear of future persecution. She should include a description of harm she suffered in the past, even if it did not rise to the level of past persecution, as a way to demonstrate that she will be singled out for future harm. Juana should also present persuasive country conditions materials, including, if possible, an expert witness about the likelihood of increased harm given that she is readily identifiable as gender-nonconforming.

B. Agent of Persecution

1. Government Actor

Part of the persecution analysis is to determine who is the persecutor. Persecution “is something a government does, either directly or by abetting (and thus becoming responsible for) private discrimination by throwing in its lot with the deeds or by providing protection so ineffectual that it becomes a sensible inference that the government sponsors the misconduct.”⁷⁰ If the persecution occurred directly at the hands of a government actor, there is a presumption that they cannot safely internally relocate.⁷¹

Persecution against LGBTQ people by government actors is unfortunately a common occurrence around the world, with at least 67 countries criminalizing same-sex sexual conduct, seven of which have the death penalty for such “crimes.”⁷² One of the countries with the death penalty is Uganda, a country with which the Trump administration recently entered into an agreement to accept deportees.⁷³ There have been many claims by LGBTQ individuals who have been sexually assaulted by the police or the military in their home country based on their identity.⁷⁴



Example: *Julia is a transgender woman from Mexico. While living in Mexico, she identified as a gay man, but she wore female clothing when going to bars. She frequented bars where gay men would congregate because they were the only places where she felt she could express herself. On one occasion when leaving the bar, two police officers put her in their car*

⁷⁰ *Hor v. Gonzales*, 400 F.3d 482, 485 (7th Cir. 2005).

⁷¹ 18 CFR § 1208.13(b)(3)(ii).

⁷² Human Rights Watch, #OUTLAWED “The Love That Dare Not Speak Its Name,” https://features.hrw.org/features/features/lgbt_laws/index.html?_gl=1*71q0co*_ga*MTlwMzAwMDE3MS4xNzU1NTlzMtA0*_ga_8G7WH8R2Z8*czE3NTU3OTUxNTUkbzQkZzAkDE3NTU3OTUxNTUkajYwJGwwJGgxNDA4NjU4NzUz. The countries with a death penalty for same-sex conduct are: Brunei, Iran, Mauritania, Qatar, Saudi Arabia, Uganda, Yemen.

⁷³ *Uganda Agrees to a Deal with the US to Take Deported Migrants If They Don't Have Criminal Records*, ASSOCIATED PRESS, Aug. 21, 2025, <https://apnews.com/article/uganda-us-deportation-migrants-immigration-crackdown-trump-15edfb4d80677c51c56beb8ab5130cd4>.

⁷⁴ See, e.g., *Carranza-Albarran v. Barr*, 783 F. App'x 656 (9th Cir. 2019) (unpublished) (finding agency error in determining gay Mexican not credible for omitting specifics of rape by police in his pro se I-589 *Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1075 (9th Cir. 2015) (transgender Mexican woman who was “raped and sexually assaulted by members of the Mexican police and military” was entitled to CAT protection); *Todorovic v. U.S. Atty. Gen.*, 621 F.3d 1318, (11th Cir. 2010) (Finding persecution where gay Serbian man, was forced to perform oral sex on police officer at gun point, in addition to other harms); *Boer-Sedano v. Gonzales*, 418 F.3d 1082 (9th Cir. 2005) (finding persecution where gay, HIV-positive Mexican man was sexually and physically abused by a police officer.) But see *Sama v. U.S. Att'y Gen*, 887 F.3d 1225, 1232 (11th Cir. 2018) (finding that even though applicant with imputed gay identity based on pro-LGBT political opinion was subject of arrest warrant in Cameroon, because the police did not arrest him on one occasion when they had the opportunity he did not have well-founded fear); *Kimumwe v. Gonzales*, 431 F.3d 319 (8th Cir. 2005) (finding that gay man from Zimbabwe had not been jailed because of his sexual orientation but rather because of sexual misconduct with another man at college).

and threatened her with arrest unless she performed oral sex. Fearing what might happen to her if she were brought to jail, Julia complied. Julia likely has a strong asylum case based on past persecution by government actors.

2. Non-Governmental Actor

In many LGBTQ asylum cases, the harm the asylum applicant suffered, or fears, is not directly from the government but from private, non-governmental actors. If the harm suffered by the applicant is at the hands of a private actor, they must additionally demonstrate that the government is unwilling or unable to protect them.⁷⁵ On Sept. 2, 2025, the attorney general designated *Matter of S-S-F-M*-⁷⁶ as precedent, reinstating *Matter of A-B- I* and *Matter of A-B- II*.⁷⁷ Those decisions heightened the legal standard in private actor cases, stating that the applicant must show that “the government condoned the private actions ‘or at least demonstrated a complete helplessness to protect the victims.’”⁷⁸ Note, however, that not all circuits have accepted that heightened legal standard; practitioners should review the law of the circuit where the case arises to determine if the law is different. Practitioners should also preserve arguments for federal court review, that the standard articulated in *Matter of A-B- I* and *Matter of A-B- II* conflicts with the asylum statute.

In private actor cases, the applicant should explain whether they reported the harm to the police and how the police responded, that is, whether the government offered protection. If the applicant never reported the harm to the police, they must explain why doing so would have been futile.⁷⁹

One of the few positive asylum decisions to be published by the BIA in recent years is *Matter of C-G-T*,⁸⁰ a case involving a young gay man from the Dominican Republic. Mr. C-G-T was abused by his father, who suspected he was gay. The BIA remanded the case, finding that Mr. C-G-T’s failure to report the harm to the police was not fatal to the claim and determining that whether or not reporting would be futile is a fact-based inquiry that must be made in each case.⁸¹ In *Matter of C-G-T*, the BIA highlighted Mr. C-G-T’s young age in its analysis about whether it would have been reasonable for him to report his father to the authorities.⁸² In cases where the asylum seeker was not a child and the persecutor was not an immediate family member, it may be helpful for the applicant to include evidence of criminalization of same-sex activity, where

⁷⁵ In some asylum cases, it may be possible to demonstrate that the gang has established so much control that it is functioning as a quasi-government. See *Alvarez Lagos v. Barr*, 927 F.3d 236, 244 (4th Cir. 2019) (“The gang monitors who enters and exits the neighborhood, controls when residents can worship, collects taxes from residents, and kills individuals who disobey its commands.”)

⁷⁶ *Matter of S-S-F-M*-, 29 I&N Dec. 207 (A.G. 2025).

⁷⁷ *Matter of A-B-I*, 27 I&N Dec. 316 (A.G. 2018), and *Matter of A-B- II*, 28 I&N Dec. 199 (A.G. 2021).

⁷⁸ 27 I&N Dec. at 337; 28 I&N Dec. 200-03.

⁷⁹ See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1335 (BIA 2000) (finding that testimony and country conditions indicated that it would be unproductive and possibly dangerous for a young female applicant to report father’s abuse to government); *Troche v. Garland*, 15 F.4th 559, 568 (1st Cir. 2021) (remanding gay Honduran applicant’s case where the agency made an improper adverse credibility determination regarding the applicant’s efforts to report prior homophobic harm); *Ornelas Chavez v. Gonzales*, 458 F.3d 1052 (9th Cir. 2006) (holding that reporting not required if applicant can convincingly establish that doing so would have been futile or have subjected the applicant to further abuse).

⁸⁰ *Matter of C-G-T*-, 28 I&N Dec. 740 (BIA 2023).

⁸¹ *Id.* at 743-44.

⁸² *Id.*

available, to demonstrate that it would have been dangerous to report the harm or that the government of a particular country condones anti-LGBTQ behavior.

Some circuits have held that the asylum seeker need not show that they attempted to report private harm to the government. In *Doe v. Att’y Gen. of the United States*,⁸³ a case involving a gay man from Ghana, the Third Circuit explained that failing to report does not mean that it would have been safe to report. Rather the failure to report, creates an “evidentiary gap” which can be filled by:

- 1) Demonstrating that a country’s laws or customs effectively deprive the petitioner of any meaningful recourse to governmental protection,
- 2) Describing [p]rior interactions with the authorities,
- 3) Showing that others have made reports of similar incidents to no avail,
- 4) Establishing that private persecution of a specific sort is widespread and well-known but not controlled by the government, or
- 5) Convincingly establish[ing] that [reporting] would have been futile or [would] have subjected [the applicant] to further abuse.⁸⁴

Furthermore, in private actor harm cases, the applicant must show that they cannot reasonably relocate within their country to avoid harm, as discussed above.⁸⁵

C. Protected Characteristic

A key element of asylum law is proving that the applicant possesses a protected characteristic that motivates the persecutor to harm the applicant.⁸⁶ These protected characteristics are the following: race, religion, nationality, membership in a particular social group, or political opinion. LGBTQ identity may form the basis for multiple protected grounds, individually or simultaneously.⁸⁷ While LGBTQ claims are most commonly brought as PSG cases, with the legal standards surrounding PSG in flux and with the possibility that they may be further restricted,⁸⁸ it is best practice to advance alternative protected characteristics where warranted by the facts.

1. Particular Social Group

Under current law, to be cognizable, a particular social group must be:

- 1) Composed of members who share a common immutable characteristic,
- 2) Defined with particularity, and

⁸³ *Doe v. Att’y Gen. of the United States*, 956 F.3d 135, 146 (3d Cir. 2020).

⁸⁴ *Id.* Citing *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1066 (9th Cir. 2017).

⁸⁵ 8 CFR § 1208.13(b)(1)(B) and § 1208.13(b)(2)(ii). See discussion of internal relocation section II.A.2.a.*infra*.

⁸⁶ *Matter of Acosta*, 19 I&N Dec. 211, 226 (BIA 1985).

⁸⁷ USCIS, Refugee Asylum and International Operations Combined Training Course, Nexus and the Protected Grounds* Training Module (Feb. 21, 2012). AILA Doc. No. 18012237, www.aila.org/infonet. [hereinafter USCIS, Nexus].

⁸⁸ The Heritage Foundation’s, *Mandate for Leadership, the Conservative Promise* (2023)

https://static.heritage.org/project2025/2025_MandateForLeadership_FULL.pdf?_gl=1*95d9kh*_gcl_au*MjAyMDcxMDA1OS4xNzU1Nzk3ODM5*_ga*MTU3NzU3MjY0OC4xNzU1Nzk3ODM5*_ga_W14BT6YQ87*_czE3NTU3OTc4MzgkbzEkZzAkDE3NTU3OTc4NDQkajU0JGwwJGgw, generally known as Project 2025, states at 148, “Congress should eliminate the particular social group protected ground as vague and overbroad or, in the alternative, provide a clear definition with parameters that at a minimum codify the holding in *Matter of A-B*-that gang violence and domestic violence are not grounds for asylum.”

3) Socially distinct within the society in question.⁸⁹

The BIA has recognized sexual orientation as a potential PSG for nearly 30 years.⁹⁰ Likewise, U.S. courts of appeals have consistently found lesbians,⁹¹ gay men,⁹² bisexual,⁹³ and transgender individuals⁹⁴ to be members of PSGs. There is also precedent recognizing HIV-positive status as a possible PSG.⁹⁵ Asylum applicants may also seek asylum based on imputed membership in an LGBTQ PSG, meaning that the individual does not have to actually identify as LGBTQ if the persecutor seeks to harm the applicant based on the persecutor's belief that the individual is LGBTQ.⁹⁶

Unlike many other asylum claims based on membership in a PSG, establishing that the PSG itself is viable has generally not been an issue in LGBT claims.⁹⁷ The LGBTI training module takes a broad view of how to define PSGs and even allows for the possibility of framing any LGBTQ PSG as "sexual minority from country X," rather than forcing the applicant to articulate a more precise identity or PSG.⁹⁸ However, asylum law is always changing, and different adjudicators may have a preference for a more specific or more general articulation of the PSG, so it may be strategic to articulate the PSG in more than one way, both generally and more specifically.

Given the recent reinstatement of the *Matter of A-B-* decisions issued the first Trump administration, including language determining that adjudicators should not rely on "concessions" by opposing counsel and should make their own determinations on PSG viability in every case,⁹⁹ it is prudent for practitioners to not take for granted that "sexual minorities" or any formulation of an LGBTQ PSG is cognizable based solely on the fact that it has been found cognizable before.

⁸⁹ *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014). Note, the Seventh Circuit has never adopted the *M-E-V-G-* standard and instead employs the PSG standard articulated in *Matter of Acosta* 19 I&N Dec. at 233-34, which is the first prong of *M-E-V-G-*, that is that the characteristic be immutable or so fundamental that the applicant should not be required to change it.

⁹⁰ See *Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819 (BIA 1990).

⁹¹ See *Nabulwala v. Gonzales*, 481 F.3d 1115, 1116 (8th Cir. 2007) (remanding case of Ugandan lesbian); *Pitcherskaia v. INS*, 118 F.3d 641 (9th Cir. 1997) (remanding case of Russian lesbian).

⁹² See *Karouni v. Gonzales*, 399 F.3d 1163, 1172 (9th Cir. 2005) ("all alien homosexuals are members of a 'particular social group'").

⁹³ See *Fuller v. Lynch*, 833 F.3d 866, 869 (7th Cir. 2016) (seemingly accepting bisexual identity as a PSG, but denying applicant's claim on credibility ground for not establishing that he is bisexual).

⁹⁴ See *Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1079 (9th Cir. 2015) (denying asylum and withholding because of applicant's conviction of a particularly serious crime but granting deferral of removal under the Convention Against Torture). See also footnote 1 of *Practice Advisory: Considerations in Asylum Claims for Transgender People*, *supra* note 23, which links to a searchable chart created by Oasis Legal Services citing to all circuit court precedent in asylum cases concerning transgender applicants, also available at <https://airtable.com/appiSDZA00A7BIIH9/shrNWSTStpkvhsJN9?nn6BM%3Aview=plarmpc9o2F5SjY13>.

⁹⁵ See *Velasquez-Banegas v. Lynch*, 846 F.3d 258, (7th Cir. 2017); Memorandum from David A. Martin, INS General Counsel, Seropositivity for HIV and Relief From Deportation (Feb. 16, 1996), 73 Interpreter Releases 901 (July 8, 1996).

⁹⁶ See *Amanfi v. Ashcroft*, 328 F.3d 719, 721 (3d Cir. 2003). Note, the BIA recently held in *Matter of L-A-L-T-*, 29 I&N Dec. 269 (BIA 2025) that for an imputed PSG to be cognizable, the underlying PSG itself had to be cognizable. That decision should not present an impediment to recognizing LGBTQ claims since there are many precedential decisions recognizing various formations of LGBTQ identity as valid PSGs.

⁹⁷ While there are numerous U.S. court of appeals decisions denying those who claim asylum based on being LGBTQ, none of these cases deny asylum because the PSG itself is not viable. Rather, cases are generally denied because the court does not find the applicant credible. See, e.g., *Fuller v. Lynch*, 833 F.3d at 869, or because there is no nexus to the protected ground, see e.g., *Gonzalez-Posadas v. Attorney Gen. U.S.*, 781 F.3d 677, 686 (3d Cir. 2015).

⁹⁸ LGBTI training module, *supra* note 21, at 17 and 47.

⁹⁹ See *Matter of A-B-* 27 I&N Dec. 316, 337 (A.G. 2018).

Instead, practitioners should include the three-prong M-E-V-G- analysis in LGBTQ PSG cases, in addition to citing to precedent recognizing similar PSGs.

A good example of how to articulate the three prongs in the LGBTQ context can be found in the following excerpt from a post-*Matter of A-B-I* Asylum Office referral to immigration court under the first Trump administration, which found the PSG viable, but found the applicant had not established past persecution or a well-founded fear of future persecution:

The particular social group put forward by you meets the prongs of this test. Your sexual orientation is a common, immutable characteristic that you possess which is so fundamental to your identity that you cannot change, and should not be required to change it. The group can be defined with particularity since only males who desire to be in intimate relationships only with people of the same gender belong to the group. Country conditions information establishes that the group is socially distinct.

Credible NGOs reported incidents of bias-motivated violence against LGBTQ persons [in your country.] . . . Additionally, the BIA and 2nd Circuit have recognized sexual orientation as a particular social group. [citing cases.] Therefore, the applicant's proposed particular social group of Country X sexual minorities meets the requirements as articulated in *Matter of M-E-V-G-*.¹⁰⁰

Practitioners should also be familiar with *Matter of W-Y-C- & H-O-B-*,¹⁰¹ a BIA decision which held that all proposed PSGs must be raised before the IJ rather than on appeal. Thus, if there are strategic reasons to advance more than one PSG, it is important to fully engage in the three-part analysis for each proposed PSG before the IJ.

For example, a transgender applicant may also have an imputed gay sexual orientation claim. If articulating these claims as two distinct PSGs makes the case stronger, the practitioner must raise them both before the IJ. With the Trump administration's aggressive targeting of transgender people,¹⁰² there is a possibility that adjudicators may be reluctant to grant asylum based on transgender identity and practitioners should advance protected characteristics in addition to "transgender people from country X."¹⁰³

 **Example:** *Enrique was an effeminate boy and suffered bullying and physical abuse growing up in Mexico. When he was injured and threatened, he was called "maricon," or "faggot." At that time, he was too young to have come to terms with his sexual orientation or gender identity. Enrique entered the United States when he was 14 years old and is now 19 years old. He "came out" as gay four years ago and is now questioning whether he may actually identify as a transgender woman, though he still uses the male pronoun. If Enrique files for asylum, it may be helpful to frame the claim as being a "sexual minority from Mexico," since it is not clear how Enrique*

¹⁰⁰ USCIS, Notice of Intent to Deny, Sep. 2019, on file with the authors.

¹⁰¹ *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189 (BIA 2018).

¹⁰² See Exec. Order No. 14,168, "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government," 90 Fed. Reg. 8615 (Jan. 20, 2025); see also Exec. Order 14,183, "Prioritizing Military Excellence and Readiness," 90 Fed. Reg. 8757 (Jan. 27, 2025); Exec. Order 14,201, "Keeping Men Out of Women's Sports," 90 Fed. Reg. 9279 (Feb. 5, 2025).

¹⁰³ See National Immigration Project, Immigration Equality, et al, *Practice Advisory: Considerations in Asylum Claims for Transgender People* (May 30, 2025) <https://nipnl.org/work/resources/practice-advisory-considerations-asylum-claims-transgender-people>.

currently identifies or how Enrique identified when living in Mexico. Be aware that in many countries, country conditions are much worse for transgender people than for gay people, so there may be strategic advantages in structuring the claim as a transgender claim if doing so is possible under the facts of the case. Even if Enrique does not identify as transgender, if he fears being persecuted based on being perceived as transgender, he could articulate a PSG based on imputed identity. Thus, Enrique could put forward several PSGs in the alternative: “gay men from Mexico,” “people imputed to be transgender from Mexico,” and “sexual minorities from Mexico.”

2. Political Opinion

LGBTQ asylum applicants may also have claims based on political opinion, if they have advocated for LGBTQ rights or imputed political opinion if a persecutor believes the applicant holds a political opinion that LGBTQ people should be given equal rights. For example, in *Pitcherskaia v. INS*.¹⁰⁴ Ms. Pitcherskaia sought asylum based on both her political opinion and her PSG as a Russian lesbian. She was initially arrested for protesting the beating of a gay friend and later arrested again and beaten for participating in an illegal demonstration demanding the release of an arrested leader of a lesbian youth organization to which Ms. Pitcherskaia belonged.¹⁰⁵ Likewise, in *Nabulwala v. Gonzales*, Ms. Nabulwala claimed past persecution, in part, based on having been hospitalized following an attack by an angry mob while she was participating in a meeting of a gay rights organization.¹⁰⁶ Since LGBTQ PSGs have been so widely accepted, there is little case law on political opinion in this context, but practitioners should be sure to explore political opinion as another possible protected characteristic in these claims, especially if the applicant has publicly supported LGBTQ rights.

 **Example:** Angelica came out as a lesbian during college and has volunteered for an LGBTQ rights organization in the United States since her arrival last year. She is a frequent blogger and has written two op-eds that have reached a wide audience through social media. She has been severely critical of her own country's government's failure to protect LGBTQ people and fears returning to her country because government officials and homophobic private actors could easily learn about her pro-LGBTQ rights opinion.

3. Religion

Asylum applicants who are LGBTQ may also have a claim based on religion if their LGBTQ identity goes against religious norms in a non-secular country. For example, if an asylum applicant comes from a non-secular country or a country with one dominant faith that sees being LGBTQ as an abomination, the applicant may be imputed to not hold the expected religious beliefs of the state or dominant religion, or to have “liberal” religious views. In *Matter of S-A-*, the BIA held that a woman with liberal Muslim beliefs was persecuted based on her religion by her father who was conservatively religious.¹⁰⁷ Although the case does not involve an LGBTQ

¹⁰⁴ *Pitcherskaia v. INS*, 118 F.3d 641, 644 (9th Cir. 1997).

¹⁰⁵ *Id.*

¹⁰⁶ *Nabulwala v. Gonzales*, 481 F.3d 1115, 1117 (8th Cir. 2007). In this case, the immigration judge had accepted that her homosexuality placed her in a PSG, so there was no analysis of a political opinion-based claim.

¹⁰⁷ See *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000). In such cases the applicant may also be able to advance an imputed political opinion case, if they can show that their failure to adhere to cultural norms is the equivalent of expressing an opinion against the non-secular government.

applicant, the facts may be analogous to some LGBTQ cases. For example, Ms. S-A's father physically abused her for wearing clothing, such as a short skirt, that he deemed contrary to his religious beliefs, as well as for what he deemed to be inappropriate sexual behavior, such as speaking with a man on the street.¹⁰⁸ Her father's violence against her escalated when she began a long-distance relationship that her father had not approved with a man who became her fiancé.¹⁰⁹ LGBTQ asylum applicants may be able to analogize to this case if they have feared or fear harm based on defying religious norms in their country.

D. Nexus

In addition to proving that an individual actually has the protected characteristic of being LGBTQ or perceived as LGBTQ, they must also prove that the persecution they suffered in the past or fear in the future is "on account of" their LGBTQ identity. That is, it is not enough to prove that an applicant is LGBTQ and was harmed in the past; they must also prove a connection between their protected characteristic and the harm. Asylum applicants are required to prove that protected characteristic was at least "one central reason" for the harm.¹¹⁰

The LGBTI training module lays out possible ways for the asylum officer to determine nexus. This evidence may include the applicant's testimony regarding:

- What the persecutor said or did to the applicant.
- What the persecutor said or did to others similar to the applicant.
- The context of the act of persecution (for example, if the applicant was attacked in a gay bar or while holding hands with a same-sex partner).
- Reliable Country of Origin Information (COI) that corroborates such testimony [about the nexus to the harm].¹¹¹

Another common scenario involves harm that was not initially based on a protected ground but worsens once the persecutor determines that the applicant is LGBTQ. For example, an LGBTQ person may have been the victim of a random criminal act, such as a robbery, but when the perpetrator realized the victim was LGBTQ, the perpetrator escalated the incident, beating the asylum applicant and threatening to kill him or her. While the government may argue that the harm was not motivated by the protected characteristic, if the applicant can demonstrate that the violence escalated to the level of persecution because the persecutor became aware of the protected characteristic, this incident may be considered persecution.¹¹²

Many asylum cases, especially those from Central America and Mexico, involve fear of gangs and criminal drug cartels. In LGBTQ cases involving harm by gangs, as in all gang-based asylum cases, it can be challenging for the applicant to prove that their protected characteristic, here LGBTQ

¹⁰⁸ *Id.* at 1329.

¹⁰⁹ *Id.* at 1330.

¹¹⁰ INA § 208(b)(1)(B)(i).

¹¹¹ LGBTI training module, *supra* note 21, at 18.

¹¹² The Asylum Office Lesson Plan on Nexus notes that "[t]here is no requirement that the persecutor's harmful contact with the applicant be initially motivated by the applicant's possession of a protected belief or characteristic." If the motivation changes to having a nexus to a protected ground, the applicant may be able to show persecution. USCIS, Nexus, *supra* note 81, at 13. See also *Tarubac v. INS*, 182 F.3d 1114 (9th Cir. 1999) (holding that what began as extortion by the Philippine New People's Army became persecution after applicant expressed an anti-communist political opinion and the harm escalated).

identity, was “one central reason” for the harm.¹¹³ This is especially true now that the attorney general designated *Matter of R-E-R-M- & J-D-R-M-* as precedent,¹¹⁴ reinstating *Matter of L-E-A-II*.¹¹⁵ While *L-E-A-II*’s central holding is to narrow the cognizability of family-based PSGs, it also affirms the harmful “means to an end” analysis articulated in *L-E-A-I*. The nexus analysis articulated in *L-E-A-I* has been in place since 2018 when the case was decided. In *L-E-A-I*, the BIA determined that when an adjudicator is considering nexus, claiming that a persecutor must be motivated by animus or punishment rather than financial or recruitment motivations.¹¹⁶ Note, however, that several other circuit courts have rejected the “means to an end” framework.¹¹⁷

Additionally, practitioners should be the aware of proving nexus to harm for applicants who entered the United States as children and may not have identified as LGBTQ when they were abused or otherwise harmed as children. If the harm took place before the applicant identified as LGBTQ, it may be difficult to prove a nexus between the past harm and the applicant’s LGBTQ identity.¹¹⁸ In a 2023 precedential decision, the BIA addressed the nexus requirement involving a gay, HIV-positive man who did not live openly as a gay man in his home country.¹¹⁹ In the case, *Matter of C-G-T-*, the respondent testified that he was physically and verbally abused by his father from a young age based on his sexual orientation. Although the respondent never told his father that he was gay when he lived in the Dominican Republic, he testified that his father “called him a girl [and] targeted him for particularly harsh treatment.”¹²⁰

Relevant to the nexus issue, the BIA found that the IJ did not properly address all the evidence establishing the respondent’s father’s reasons for harming him, including the multiple declarations stating that the respondent was singled out for abuse because the father believed him to be gay, the respondent’s testimony that his father called him a “girl,” and the father’s frequent expressions of animus towards gay people. The matter was remanded for the IJ to fully consider all the evidence of motive in the case.¹²¹

The practitioner should spend time interviewing the applicant to better understand whether the persecutor actually knew or believed the applicant was LGBTQ, or whether the persecutor was merely using homophobic or transphobic epithets as slurs that are not specifically about the applicant. Furthermore, in similar cases, it would be helpful to include testimony or evidence that the persecution worsened when the persecutor found out or perceived the person’s identity to be LGBTQ to establish that the applicant’s sexual orientation or gender identity was at least one

¹¹³ See *Gonzalez-Posadas v. Att’y Gen. U.S.*, 781 F.3d 677, 686 (3d Cir. 2015) (upholding finding that homophobic language used by gang against gay asylum seeker was a “means to an end” to cow him to pay them off or join the gang and not motivated by his sexual orientation).

¹¹⁴ 29 I&N Dec. 202 (A.G. 2025).

¹¹⁵ *Matter of L-E-A-*, 27 I&N Dec. 581, 581 (A.G. 2019) (“*L-E-A-II*”)

¹¹⁶ *Id.* at 597; see also *Matter of M-R-M-S-*, 28 I&N Dec. 757 (BIA 2023), *vacated by O.C.V. v. Bondi*, – F.4th –, 2025 WL 2447603 (10th Cir. 2025) (Tymkovich, J., dissenting).

¹¹⁷ *Perez Vasquez v. Garland*, 4 F.4th 213 (4th Cir. 2021); *Lopez v. U.S. Att’y Gen.*, 142 F.4th 162, 171 (3d Cir. 2025); *Mayancela v. Bondi*, 136 F.4th 1, 13 n.8 (1st Cir. 2025); *Mazariegos-Rodas v. Garland*, 122 F.4th 655, 670 (6th Cir. 2024).

¹¹⁸ See *Mendez v. Barr*, 792 F. App’x 466 (9th Cir. 2019) (unpublished) (finding that although childhood sexual abuse was severe enough harm to qualify as persecution the transgender Honduran asylum seeker could not show that there was a nexus to her LGBTQ identity since the abuse took place before she identified as transgender).

¹¹⁹ 28 I&N Dec. 740 (BIA 2023).

¹²⁰ *Id.* at 741.

¹²¹ *Id.* at 742.

central reason for the persecution. It will always be important for the practitioner to include country conditions materials that corroborate the persecutor's animus towards LGBTQ people in the country of origin. In some cases, it may be possible to demonstrate that a persecutory group, like MS-13 is *machista* and anti-gay even if it may not be possible to demonstrate the specific motivations of an individual gang member. It is often crucial to the case to have an expert witness who can address these issues.

Several unpublished BIA decisions¹²² may prove helpful to practitioners seeking to show the nexus in an LGBTQ asylum case. For example, in one case, the BIA found that the applicant's sexual orientation was at least one central reason for persecution in light of the respondent's testimony that police officers used offensive words regarding his sexual orientation while raping him.¹²³ In another unpublished decision, the BIA reversed as clearly erroneous the IJ's finding that the respondent was not raped and abused in Mexico because she was a transgender woman.¹²⁴ In that case, the BIA found that one of the most severe instances of harm — being forced into prostitution — occurred only after the police became aware that the applicant was transgender. The BIA also relied on country conditions evidence to show the increased harm suffered by transgender women in Mexico.

 **Example:** *Fredy is an asylum seeker from Guatemala. He owned a shop there. The town where his shop was located was under the control of the Barrio 18 gang and the gang frequently extorted its residents for money. Gang members would come to Fredy's shop and ask for money. When they found out he was gay, their visits became more frequent. They would tell him that they did not want "his kind" in Guatemala and demanded double the amount of money they had previously collected. One of the gang members used a hand gesture to signal putting a gun to his head. Sometimes the gang would throw rocks at Fredy as he passed by. Fredy changed his route to avoid the gang, but one day his house was spray painted with the words "Garbage out of Guatemala." A friend warned Fredy that the gang wanted to kill Fredy because "it would be funny to kill a faggot." Fredy immediately fled Guatemala.*

In this example, the gang is targeting Fredy on account of his sexual orientation. Although Fredy had been initially approached by the gang members for extortion at his shop, the harm he suffered worsened when the gang members determined that Fredy was gay. Their targeting of him went beyond mere extortion and, as a result, Fredy could have a viable asylum claim based on his LGBTQ identity.

¹²² These cases are available in the Index of Unpublished Decisions of the Board of Immigration Appeals published by the Immigrant & Refugee Appellate Center, LLC, <https://www.irac.net/>.

¹²³ J-S-G-V-, AXXX XXX 803 (BIA Dec. 12, 2019) (unpublished), https://www.scribd.com/document/443775305/J-S-G-V-AXXX-XXX-803-BIA-Dec-12-2019?secret_password=X1Dm1FMg1ABYetzJ9O2X.

¹²⁴ C-R-R-, AXXX XXX 955 (BIA Oct. 20, 2019), https://www.scribd.com/document/437041336/C-R-R-AXXX-XXX-955-BIA-Oct-20-2019?secret_password=0lobPI8puQq6A3SPqPrz.

E. One Year Filing Deadline

The INA requires an asylum applicant to file for asylum within one year of their last arrival in the United States,¹²⁵ or meet an exception to the OYFD. Even if filing more than a year after arriving in the United States, an asylum seeker can prevail if they “demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant’s eligibility for asylum or extraordinary circumstances relating to the delay in filing the application.”¹²⁶ For both changed and extraordinary circumstances exceptions, an applicant must also file within a reasonable period of time of the exception.¹²⁷ The BIA has found that a delay of six months or more following the changed or extraordinary circumstances is not generally a “reasonable period of time.”¹²⁸ Therefore, it is advisable for practitioners to file within six months of the changed or extraordinary circumstance.

A helpful resource for analyzing OYFD issues is the Asylum Office Lesson Plan on the OYFD, entitled “Asylum Officer Basic Training: One Year Filing Deadline.”¹²⁹ However, practitioners should be careful not to over-rely on a document that is not binding on immigration courts. Furthermore, with growing gaps in transparency and communication between asylum offices and stakeholders, it is unclear which lesson plans are currently being used to train asylum officers.

The “changed circumstances” exception is invoked if an applicant did not have a claim for asylum within the first year of arrival in the United States, but something has changed to make him or her eligible now.¹³⁰ It may also apply if the asylum applicant did have a claim for asylum but the changed circumstance has strengthened their already existing asylum claim.¹³¹ By way of contrast, the “extraordinary circumstances” exception applies if the applicant did have an asylum claim upon arrival in the United States, but something prevented him or her from timely filing.¹³²

¹²⁵ INA § 208(a)(2)(B). Note that special rules apply to asylum seekers who entered the United States as unaccompanied children. See National Immigration Project, *J.O.P. v. DHS* (last updated Jan. 6, 2025) <https://nippnl.org/work/litigation/jop-v-dhs>.

¹²⁶ INA § 208(a)(2)(D).

¹²⁷ 8 CFR § 1208.4(a)(4)(ii); 8 CFR § 1208.4(a)(5).

¹²⁸ *Matter of T-M-H- & S-W-C-*, 25 I&N Dec. 193 (BIA 2010).

¹²⁹ USCIS, *Asylum Officer Basic Training: One Year Filing Deadline*, (March 23, 2009). This and other Asylum Officer Lesson Plans used to be easily accessible on the USCIS website. In 2017, USCIS removed the training materials altogether. It has now restored many internal Asylum Office documents, but as a single pdf that is difficult to navigate and is heavily redacted. The One Year Filing Deadline Lesson Plan is not included. https://www.uscis.gov/sites/default/files/files/nativedocuments/Legal_standards_governing_Asylum_claims_and_issues_related_to_the_adjudication_of_children.pdf. The Lesson Plan can be accessed publicly on the U.S. Court of Appeals for the Ninth Circuit website at http://cdn.ca9.uscourts.gov/datastore/library/2013/02/26/Vahora_LessonPlan.pdf.

This document is also accessible to members of the American Immigration Lawyers Association at AILA InfoNet Doc. No. 16102840 www.aila.org/infonet, [hereinafter “AO OYFD Lesson Plan”].

¹³⁰ 8 CFR § 1208.4(a)(4)(i) includes a non-exhaustive list of changed circumstances which can excuse the OYFD. These include: changed country conditions; changed personal circumstances; and losing derivative status on a family member’s asylum application.

¹³¹ *Zambrano v. Sessions*, 878 F.3d 84 (4th Cir. 2017); *Vahora v. Holder*, 641 F.3d 1038, 1044 (9th Cir. 2011); *Weinong Lin v. Holder*, 763 F.3d 244 (2d Cir. 2014); *Mandebvu v. Holder*, 755 F.3d 417 (6th Cir. 2014); but see *Matter of D-G-C-*, 28 I&N Dec. 297 (BIA 2021) (finding that the mere continuation of an activity in the United States that is substantially similar to the activity from which an initial claim of past persecution is alleged and that does not significantly increase the risk of future harm is insufficient to establish changed circumstances).

¹³² 8 CFR § 1208.4(a)(5) includes a non-exhaustive list of extraordinary circumstances which can excuse the OYFD. These include: serious mental or physical illness; legal disability (including both being under age 18 and/or having a

The LGBTI training module gives specific examples of common fact patterns that may give rise to OYFD exceptions in these cases. These examples include (but are not limited to):

Changed Circumstances:

- Changed country conditions.
- “Coming out” as LGBTQ.
- Recent steps in gender transitioning.
- Recent HIV diagnosis.

Extraordinary Circumstances:

- HIV-positive status, if the illness was sufficiently severe to prevent filing
- Post Traumatic Stress Disorder (PTSD) or other mental health issues, or
- Severe family or community opposition or isolation experienced by the applicant in the United States.¹³³

Additionally, the regulations specify that maintaining Temporary Protected Status, lawful immigrant, or lawful nonimmigrant status, or receiving parole, can constitute an extraordinary circumstance.¹³⁴ The Asylum Office OYFD Lesson Plan explains that the purpose behind this exception is to allow potential asylum applicants to monitor conditions in their home country and wait to file for asylum, until they have no other options.¹³⁵ The exception may be used to help others who have applied for, or have, some type of lawful permission to remain in the United States, such as Deferred Action for Childhood Arrivals (DACA) or a pending application for adjustment of status.

Practitioners should also be aware that the regulations list being an “unaccompanied minor” as an extraordinary circumstance as well.¹³⁶ USCIS has interpreted this exception to include all minors below the age of 18.¹³⁷ Likewise, an unpublished BIA decision agreed that “asylum applicants under 18 years old are understood to suffer from a *per se* legal disability excusing them from the filing deadline.”¹³⁸ The BIA further held that for those who fall between the ages of 18 and 21, the adjudicator should engage in a case-by-case analysis of whether the applicant’s age prevented him or her from filing sooner.¹³⁹

Another potential ground for an exception to the OYFD could be if individuals in the home country become aware of the applicant’s sexual orientation. For example, in an unpublished decision, the BIA found that an asylum applicant’s decision to remain with his partner constituted

mental disability); ineffective assistance of counsel (provided certain procedural requirements are met); maintaining lawful status; filing within one year but having the application rejected for a mistake; or death or serious illness of a legal representative or close family member.

¹³³ LGBTI training module, *supra* note 21, at 61-62.

¹³⁴ 8 CFR § 1208.4(a)(5)(iv).

¹³⁵ See AO OYFD Lesson Plan, *supra* note 121 at 17.

¹³⁶ 8 CFR § 1208.4(a)(5)(ii).

¹³⁷ See AO Children’s Claims, *supra* note 30, at 77.

¹³⁸ A–D–, AXXX XXX 526, at 5 (BIA May 22, 2017) (unpublished), <https://www.scribd.com/document/351904250/A-D-AXXX-XXX-526-BIA-May-22-2017>.

¹³⁹ A–D–, at 5-7.

a changed circumstance materially impacting his eligibility for asylum, even though his relationship with his partner had lasted for years before he filed for asylum, because returning to his home country as a couple increased the likelihood that the applicant would be identified as gay.¹⁴⁰

 **Example:** *Marta came to the United States from El Salvador when she was four years old. In 2013, at age 17, she received DACA. Marta has been an activist for “Dreamers” and has highlighted her personal story of “coming out” as a lesbian and as an undocumented immigrant. Four months ago, Marta was featured on the cover of Time magazine. Marta has heard that the magazine has circulated in her town in El Salvador and that she is now “famous” for being a lesbian celebrity. Marta may have a changed circumstances exception based on her prominence as an “out” lesbian. She could also argue an extraordinary circumstance of being a minor and then a DACA recipient.*

It is also important to note that the “changed circumstances” exception can be used even for scenarios that arise after the filing of an application for asylum. The Fourth Circuit issued a precedential decision on this point in 2022 in a case called *Garcia Hernandez v. Garland*.¹⁴¹ In that decision, which is not an LGBTQ case, the Fourth Circuit found that the BIA had erred in determining that the purported changed circumstances that took place after the time-barred application was filed could not be considered. Instead, the Fourth Circuit found that the agency must evaluate changed circumstances in line with its prior precedent in *Zambrano v. Sessions*, which held that facts that provide additional proof in support of a pre-existing asylum claim can satisfy the changed circumstances exception to the OYFD.¹⁴² The BIA has issued several unpublished decisions agreeing with this analysis.¹⁴³ Because of how long asylum applications can be pending, it is important for advocates to keep in mind that they can still argue for changed circumstances after the filing of an asylum application. An example of such an argument is included in the sample brief attached as an exhibit to this practice advisory.

 **Example:** *Rafael filed for asylum two years after he entered the United States. In his filing, his attorney included documentation showing that Rafael suffered from severe mental health issues after his arrival in the United States, including post-traumatic stress disorder, which impacted his ability to file for asylum in a timely manner. Rafael’s case was pending at the asylum office for 18 months when Rafael was diagnosed as HIV positive. In addition to arguing for extraordinary circumstances as an exception to the OYFD, Rafael’s attorney may also advance arguments that his HIV diagnosis constitutes a changed circumstance even though the diagnosis happened after he had already filed for asylum. Such an approach allows Rafael’s attorney to make arguments*

¹⁴⁰ A-L-G-, AXXX XXX 662 (BIA May 10, 2017) (unpublished) https://www.scribd.com/document/508999364/A-L-G-AXXX-XXX-662-BIA-May-10-2017?secret_password=TaRo702TwjZABWSRIWkG

¹⁴¹ 27 F.4th 263 (4th Cir 2022).

¹⁴² 878 F.3d 84 (4th Cir. 2017),

¹⁴³ J-R-F-F-, AXXX XXX 634 (BIA July 9, 2019) (unpublished) https://www.scribd.com/document/419391625/J-R-F-F-AXXX-XXX-634-BIA-July-9-2019?secret_password=Qy5GXwkhU0zSVaivXRih (citing *Zambrano* and finding that changed circumstances need not occur before asylum application is filed to qualify for exception to one-year filing deadline); S-S-, AXXX XXX 344 (BIA Jan. 28, 2016) (unpublished) https://www.scribd.com/document/639646698/S-S-AXXX-XXX-344-BIA-Jan-28-2016?secret_password=Z7TQjgnLyoT573LZ6TM2 (finding respondent qualifies for changed circumstances exception based on increasing discrimination and harm against members of Russia’s LGBTQ community that occurred after he had already filed for asylum).

based both on extraordinary circumstances (the PTSD diagnosis) and changed circumstances (the HIV diagnosis).

Practitioners can and should be creative about advancing arguments for an exception to the OYFD. The regulations are non-exhaustive, and practitioners can feel free to argue for a variety of factors in support of an exception. Fact-finding through continuous client communication is essential to developing creative OYFD arguments

F. Matter of Discretion

Finally, asylum is a discretionary form of relief. INA §208(b)(1)(A) provides that the attorney general or secretary “may grant asylum” to a qualifying refugee, giving the adjudicator authority to grant or deny relief after weighing relevant factors. Even after an applicant establishes eligibility, the adjudicator — whether an Immigration Judge or a USCIS officer — retains the discretion to grant or deny asylum, typically favoring approval when no negative factors or mandatory bars exist.¹⁴⁴ The applicant’s established eligibility is itself a strong argument for granting asylum,¹⁴⁵ and any factor material to eligibility should generally be given the greatest weight.¹⁴⁶

Adjudicators weigh both positive and negative factors when exercising discretion. For example, while the manner of entry is relevant for an adjudicator to consider, an irregular entry generally has not historically barred asylum as a matter of discretion.¹⁴⁷ Negative factors — such as criminal history, immigration violations, or fraudulent documents — should be addressed directly. For instance, if an applicant used fraudulent documents to enter the United States, the asylum seeker should affirmatively explain why they had to resort to using fraudulent documents to seek safety. In the asylum declaration or on Form I-589, the practitioner can help clarify any negative discretionary issues.¹⁴⁸

Positive factors should also be clearly documented.¹⁴⁹ Examples might include community contributions, religious or civic engagement, efforts to integrate or learn English, employment or

¹⁴⁴ See USCIS, RAIO Training Guide on Discretion, (Jan. 27, 2025), https://www.uscis.gov/sites/default/files/document/foia/Discretion_LP_RAIO.pdf (page 13) [hereinafter USCIS Training Guide on Discretion]

¹⁴⁵ *Id.* at 17 & 21.

¹⁴⁶ *Id.* at 19. See also 8 C.F.R. §§ 1240.8(d), 240.11(e) (burden on applicant to establish eligibility and merit of discretionary relief).

¹⁴⁷ *Matter of Pula*, 19 I&N Dec. 467, 473 (BIA 1987) (holding that an applicant’s irregular entry does not automatically preclude a favorable exercise of discretion).

¹⁴⁸ For a discussion of the role of declarations versus including substantive answers directly on the I-589 application form, see National Immigration Project and Center for Gender and Refugee Studies et al., *Fighting for a Day in Court: Understanding and Responding to Pretermission of Asylum Applications* (Jul. 25, 2025) <https://ninpnlg.org/work/resources/fighting-day-court-understanding-and-responding-pretermission-asylum-applications>.

¹⁴⁹ Practitioners should be aware that USCIS recently changed its guidance for naturalization applicants who must prove good moral character, from merely showing an absence of negative factors (such as criminal convictions) to a need to demonstrate positive equities. See USCIS Policy Memorandum, *Restoring a Rigorous, Holistic, and Comprehensive Good Moral Character Evaluation Standard for Aliens Applying for Naturalization* PM-602-0188, (Aug. 15, 2025) https://www.uscis.gov/sites/default/files/document/policy-alerts/08.15.2025-Restoring_a_Good_Moral_Character_Evaluation_Standard_for_Aliens_Applying_for_Naturalization-Policy_Memorandum_FINAL.pdf. While the legal standard of demonstrating “good moral character” is different from

educational accomplishments, and family ties. Compelling humanitarian or sympathetic factors — such as the severity of past persecution, tender age, mental or physical health conditions, family unity or ties in the United States, length of residence in the United States, or hardship if removed — should also be highlighted and supported by evidence.¹⁵⁰ In LGBTQ asylum cases, additional positive factors may include active involvement in supportive LGBTQ communities, advocacy or volunteer work, participation in organizations that promote LGBTQ rights, or demonstrated resilience and leadership in the face of discrimination. Highlighting these factors can help humanize the applicant and reinforce the case for a favorable exercise of discretion.

An exception to favorable discretion occurs when an applicant has experienced past persecution but no longer faces a well-founded fear of future persecution; in such cases, asylum may still be granted based on either severe past persecution or the reasonable possibility of other serious harm (8 C.F.R. § 208.13(b)(1)(i), (iii)) — see Section II, *supra*, for a discussion of humanitarian asylum.

In short, since discretion can play a crucial role in asylum claims, advocates should be sure to present evidence that supports a favorable exercise of discretion and further humanizes their client before the adjudicator.

G. The Circumvention of Lawful Pathways Rule (CLP)

On May 16, 2023, the Departments of Homeland Security (DHS) and Justice (DOJ) published a final rule, Circumvention of Lawful Pathways (CLP),¹⁵¹ significantly restricting asylum eligibility for certain individuals entering the United States at or near the southern border between May 11, 2023, and May 11, 2025. Often referred to as “Biden’s Asylum Ban,” the CLP imposes new barriers that heighten the risks faced by LGBTQ asylum seekers and others with urgent protection needs. With only narrow exceptions, the rule bars asylum for non-Mexican individuals who crossed into the United States between ports of entry or arrive at ports without CBP One appointments. The CLP took effect on May 11, 2023, at 11:59 p.m. ET, coinciding with the expiration of Title 42,¹⁵² which blocked thousands from seeking asylum at the southern border under the pretext of preventing COVID-19 transmission.

CLP distinguishes between asylum seekers who enter through lawful pathways, who retain full access to asylum, and those who do not — such as individuals entering without inspection — who

requiring a positive exercise of “discretion” practitioners should include affirmative, positive discretionary factors in an abundance of caution

¹⁵⁰ USCIS Training Guide on Discretion, pgs. 18-20, available at

https://www.uscis.gov/sites/default/files/document/foia/Discretion_LP_RAIO.pdf.

¹⁵¹ Circumvention of Lawful Pathways, 88 Fed. Reg. 31314 (May 16, 2023). For individuals with a registered account with the Center for Gender & Refugee Studies (CGRS), there is an excellent Practice Advisory titled *Arguing Against the Circumvention of Lawful Pathways Rule* from August 2025, available to those who submit a case intake request via <https://cgrs.uclawsf.edu/en/user/login>; see also Immigration Justice Campaign, *STB and CLP Rules Practice Advisory* (Dec. 2024), https://immigrationjustice.us/wp-content/uploads/2025/01/STB-and-CLP-Rules-Practice-Advisory_December-2024.pdf; see also National Immigration Project (NIP), *Practice Advisory: Biden’s Asylum Ban* (May 15, 2023), <https://nipnlg.org/work/resources/practice-advisory-bidens-asylum-ban>.

¹⁵² Department of Homeland Security, Fact Sheet: Circumvention of Lawful Pathways Final Rule (May 11, 2023), <https://www.dhs.gov/news/2023/05/11/fact-sheet-circumvention-lawful-pathways-final-rule>. Although the Rule took effect on May 11, 2023, it applies only to individuals whose entry occurred between May 11, 2023, and May 11, 2025, and after the expiration of the Title 42 policy. 88 Fed. Reg. 31,314 (effective date of the Rule); 8 CFR § 208.33(a)(ii), 8 CFR § 1208.33(a)(ii) (applying to entries following the termination of Title 42).

are generally barred from asylum under the rule. Applied in tandem with expedited removal, CLP effectively denies many asylum seekers — including those with strong claims based on sexual orientation, gender identity, or HIV status — a full hearing in immigration court by imposing a highly restrictive initial screening standard. It establishes a rebuttable presumption of ineligibility based on the manner of entry into the United States and whether protection was sought in a transit country. Individuals subject to this presumption are barred from asylum but may remain eligible for Withholding of Removal or protection under the Convention Against Torture (CAT).

Asylum applicants entering the United States after the sunset of the Rule on May 11, 2025 (11:59 p.m. ET), are no longer subject to its provisions, while those who entered during the relevant 24-month period remain affected. CLP is triggered by the date of entry rather than the date the asylum application is filed or adjudicated. Accordingly, the presumption of ineligibility applies at all stages of proceedings for those who entered during this period, even if the application is filed or adjudicated after May 11, 2025.¹⁵³ CLP applies to applications and determinations at the following procedural stages:¹⁵⁴

1. During credible fear screenings (CFIs):

- a. Individuals who enter without using a “lawful pathway” may be placed in expedited removal and will receive a CFI with the Asylum Office if they express a fear of return. The asylum officer first determines whether the CLP presumption applies and whether the applicant can establish an exception or rebut the presumption.¹⁵⁵ Applicants who qualify for an exception or successfully rebut the presumption are then evaluated under the standard credible fear procedures using the “significant possibility” test. Those who cannot meet an exception or rebuttal are found not to have a credible fear of asylum and must demonstrate a “reasonable possibility” of persecution or torture for withholding or CAT protection. Applicants may request Immigration Judge review if the CFI is negative.¹⁵⁶

2. Upon immigration judge review of a negative CFI:

- a. The IJ reviews the case de novo. The IJ first determines if an exception or rebuttal applies and then applies either the “significant possibility” or “reasonable possibility” standard based on whether or not the applicant is potentially eligible for asylum. Positive findings proceed to an asylum merits interview (AMI)¹⁵⁷ or DHS-initiated §240 proceedings;¹⁵⁸ negative findings result in removal.

¹⁵³ 8 CFR § 208.33(c)(1).

¹⁵⁴ 8 CFR §§ 208.33(b)-(c).

¹⁵⁵ 8 CFR 208.33(b)(1). The Rule directs AO to assess whether the applicant has established an exception and not whether there is a significant possibility that the applicant will be able to establish an exception in full removal proceedings.

¹⁵⁶ To explore potential arguments against the CLP in CFIs, see Center for Gender and Refugee Studies, *August 2025 Practice Advisory on Arguments Against the Circumvention of Lawful Pathways Rule* (including a CLP-CFI flowchart in Appendix B), available by request at <https://cgrs.uclawsf.edu/about-technical-assistance-program/how-access-technical-assistance-ta>; see also AILA, *Border Solutions Policy Brief on the Asylum Credible Fear Standard*, available at <https://www.aila.org>.

¹⁵⁷ U.S. Citizenship & Immigration Servs., *Asylum Merits Interview with USCIS: Processing After a Positive Credible Fear Determination*, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/asylum-merits-interview-with-uscis-processing-after-a-positive-credible-fear-determination> (last reviewed Jan. 25, 2025).

¹⁵⁸ 8 CFR § 208.33(b)(2)(v)(A).

- b. The IJ finds no credible fear for asylum and evaluates a “reasonable possibility” of persecution or torture for withholding or CAT protection. If the standard is met, DHS issues an NTA for §240 proceedings. If not, the case returns to DHS for removal with no appeal.¹⁵⁹
- 3. During an affirmative asylum interview:**
 - a. The Asylum Office assesses whether the CLP applied at entry, whether any exception is available, or whether the presumption against asylum eligibility can be rebutted. Applicants must substantiate any exceptions and provide supporting evidence, including their entry date. If the CLP does not apply—or if the applicant successfully rebuts the presumption or qualifies for an exception—they proceed to an interview on the merits.
- 4. In regular § 240 removal proceedings:**
 - a. The CLP is assessed de novo. Applicants who entered between May 11, 2023, and May 11, 2025, must address the CLP at their merits hearing, even if they previously rebutted the presumption or qualified for an exception. Applicants should document their entry date to meet the one-year filing deadline and establish CLP applicability. Those who must rebut bear a “preponderance of the evidence” standard, showing it is more likely than not that the circumstances justifying rebuttal existed at entry.¹⁶⁰ Applicants unable to rebut or establish an exception are ineligible for asylum but may still seek withholding of removal, CAT protection, or other relief, including adjustment of status.

Notably, the application of the CLP to an asylum seeker is assessed de novo at each stage.¹⁶¹ For instance, an applicant who rebuts the presumption of ineligibility during a CFI must be prepared to do so again in later proceedings. A determination at the CFI stage that the CLP applies does not preclude the applicant from establishing an exception or rebutting the presumption in subsequent proceedings. The presumption is limited to narrow exceptions, which are discussed in detail below.

CLP imposes two main bans on any noncitizen: the entry ban and the travel ban, described below.

1. Entry Ban

- Entered the United States by land at the U.S.-Mexico border (or adjacent coastal waters).
- Entered without inspection or authorization — i.e., without a visa or other U.S.-issued entry document (including pre-scheduled parole) — between on May 11, 2023, and May 11, 2025.

2. Transit Ban:

- Traveled through a third country on the way to the United States, other than their country of origin, citizenship, nationality, or last habitual residence that is a party to

¹⁵⁹ 8 CFR § 208.33(b)(2)(v)(C).

¹⁶⁰ 8 CFR § 1208.33(a)(3)).

¹⁶¹ 8 CFR § 1208.33(b)(1).

the 1951 United Nations Convention relating to the Status of Refugees or the 1967 Protocol relating to the Status of Refugees.¹⁶²

There is also a select class of individuals *exempt* from the CLP that advocates should first consider:

- **Mexican citizens** (including stateless persons whose last habitual residence was in Mexico), as they do not transit through a third country en route to the United States.¹⁶³
- **Individuals who entered prior to the Rule's effective date/time:** Practitioners should carefully screen applicants to confirm whether they entered *prior* to the expiration of the Title 42 policy at midnight Eastern time on May 11, 2023.

 **Example:** Mariana is a transgender asylum seeker from Venezuela. She entered the United States without inspection on May 9, 2023. Mariana is exempt from the CLP because she entered before it went into effect.

For applicants who are not Mexican and entered during the 24 months *after* the CLP took effect, advocates should assess any applicable exceptions and document the circumstances. **The following noncitizen categories are exceptions to the CLP's rebuttable presumption of asylum ineligibility:**

- **Unaccompanied Children (UC):** Those who meet the UC definition under 6 U.S.C. § 279(g)(2) *at the time of entry* are not subject to the asylum ban. UCs are defined as children under 18, with no lawful immigration status, who entered the U.S. without a parent or legal guardian.¹⁶⁴
- **Noncitizens, or family members traveling with them, who entered the United States through the following pathways:**¹⁶⁵
 - **Parole Entrants:** Those who entered pursuant to a DHS-approved parole process, such as individuals entering via the Cuban, Haitian, Nicaraguan, and Venezuelan parole process (CHNV), as well as other government-designated parole entrants.¹⁶⁶

¹⁶² 8 CFR § 1208.33(a)(1)(iii). Forty-four United Nations member states are not parties to the 1951 Refugee Convention or its 1967 Protocol. Notably, most countries in the Middle East (with Iran, Israel, Egypt, and Yemen as exceptions) and several in South and Southeast Asia (including India, Bangladesh, Pakistan, Sri Lanka, Malaysia, and Indonesia) are non-signatories. Guyana is the sole non-signatory in South America. Other non-signatory states include Eritrea, Libya, Mongolia, Cuba, and Uzbekistan. Maja Janmyr, "The 1951 Refugee Convention and Non-Signatory States: Charting a Research Agenda," 33 Int'l J. Refugee L. 188, 189 (2021), <https://academic.oup.com/ijrl/article/33/2/188/6448830>.

¹⁶³ 8 CFR § 208.33(a)(1)(iii).

¹⁶⁴ 8 CFR § 208.33(a)(2)(i).

¹⁶⁵ These exceptions apply if the applicant was traveling with a family member who met the exception, *even if* the applicant themselves did not. The Rule defines "family member," under 8 CFR § 208.30(c) to refer to valid spouses, unmarried children under age 21, and at USCIS's discretion, any "other accompanying family members who arrived in the United States concurrently." 8 CFR § 208.33(a)(2)(ii)

¹⁶⁶ 8 CFR § 208.33(a)(2)(ii)(A).

Practice Tip: This form of parole does not include parole from immigration detention or release from Immigration and Customs Enforcement (ICE)/Customs and Border Protection (CBP) custody; it must relate to entry into the United States, not release from custody.¹⁶⁷

- **CBP-One Pre-scheduled Appointment:** presented at a port of entry (POE) pursuant to a pre-scheduled time and place (i.e., used the CBP One app or otherwise scheduled an appointment). On Jan. 20, 2025, CBP One was suspended and rebranded as CBP Home, a mobile application for self-deportation.¹⁶⁸
- **Presented at a Port of Entry (POE)** without a pre-scheduled appointment *and* can demonstrate by a preponderance of the evidence an inability to access or use the CBP One system due to factors such as language barriers, illiteracy, significant technical failure, or other ongoing and serious obstacle.¹⁶⁹

Practice Tip: Individuals who entered the United States after CBP One's suspension and before the May 11, 2025, sunset date will likely be unable to use many of the CBP One-related exceptions that presume the continued existence of the app. However, individuals who entered after Jan. 20, 2025, may argue that the suspension of CBP One qualifies as a "significant technological failure" and "other ongoing and serious obstacle" only if they presented at a POE.

- LGBTQ asylum seekers faced heightened risks while waiting in Mexico to access the U.S. asylum process. Discrimination and antipathy based on sexual orientation, gender identity, race, nationality, migratory status, or language barriers often limits access to safe housing, employment, medical care, and other basic needs.¹⁷⁰ The CBP One app added further obstacles: it was only available in English, Spanish, and Haitian Creole, excluding many asylum seekers who speak other languages. It also disadvantaged those who are illiterate, have disabilities, lack smartphones, or cannot safely use the internet, leaving many LGBTQ people without equal access to asylum appointments.

¹⁶⁷ 88 Fed. Reg. 3134 at 31349 (citing 8 CFR § 235.3(b)(2)(iii), (b)(4)(ii)). It is not clear whether the exception applies to noncitizens who were paroled at the border based on advocacy by immigration providers when the asylum seeker did not have a pre-scheduled parole appointment.

¹⁶⁸ For more on CBP Home, please see CLINIC's Practice Pointer: *The "Project Homecoming" Proclamation and the CBP Home App's "Self-Deportation" Program*, available at <https://www.cliniclegal.org/resources/practice-pointer-project-homecoming-proclamation-and-cbp-home-apps-self-deportation>

¹⁶⁹ 8 CFR § 208.33(a)(2)(ii)(B)

¹⁷⁰ For detailed information highlighting key findings on the impact of the asylum ban policy on LGBTQ people, see Human Rights First, *U.S. Asylum Bans Strand LGBTQ+ Refugees in Danger and Risk Return to Persecution* (June 2024), https://humanrightsfirst.org/wp-content/uploads/2024/06/Factsheet_Asylum-Bans-Strand-LGBTQI-Refugees_final-formatted.pdf.

- **Sought asylum or other protection in one country through which they traveled to reach the United States and received a final decision denying their claim:** The applicant must have applied for asylum or “other protection” in a transit country and received a final denial on the merits; abandoned claims do not qualify.¹⁷¹ “Other protection” is not defined but may include fear-based relief or temporary protection programs, such as those in Colombia, Costa Rica, and Ecuador.¹⁷²

Practice Tip: Practitioners may want to include country conditions information about how LGBTQ people are treated in the countries that the asylum seeker traveled through as part of the asylum application to corroborate their fear for their safety in transit countries, in addition to their country of citizenship. LGBTQ asylum seekers face heightened risk of persecution in many of the transit countries they travel through, making it unsafe for them to apply for asylum or other protection in those countries. Practitioners should be aware, however, that the CLP regulations do not include an exemption from applying for asylum in a third country based on conditions in the country. For an overview of country conditions resources for LGBTQ clients, see Section V below.

1. Overcoming the Presumption of Asylum Ineligibility

Asylum seekers who do not qualify for one of the exceptions described above may still rebut the presumption of asylum ineligibility by demonstrating, by a preponderance of the evidence, that “exceptionally compelling circumstances” exist.¹⁷³ The CLP identifies three specific categories of “exceptionally compelling circumstances” that, if shown to have affected the applicant or a traveling family member, may rebut the presumption. These per se categories for rebuttal are evaluated as part of a broader, individualized, case-by-case assessment and are supplemented by a catch-all provision. Advocates should screen for these conditions and consider arguing for more than one exceptionally compelling circumstance, as many applicants — especially LGBTQ clients — may have experienced multiple. The following categories cover circumstances where, at the time of entry, the applicant or a traveling family member experienced:

A. Acute Medical Emergency:¹⁷⁴ A serious medical condition that arises at or near the time of entry.

Practice Tip: The preamble to the CLP rule notes this can include a mental health emergency and explains that health emergencies that are less severe than an “acute medical emergency” could potentially qualify as an “exceptionally compelling circumstance” on a case-by-case basis to be determined by the Asylum Officer (AO) or IJ.¹⁷⁵

¹⁷¹ 8 CFR §§ 208.33(a)(2)(ii)(C), 1208.33(a)(2)(ii)(C).

¹⁷² 88 Fed. Reg. at 31,416.

¹⁷³ 8 C.F.R. § 208.33(a)(3).

¹⁷⁴ 8 CFR § 208.33(a)(3)(i)(A).

¹⁷⁵ Preamble, Circumvention of Lawful Pathways, 88 Fed. Reg. 31314 (May 16, 2023).

 **Example:** An HIV-positive Colombian gay man struggled for two months to obtain a CBP One appointment while waiting in Matamoros and went without treatment, becoming seriously ill. Unable to access the port of entry and in urgent need of medical care, he crossed the river into the United States, where CBP apprehended him.

B. Imminent and Extreme Threat to Life or Safety:¹⁷⁶ Such as rape, kidnapping, torture, or murder, occurring at or close to entry.

Some tips for practitioners include:

- I. **Screen for Imminent Threats:** Practitioners should carefully screen LGBTQ clients for any imminent threats to their life or safety encountered while seeking entry at the southern border and thoroughly document these threats—even if the client was not actually harmed. The CLP explicitly acknowledges that applicants do not need to wait until harm is actively occurring or certain to happen before seeking entry into the United States. The rule requires only a “threat” to the applicant’s life or safety, not that the applicant actually suffered harm.¹⁷⁷ To invoke this rebuttal ground, the noncitizen must show that the threat was both imminent and extreme—not speculative, based on generalized safety concerns, or tied to prior threats that no longer pose an immediate danger.¹⁷⁸

 **Example:** A transgender Honduran woman, traveling with her transgender friend, encountered a Mexican cartel, which threatened to kill her if she did not pay them. She had already witnessed the cartel beat and sexually assault her friend. Fearing for her life, she entered the United States without inspection before her pre-scheduled CBP One appointment. She may be able to rebut the presumption against asylum because the risk to her was imminent and related to her need to quickly cross into the United States.

- II. **Types of harm:** While the CLP specifically lists rape, kidnapping, torture, or murder as examples of threats that rebut the presumption, the preamble makes clear that other forms of harm causing severe pain or suffering may also satisfy this standard: “this means of rebuttal may in certain circumstances encompass imminent and extreme threats of severe pain and suffering.”¹⁷⁹ The CLP also recognizes that “imminent” and “extreme” are standards long used in asylum adjudications and that harm rising to the level of persecution may satisfy this standard, giving advocates a strong body of case law to rely on.¹⁸⁰
- III. **Highlight Membership in a Vulnerable Group:** The CLP specifically acknowledges that membership in a particularly vulnerable group — such as LGBTQ or HIV-positive

¹⁷⁶ 8 CFR § 208.33(a)(3)(i)(B).

¹⁷⁷ 88 Fed. Reg. at 31,393.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ See, e.g., *Fon v. Garland*, 34 F.4th 810, 813 (9th Cir. 2022) (“[P]ersecution is an extreme concept” (quoting *Ghaly v. INS*, 58 F.3d 1425, 1431 (9th Cir. 1995))); *Li v. Att’y Gen. of U.S.*, 400 F.3d 157, 164 (3d Cir. 2005) (“[U]nfulfilled threats must be of a highly imminent and menacing nature in order to constitute persecution” (citing *Boykov v. INS*, 109 F.3d 413, 416-17 (7th Cir. 1997))).

- individuals — can help show how extreme and immediate the threat is.¹⁸¹ However, applicants still must demonstrate they faced an imminent risk.
- IV. **Types of Evidence to Documents Harm:** Practitioners should gather supporting evidence, including country conditions reports, human rights documentation, and declarations or records that corroborate the threat and the applicant's heightened vulnerability. Testimony from the applicant or traveling companions and documentary evidence — like photos, text messages, social media posts, or phone logs — should also be preserved. Country conditions evidence can further support the imminency and severity of the threat (see Section VI on country conditions for LGBTQ individuals).
- V. **Credible Testimony Alone May Suffice:** The CLP confirms that credible testimony alone may be enough to rebut the presumption against asylum eligibility.¹⁸² The applicant's reasonable belief that their life or safety was threatened is enough, even if later proven unfounded.¹⁸³

C. Victim of a Severe Form of Trafficking in Persons¹⁸⁴ May have occurred *at any time*, including in the country of origin or en route to the United States, consistent with the T visa definition in the regulations.¹⁸⁵ Unlike the other exceptions and rebuttals, there is no need to demonstrate a link between the trafficking and the need to enter the United States without waiting for a CBP One appointment.

Practice Tip: LGBTQ applicants may be particularly vulnerable to trafficking or coercion due to their sexual orientation or gender identity. Many have experienced kidnapping, sexual exploitation, or forced labor, which can constitute “exceptionally compelling circumstances” sufficient to overcome the presumption of ineligibility. Practitioners should carefully screen for and document any trafficking-related harms, demonstrating how they meet the regulatory definition and exception criteria.¹⁸⁶

D. Family Unity in Removal Proceedings – For noncitizens in removal proceedings before the Immigration Court under INA § 240, the presumption of ineligibility may be rebutted to preserve family unity. The principal applicant must be eligible for statutory or CAT withholding of removal, discussed in more detail in section IV, *infra*, and would otherwise be granted asylum but for the presumption. This applies in two situations:¹⁸⁷

¹⁸¹ 88 Fed. Reg. at 31,393. . “Where the noncitizen is a member of a particularly vulnerable group (e.g., LGBT or HIV-positive people), their membership in such a group may be a relevant factor in assessing the extremity and immediacy of the threats faced at the time of entry.

¹⁸² 88 Fed. Reg. at 31,393.

¹⁸³ 88 Fed. Reg. 31, 390.

¹⁸⁴ 8 CFR 208.33(a)(3)(i)(C).

¹⁸⁵ See 8 C.F.R. § 214.202 (definitions of T visa eligibility).

¹⁸⁶ For a helpful screening tool with questions regarding trafficking, see Coalition to Abolish Slavery and Trafficking (CAST), *T Visa Screening Guide*, https://casttta.nationbuilder.com/do_you_have_a_t_visa_screening_guide.

¹⁸⁷ 8 CFR § 1208.33(c).

- a. **Accompanying family in the United States:** The principal applicant has a lawful spouse and/or eligible children present in the United States who do not independently qualify for asylum or other protection from removal.¹⁸⁸
- b. **Family outside the United States:** The principal applicant has a lawful spouse and/or eligible children abroad who would be eligible to follow to join the applicant under INA § 208(b)(3)(A) if the principal had been granted asylum. Family members outside the United States do not need to show that they would otherwise be ineligible for asylum or other protection for this exception to apply. While the family unity exception has generally been the most common way for some noncitizens who would otherwise have been subject to the CLP to obtain asylum, this exception may provide fewer benefits to LGBTQ people who are likely fleeing countries where they were unable to marry their partner.

Practice Tip: Family Unity

Practitioners should carefully document the location and eligibility status of all qualifying family members to support the family unity exception. Key questions to ask clients include:

- Do you have a spouse or children under age 21 currently in the United States? If so, assess whether those family members have independent bases to seek asylum, withholding of removal, or protection under CAT.
- Do you have a spouse or children under age 21 outside the United States?

Ethical Considerations: The family unity provision requires the applicant to demonstrate their derivatives' ineligibility for asylum, potentially undermining those family members' claims. Advocates should be mindful of these ethical challenges and document family eligibility thoroughly while supporting the principal applicant.

In addition to the enumerated per se categorical exceptionally compelling circumstances, including the family unity provision, advocates should consider other potential “exceptionally compelling circumstances” that may rebut the presumption of asylum ineligibility. To qualify, any other exceptionally compelling circumstances must also exist at the time of entry.¹⁸⁹ As an especially vulnerable population, LGBTQ asylum seekers may experience other exceptionally compelling circumstances while waiting in Mexico, such as sexual assault, with resulting PTSD or severe physical symptoms; ongoing PTSD from prior persecution even without a formal diagnosis; or targeted robbery or threats causing psychological harm to the applicant or accompanying family members. Advocates should thoroughly screen for and document these

¹⁸⁸ See Immigrant Legal Resource Center (ILRC), *How the “Lawful Pathways” Asylum Ban Impacts Children & Youth* (Oct. 16, 2023), <https://www.ilrc.org/community-resources/how-%E2%80%99Lawful-pathways%E2%80%99D-asylum-ban-impacts-children-youth>. CGRS’s *Arguing Against the Circumvention of Lawful Pathways Rule*, (Aug. 2025) also has an excellent Flow Chart on the Family Unity Exception at Appendix C.

¹⁸⁹ 8 C.F.R. § 1208.33(a)(3)(i); 88 Fed. Reg. 31,318

circumstances and consider making appropriate referrals for psychological or medical evaluations to further support the applicant's claim.

 **Example:** *Joseph is a gay man from Cameroon. He entered the United States without inspection in December 2023. While in Mexico waiting for his CBP one appointment, he suffered a sexual assault and was the target of threats from cartels. He suffered severe anxiety and depression as he waited for his appointment as this assault and threats reminded him of what he had endured in Cameroon. Joseph may be able to rebut the presumption of asylum ineligibility by showing exceptionally compelling circumstances for entering without inspection.*

III. Overview of Withholding of Removal Under INA § 241(b)(3) and Protection Under the Convention Against Torture

Several U.S. courts of appeal have issued precedential decisions addressing withholding and CAT protection in the LGBTQ context.¹⁹⁰ Practitioners should always consider, in addition to and in the alternative to asylum, withholding of removal under INA § 241(b)(3), and CAT protection for LGBTQ asylum seekers.

Individuals who are in removal proceedings can seek withholding of removal under section 241(b)(3) of the INA and protection under CAT simultaneously with filing for asylum. Practitioners should be aware that individuals who cannot succeed with an exception to the OYFD may still be eligible for withholding of removal or CAT protection. Both withholding under the INA and CAT protection require the applicant to meet a higher standard than asylum, proving that it is “more likely than not” the applicant will be persecuted or tortured, respectively.¹⁹¹ However, importantly for withholding of removal cases under the INA, the regulations create a presumption of persecution in the future in cases where past persecution is established.¹⁹² Neither withholding nor CAT protection leads to permanent residence or U.S. citizenship; these forms of protection from removal merely prevent the U.S. government from removing the individual to a country where they have proven they are likely to face persecution or torture.

¹⁹⁰ See *Velasquez-Banegas v. Lynch*, 846 F.3d 258, (7th Cir. 2017) (granting petition for review and remanding withholding case for HIV-positive Honduran man with imputed gay sexual orientation); *Neri-Garcia v. Holder*, 696 F.3d 1003, 1006 (10th Cir. 2012) (denying withholding and CAT to gay man from Mexico where IJ found that country conditions had improved sufficiently in the 15 years since the applicant had lived in Mexico to rebut the presumption of future harm); *Morales v. Gonzales*, 478 F.3d 972, 980 (9th Cir. 2007) (remanding transgender Mexican's claim for CAT protection where IJ applied the wrong legal standard regarding government conduct); *Reyes-Reyes v. Ashcroft*, 384 F.3d 782 (9th Cir. 2004) (remanding withholding of removal and CAT claims for “gay man with female sexual identity” from El Salvador where IJ and BIA had improperly applied a per se rule requiring applicant to report private actor harm and had misapplied the standard of government acquiescence); *Udo v. Garland*, 32 F.4th 1198 (9th Cir. 2022) (finding that an adverse credibility determination is not necessarily a death knell for a gay applicant's application for protection under the CAT if other evidence in the record alone establishes that the noncitizen would more likely than not be tortured if removed); *Xochihua-Jaimes v. Barr*, 962 F.3d 1175 (9th Cir. 2020) (finding that lesbian in Mexico was more likely than not to suffer torture with the acquiescence of the government).

¹⁹¹ See 8 CFR § 1208.16(b)(2); 8 CFR § 1208.16(c)(2).

¹⁹² 8 C.F.R. § 1208.16(b)(1).

Practitioners should also be aware that ICE is making a concerted effort to increase the use of third-country removals. On Feb. 18, 2025, ICE issued a directive encouraging the increased use of third-country removals against individuals granted withholding of removal under the INA and individuals granted protection under the CAT.¹⁹³ The directive states that withholding and CAT are “country-specific protections from removal” that do not prevent removal to a third country. As a result, the directive instructs officers that when individuals granted withholding of removal or CAT protection report for a check-in on a non-detained docket, officers should consider “the viability of removal to a third country” and whether the noncitizen should be re-detained. Given the increased pressure that ICE has been under to meet quotas for arrests, detentions, and deportations, it is not surprising that the agency is focused on those who already have removal orders as being easy targets for removal.

On March 23, 2025, a complaint, motion for class certification, and motion for a temporary restraining order were filed in district court in Massachusetts challenging the ICE directive and policy of removing individuals to third countries without notice and an opportunity to express a fear of return to that third country. This case is titled *D.V.D. v DHS*.¹⁹⁴

While the district court issued a preliminary injunction that provided certain procedural protections to noncitizens seeking third country removal, the Supreme Court later issued a decision on its “shadow docket,” granting the government’s requested stay as to the preliminary injunction issued by the district court.¹⁹⁵ The Supreme Court provided no analysis in its decision, leaving practitioners with no guidance as to what to do to ensure that clients who may be at risk of removal to a third country can receive the due process to which they are entitled. While third-country removals may still be challenged on an individual basis via a habeas petition, many noncitizens are left in a precarious position when the government is moving so quickly to deport them without process. Further, many LGBTQ clients may be particularly at risk from the Supreme Court’s issuance of a stay, as they are likely to fear persecution and torture in various parts of the world. Indeed, one of the plaintiffs in the *D.V.D.* case is a gay man from Guatemala, O.C.G., who was granted withholding of removal as to Guatemala but then deported shortly thereafter to Mexico even though he had suffered sexual assault there.¹⁹⁶

Following the Supreme Court’s decision in *D.V.D.*, ICE issued a subsequent memo on third country removals, stating that no notice would be provided to noncitizens regarding third country removals when officials have been provided with diplomatic assurances that the noncitizen will not face torture in that third country.¹⁹⁷ When no such assurances are provided, the noncitizen will be provided 24 hours’ notice in some cases and, in cases with “exigent circumstances,” will be provided just six hours’ notice.

¹⁹³ A copy of the Feb. 18, 2025, ICE directive is available at https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.1.4_1.pdf

¹⁹⁴ Documents relating to the district court docket in the *D-V-D- v DHS* case are available at <https://www.courtlistener.com/docket/69775896/dvd-v-us-department-of-homeland-security/>

¹⁹⁵ *Dep’t of Homeland Sec. v. D.V.D.*, No. 24A1153, 2025 WL 1732103 (U.S. June 23, 2025)

¹⁹⁶ The court docket documents, including the complaint, provide more details on O.C.G.’s persecution in both Guatemala and Mexico. <https://www.courtlistener.com/docket/69775896/dvd-v-us-department-of-homeland-security/>

¹⁹⁷ Maria Sacchetti, Carol D. Leonnig, and Marianne LeVine, ICE Memo Outlines Plan to Deport Migrants to Countries Where They are Not Citizens, *Washington Post* (July 13, 2025), <https://wapo.st/4nLPVpz>.

While litigation continues in the *D.V.D.* case, practitioners must keep in mind that a grant of withholding of removal or CAT may provide little protection because of the risk of removal to a third country. Nevertheless, some clients may simply not be eligible for any other forms of relief because of statutory or regulatory bars to being granted asylum.

A. Withholding of Removal Under INA § 241(b)(3)

Withholding of removal under INA § 241(b)(3) is not considered a form of relief from removal because the applicant is still ordered removed, but the U.S. government is prevented from removing the individual to the country where they would face persecution.¹⁹⁸ To qualify for withholding of removal, an applicant must establish that it is more likely than not that they would be subject to persecution based on one of the protected grounds.¹⁹⁹ The “more likely than not” burden is higher than the “well-founded fear” standard for asylum. However, if a noncitizen demonstrates past persecution in the country of removal, it is presumed that their life or freedom will be threatened in the future, and the burden shifts to DHS to demonstrate by a preponderance of the evidence that a fundamental change in circumstances has occurred in that country, or that the applicant could safely relocate to another area in the proposed country of removal.²⁰⁰ Furthermore, there is no equivalent of “humanitarian asylum” for applicants who no longer possess a fear of return.²⁰¹ Applicants for withholding of removal are not subject to the OYFD, nor are they subject to a bar based on firm resettlement, but the other mandatory bars that apply to asylum also apply in the withholding context.²⁰² Moreover, an applicant who has a criminal record may be barred from asylum based on discretion but will not be barred from withholding of removal unless they have been convicted of a particularly serious crime.

Circuit courts have granted LGBTQ noncitizens withholding of removal in numerous decisions. In *Velasquez-Banegas v. Lynch*, the U.S. Court of Appeals for the Seventh Circuit vacated the denial of withholding of removal for an HIV-positive man with an imputed gay sexual orientation from Honduras, noting that “the [IJ] made a hash of the record” and overlooked key testimony.²⁰³ Mr. Velasquez-Banegas argued that Hondurans would assume he is LGBTQ because he is HIV-positive, middle-aged, and unmarried. Relying heavily on the testimony of an expert witness, the Seventh Circuit remanded the case, instructing the BIA to take the uncontested testimony that the applicant would face future harm into account.²⁰⁴ Similarly, the First Circuit granted a petition for review and remanded the matter to the agency for consideration of a gay, HIV-positive man’s applications for withholding of removal and CAT protection when the IJ and BIA misconstrued the applicant’s testimony as to whether he had ever reported the harm he suffered to the authorities in his home country.²⁰⁵ The First Circuit found that the IJ had wrongly found the applicant to lack credibility as to this point, when a careful review of the record determined that

¹⁹⁸ *INS v. Aguirre-Aguirre*, 526 U.S. 415, 419-20 (1999).

¹⁹⁹ *INS v. Stevic*, 467 U.S. 407, 430 (1984).

²⁰⁰ 8 C.F.R. § 1208.16(b)(1).

²⁰¹ INA § 241(b)(3)(A).

²⁰² INA § 241(b)(3)(B) ((i) the alien ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual’s race, religion, nationality, membership in a particular social group, or political opinion; (ii) the alien, having been convicted by a final judgment of a particularly serious crime, is a danger to the community of the United States; (iii) there are serious reasons to believe that the alien committed a serious nonpolitical crime outside the United States before the alien arrived in the United States; or (iv) there are reasonable grounds to believe that the alien is a danger to the security of the United States).

²⁰³ *Velasquez-Banegas*, 846 F.3d 258.

²⁰⁴ *Id.* at 264.

²⁰⁵ *Troche v. Garland*, 15 F.4th 559 (1st Cir. 2021).

there were in fact no inconsistencies in the applicant's testimony. These cases highlight why it is critical to build a strong record before the IJ and to appeal decisions that lack support in the record.

B. Protection Under the Convention Against Torture

Applicants who cannot establish a nexus to a protected ground but who can establish a likelihood of torture, may be granted protection under CAT. There are two forms of protection under CAT: withholding of removal under CAT and deferral of removal under CAT. For both forms of protection, the applicant must demonstrate that it is more likely than not that they will be subjected to torture. For purposes of CAT protection, torture is defined as:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.²⁰⁶

The regulations further define mental torture as potentially including physical pain or suffering, the use of mind-altering substances or procedures, the threat of imminent death to the individual, or the threat that another person will suffer of any of the above forms of torture.²⁰⁷ Availability of CAT protection is limited further in the regulations, which specify that the torture must be extreme,²⁰⁸ cannot be part of a lawful sanction,²⁰⁹ must be intentionally intended to inflict severe pain or suffering,²¹⁰ and that the individual must be in the physical custody of the government actor or the government actor must acquiescence in the torture.²¹¹ In many CAT protection cases, the most difficult element is proving that the applicant was tortured or will be tortured by a state actor or with the acquiescence of a state actor. This element will likely also present difficulties for LGBTQ asylum seekers because they often suffer extreme harm at the hands of private actors and not the government. Most U.S. courts of appeal take the position that showing that the government is “willfully blind” to the torture, suffices to meet the state action element in the torture analysis.²¹²

²⁰⁶ 8 CFR § 1208.18(a)(1). Note that the regulations currently listed online are incorrect due to the more recent version being enjoined by litigation. The 2019 version of the regulations are currently in effect. National Immigration Project, *Enjoined Asylum Regulations “Cheat Sheet”* (Feb. 23, 2023) <https://nipnlg.org/work/resources/enjoined-asylum-regulations-cheat-sheet>.

²⁰⁷ 8 CFR § 1208.18(a)(4).

²⁰⁸ 8 CFR § 1208.18(a)(2).

²⁰⁹ 8 CFR § 1208.18(a)(3).

²¹⁰ 8 CFR § 1208.18(a)(5).

²¹¹ 8 CFR § 1208.18(a)(6)–(a)(7); see, e.g., *Madrigal v. Holder*, 716 F.3d 499 (9th Cir. 2013) (“Acquiescence . . . does not require that the public official approve of the torture, even implicitly. It is sufficient that the public official be aware that torture of the sort feared by the applicant occurs and remain willfully blind to it.”)

²¹² See, e.g., *Suarez-Valenzuela v. Holder*, 714 F.3d 241, 245–46 (4th Cir. 2013); *Diaz v. Holder*, 501 F. App'x 734, 736 (10th Cir. 2012); *Pieschacon-Villegas v. Att’y Gen. of U.S.*, 671 F.3d 303(3d Cir. 2011); *Hakim v. Holder*, 628 F.3d 151 (5th Cir. 2010); *Aguilar-Ramos v. Holder*, 594 F.3d 701, 706 (9th Cir. 2010); *Ali v. Reno*, 237 F.3d 591, 597 (6th Cir. 2001). The “willful blindness” standard is less stringent than a “willful acceptance” standard which the government sometimes advances. “Under the willful acceptance standard, an applicant must demonstrate that government officials

The attorney general and the BIA have held that public officials who engage in torture must be operating “under color of law.”²¹³ To determine whether a public official who engaged in torture was operating in their official capacity (i.e., “under color of law”), an adjudicator should consider various factors, including:

- If the actor’s government connections provide physical access to the victim or their identifying information.
- Whether a law enforcement officer was on duty and in official uniform at the time of the conduct.
- Whether the official threatened and had the ability to retaliate through governmental channels if the victim reported the conduct to authorities.²¹⁴

The BIA has emphasized that the key consideration in determining whether an official acted in their official capacity “is whether the official was able to engage in the conduct because of their government position, or whether the official could have done so without connection to the government.”²¹⁵

The legal standard for proving torture is the same whether an applicant is seeking withholding of removal under CAT or deferral of removal under CAT.²¹⁶ The primary reason an applicant may be granted withholding of removal under CAT rather than asylum or withholding of removal under INA § 241(b)(3) is that they cannot establish a nexus to the severe harm suffered in the past or feared in the future. Likewise, there is no nexus requirement for deferral of removal under CAT. However, unlike asylum or either form of withholding, there are no criminal or security-related bars to granting CAT deferral.²¹⁷ Because CAT deferral remains available to applicants whom the U.S. government may see as posing a safety threat,²¹⁸ the regulations provide for potential detention even after a grant of CAT deferral and allow the government to move the immigration court “at any time” after a grant to reopen and seek termination of deferral if country conditions have changed.²¹⁹

The BIA recently issued a precedential decision in *Matter of A-A-F-V-*, regarding a bisexual “criminal deportee with visible gang tattoos” who sought protection from deportation in part because of his fear of imprisonment in one of El Salvador’s infamous prisons.²²⁰ In that case, the IJ had granted CAT protection to the noncitizen, finding that it was more likely than not that he would be imprisoned and tortured in El Salvador. While the BIA found the IJ did not clearly err in

had actual knowledge of his or her torture to satisfy the CAT’s acquiescence requirement. *Zheng v. Ashcroft*, 332 F.3d 1186, 1194 (9th Cir.2003) (distinguishing willful acceptance from willful blindness). By contrast, pursuant to the willful blindness standard, government officials acquiesce to torture when they have actual knowledge of or ‘turn a blind eye to torture.’” *Suarez-Valenzuela v. Holder*, 714 F.3d 241, 245 (4th Cir. 2013).

²¹³ *Matter of O-F-A-S-*, 28 I&N Dec. 35, 36 (A.G. 2020); *Matter of J-G-R-*, 28 I&N Dec. 733, 736 (BIA 2023).

²¹⁴ *J-G-R-*, 28 I&N Dec. at 736

²¹⁵ *Id.* at 738.

²¹⁶ 8 CFR § 1208.16(c); 8 CFR § 1208.18(a).

²¹⁷ 8 CFR § 1208.17(a).

²¹⁸ Since there are no bars to CAT deferral, practitioners should mark the boxes on pages 1 and 5 the I-589 to seek this protection in the event the IJ finds that the applicant is barred from asylum or withholding of removal under INA §241(b)(3) and the practitioner determines that the applicant is eligible for CAT. See USCIS, Form I-589, Application for Asylum and for Withholding of Removal (Jan. 20, 2025), <https://www.uscis.gov/i-589>.

²¹⁹ 8 CFR § 1208.17(b)–(17)(d).

²²⁰ 29 I&N Dec. 118 (BIA 2025).

determining that Mr. A-A-F-V- would more likely than not be detained in El Salvador, the BIA found that imprisonment in El Salvador would not meet the legal definition of torture. Specifically, the BIA found that there were only “anecdotal incidents of mistreatment or death” in prison, that substandard prison conditions do not amount to torture as a matter of law, and that imprisonment of former gang members amounts to a “lawful sanction.”²²¹ The BIA’s decision contained little analysis as to how the noncitizen’s sexual orientation in particular could put him at risk and it appears to have been a results-oriented decision to aid Trump administration policies that seek to continue deporting alleged gang members without the opportunity to seek CAT protection. In this decision (and a similar recent decision called *Matter of A-A-R-*),²²² the BIA also appears to improperly engage in fact finding and to substitute its view of the evidence for that of the Immigration Judge.

More recently, the BIA issued a decision in *Matter of J-H-M-H-*²²³, upholding a denial of CAT protection for a transgender woman from Honduras. In this case, the parties stipulated to the facts and to the respondent’s eligibility for CAT protection before the IJ. However, the IJ advised the parties that he would not accept the joint stipulation and offered the respondent the opportunity to testify. After the respondent did not testify in support of her claim, the IJ found that she had not met her burden of proof as to the requested protection. DHS submitted a brief on appeal in which it reaffirmed its stipulation to CAT protection.

The BIA affirmed the IJ denial, finding that the IJ did not err in rejecting the parties’ stipulation and in exercising independent judgment. The BIA agreed with the IJ’s determination that the respondent had not established it is more likely than not that she will be tortured in Honduras. The BIA found the country conditions evidence showing severe harm suffered by transgender women in Honduras to be insufficient to support a grant of CAT protection, stating that “anecdotal evidence of some individuals suffering severe harm is not sufficient to show that a particular alien is more likely than not to suffer harm rising to that level.”²²⁴

CAT applicants have often been unsuccessful before the U.S. courts of appeals in proving eligibility for CAT protection. For example, in *Lopez v. Lynch*,²²⁵ the U.S. Court of Appeals for the Seventh Circuit upheld the denial of a deferral of removal under CAT claim by a gay, HIV-positive man from Mexico. Although there was substantial evidence in the record of violence towards gay men, the Seventh Circuit found that the record did not compel a finding that it was more likely than not he would be tortured.²²⁶ It is important to remember that every case is very fact-specific and outcomes vary greatly depending on how the record is developed, so practitioners should be aware of trends in adjudications but not be deterred from representing an individual based on an unfavorable outcome in a case with similar facts. For example, in 2020, the Ninth Circuit granted a petition for review with instructions to grant CAT deferral to a lesbian woman from Mexico who had an abusive relationship with a man connected to a major

²²¹ *Id.* at 120-21.

²²² 29 I&N Dec. 38 (BIA 2025) (amended).

²²³ 29 I&N Dec. 278 (BIA 2025).

²²⁴ *Id.* at 283.

²²⁵ *Lopez v. Lynch*, 810 F.3d 484 (7th Cir. 2016).

²²⁶ *Id.* at 493.

Mexican drug cartel, had already suffered past torture in Mexico, and who could not relocate within Mexico because her parents rejected her due to her sexual orientation.²²⁷



Example: Mayra is a transgender woman from Mexico. Mayra is in withholding-only proceedings before an Immigration Judge because she had a prior removal order, departed the United States, and then re-entered without inspection. In order to be granted withholding of removal under the INA, she would have to demonstrate that it is more likely than not that she would be persecuted as a transgender woman in Mexico. In order to be granted protection under the CAT, she would have to demonstrate that it is more likely than not that she would face torture by the government or entities acting with the acquiescence, or “blind eye” of the government, if returned. The IJ must consider various factors, including any evidence of torture Mayra suffered in the past or evidence as to whether Mayra can internally relocate within Mexico. Even if Mayra is granted statutory withholding or protection under the CAT, DHS is likely to try to find a third country where she can be deported.

IV. Unique Issues in Preparing Asylum, Withholding of Removal, or Convention Against Torture Claims for LGBTQ Applicants

There are some unique issues that arise in preparing LGBTQ asylum applications. It can be challenging to provide extrinsic evidence of an individual's sexual orientation or gender identity.

This section will provide information about these challenges and tips on how to prepare strong applications.

A. Discussing LGBTQ Identity With Clients

Talking about sexual orientation or gender identity can be very difficult for many people. It often takes several meetings with a potential client before a relationship of trust is developed and they feel comfortable talking about deeply personal issues, such as their sexual orientation or gender identity, with the legal representative.²²⁸

²²⁷ *Xochihua-Jaimes v. Barr*, 962 F.3d 1175 (9th Cir. 2020).

²²⁸ Immigration Equality Asylum Manual, (last updated 2006), <https://www.immigrationequality.org/get-legal-help/our-legal-resources/immigration-equality-asylum-manual/#.WrTSpajwbIV> (a comprehensive, though somewhat dated, resource on the basics of preparing an LGBTQ asylum application).

Practice Tip: It generally feels awkward to ask someone directly, “Are you gay?” Often a better approach is to explain potential eligibility grounds for asylum. For example, the practitioner could say, “People can apply for asylum in the United States if they fear returning to their countries for certain specific reasons. Under U.S. law, you may be able to qualify for asylum if you fear someone will harm you in your country because of your race, religion, nationality, membership in a particular social group, or political opinion. It is difficult to explain what ‘membership in a particular social group’ means, but people have won asylum in the United States based on personal circumstances such as being gay [or lesbian, bisexual, or transgender], or because they have been victims of familial violence. Do any of those things apply to you?” A client is more likely to divulge personal information if he or she understands that it is relevant and potentially helpful for their case.

Asylum clients often become more comfortable discussing sensitive issues over time. Thus, even if the applicant does not initially identify as LGBTQ, it can be helpful to revisit the grounds for asylum periodically. Practitioners should also explain that, regardless of the client’s actual identity, harm inflicted because a persecutor perceived or believed the client to be LGBTQ — an “imputed” identity — can still serve as a valid basis for asylum.

Practice Tip: If an applicant has been harmed or threatened with harm, it is always a good idea to ask whether the persecutor said anything. If the persecutor used a homophobic slur, this may be a reason to conclude that the persecutor believed the applicant to be LGBTQ. Sometimes, facts initially indicate that the harm suffered is not based on a protected ground (such as a robbery), but the harm gets worse after the persecutor finds out the person is LGBTQ. Therefore, it is critical to ask the client follow up questions such as, “Were you called any names?” and “Why do you think he called you that?” Practitioners will also want to explore how people who are perceived as LGBTQ are treated in the community from which the individual fled.

B. Special Considerations for Discussing Transgender Identity With Clients

Transgender asylum applicants are often at greater risk for harm that rises to the level of persecution compared to other asylum applicants. In addition, transgender people have been under attack from the current administration and practitioners should consider how anti-trans rhetoric and executive orders may affect adjudicators.²²⁹ It is essential to address transgender issues when discussing potential asylum claims, as a client’s physical appearance may not accurately reflect their gender identity. While some prospective clients may clearly identify as

²²⁹ See Practice Advisory: Considerations in Asylum Claims for Transgender People, *supra* note 23.

transgender, a client's gender identity may not be immediately apparent in all cases, making it important to include transgender issues in the discussion of asylum possibilities.²³⁰

Practice Tip: Names and Identity - Many transgender individuals no longer use the name assigned at birth, sometimes referred to as a “dead name.” Seeing or being called their dead name can be triggering. Practitioners should consistently use the client's chosen name in conversations and documentation whenever possible, while also explaining that legal documents and proceedings may occasionally require the use of their birth name.

As with discussing broader LGBTQ issues, it can be helpful to explain to clients how identifying as transgender may strengthen their asylum claim. For example, a client who is gender non-conforming and self-identifies as lesbian, gay, or bisexual — but not as transgender — may still have a valid claim based on transgender identity or imputed transgender identity.

Practitioners should also be mindful when discussing sexual orientation. Clients may not immediately identify with a specific term, and terminology can vary across cultures and languages. For instance, a young bisexual client might say she “liked boys but liked girls more.” Discussing common terms (e.g., bisexual, pansexual) and referring clients to a queer-competent counselor can help them explore their identity. Ask clients what certain terms mean to them. For example, an English-speaking client from a South Asian country used “gay” and “queer” interchangeably; clarification revealed the client considered the terms synonymous.

Gender identity and sexual orientation can be fluid, and a client's understanding of their identity may evolve throughout representation. For example, a client in the very early stages of their transition might initially use they/them pronouns. The client may explain that while they feel like a woman, gender-neutral pronouns feel most comfortable at the time because they have just begun transitioning. Practitioners should be aware that a client's preferred pronouns and identity labels may change over time and should check in regularly about pronouns and identity throughout representation.

It is also recommended to review preferred terminology in discussing medical and other transition issues with transgender clients before the first client meeting.²³¹ The LGBTI training module also has helpful tips on appropriate and inappropriate lines of questioning that the adjudicator may use.²³²

C. Corroboration of LGBTQ Identity

An asylum applicant, including an LGBTQ applicant, may prevail on an asylum claim based solely on their own detailed, credible testimony.²³³ However, the passage of the REAL ID Act in 2005

²³⁰ See Victoria Neilson, ed., *Immigration Law and the Transgender Client* (AILA Publ'ns 2008), available for purchase at <https://www.amazon.com/Immigration-Transgender-Client-Victoria-Neilson/dp/157370248X> (providing guidance on interviewing techniques for transgender clients).

²³¹ See National Center for Transgender Equality, *Understanding Transgender People: The Basics* (July 9, 2016), <https://transequality.org/issues/resources/understanding-transgender-people-the-basics>.

²³² LGBTI training module, *supra* note 21, at 36-37.

²³³ 8 CFR § 1208.13(A).

introduced heightened requirements for corroboration in asylum cases. Thus, if corroborating documents are readily available, the applicant must submit these or explain their absence.²³⁴

It is especially important to include corroboration if there are any indicia of fraud or reasons for the adjudicator to question the applicant's credibility. In *Eke v. Mukasey*, a gay Nigerian man presented inconsistent testimony and had criminal convictions involving fraud.²³⁵ The IJ found that he lacked credibility. The U.S. Court of Appeals for the Seventh Circuit upheld this determination, concluding that Mr. Eke had not demonstrated membership in the PSG of gay men in Nigeria because:

He also failed to either submit some kind of documentation indicating his sexual preferences, such as letters, affidavits, photographs, or other forms of corroborative evidence, or establish that such evidence was not reasonably available to him. In fact, the applicant could not even provide the name of the gentleman with whom he was allegedly involved in a homosexual relationship.²³⁶

While extrinsic proof of LGBTQ identity is not always necessary, applicants whose credibility may be questioned should be prepared to provide corroboration. However, an adjudicator may not rely on stereotypes to determine whether an applicant is gay.²³⁷ For example, an adjudicator may ask general questions about where an applicant met their partner or activities they engage in as part of the LGBTQ community, but should not rely on stereotypes, or find an applicant not credible if, for example, they do not frequent LGBTQ bars or nightclubs.

Explaining the Legal Basis for Corroboration to Clients: It is important that clients understand why their legal representative may request evidence of sexual orientation or gender identity. Many LGBTQ individuals assume that no proof is necessary – that surgeries, medical procedures, or past relationships are irrelevant. Practitioners should reassure clients that they validate and believe the client's self-identification, while also explaining the legal importance of providing certain evidence to strengthen the asylum claim. Clients should understand that practitioners request corroborating evidence solely for legal purposes, even if it seems unnecessary or personal.

In general, if corroborating proof is available, the applicant should provide it. Possible forms of corroboration can include:

- **Proof of Relationships:** Documentation of a long-term or past relationship with a same-sex partner, similar to marriage *bona fides* proof, such as proof of cohabitation, shared

²³⁴ INA § 208(b)(1)(B)(ii) ("Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.").

²³⁵ 512 F.3d 372 (7th Cir. 2008).

²³⁶ *Id.* at 381.

²³⁷ *Todorovic v. U.S. Att'y Gen.*, 621 F.3d 1318, 1326 (11th Cir. 2010) (remanding case where the IJ committed error by finding Serbian gay man would not experience future harm because his demeanor is not "overtly homosexual"); see also *Shahinaj v. Gonzales*, 481 F.3d 1027, 1027 (8th Cir. 2007).

expenses, photos with each other's families and letters from current or former partners can also be valuable.²³⁸

- **Affidavits or Letters from Friends or Family:** Statements from people who know the applicant is LGBTQ, describing how they know the applicant's identity and the risks the applicant faces if returned. For example, the affiant could be an LGBTQ friend who frequents LGBTQ clubs with the applicant. Another example could be a letter from a family member in the home country confirming that the applicant is LGBTQ and/or that they would face harm if they returned.
- **Proof of involvement in the LGBTQ community:** Examples include involvement in a local LGBTQ community center, LGBTQ faith groups, LGBTQ sports groups, LGBTQ social media groups, LGBTQ support or identity groups, etc.
- **Mental Health Expert Affidavit:** Although it is not always necessary to include evidence from a mental health expert, it can be very helpful to do so, especially in cases where the applicant is reticent to testify about being LGBTQ and has little corroboration of their LGBTQ identity. A mental health expert can both corroborate the applicant's narrative and help explain why it is difficult for the applicant to speak about their LGBTQ identity.
- **Proof of LGBTQ dating:** Some practitioners have found it helpful to submit proof that an applicant is active on same-sex dating websites by printing out profiles from websites. It is important that any evidence submitted is not graphically sexual or otherwise inappropriate to give to a government official, and that there is no other problematic or unlawful material on the website.
- **Medical evidence of gender transition:** If the applicant is transgender and has taken medical steps to transition — such as hormone replacement therapy (HRT), surgeries, or other medical interventions — they should submit relevant documentation to support their claim.

Practice Tip: Gender transition looks different for everyone; not all transgender individuals undergo medical interventions, and many take steps in different orders or choose not to pursue certain interventions. For example, a client may use a chosen name socially but not legally change it due to personal or family reasons. During intake or initial meetings, practitioners should be as non-invasive as possible and ask about medical history only as needed. For sensitive questions about medical procedures, explain the legal purpose and how the information will be used to strengthen the claim.

Transition milestones — such as name changes, first living publicly as their gender identity, starting HRT, or surgeries — can help overcome the OYFD or support credibility.

²³⁸ While the burden of proof for demonstrating the existence of a relationship should not be as high in the context of asylum applications as it is in the context of marriage-based petitions, practitioners may, nevertheless, find this practice advisory helpful in considering the types of evidence of a relationship that may be submitted. Em Puhl, Immigrant Legal Resource Center, *Family-Based Petitions for LGBTQ Couples* (Jan. 2020), https://www.ilrc.org/sites/default/files/resources/bona_fide_marriage_lgbtq_couples_final.pdf.

- **Medical evidence of HIV status:** If an applicant's asylum claim or OYFD exception is based on being HIV-positive, they should include proof of their HIV diagnosis.²³⁹

By combining credible testimony with available corroborating evidence and ensuring that clients understand the legal purpose of each request, advocates can strengthen the applicant's case while maintaining sensitivity to personal and potentially triggering topics.

V. Country Conditions for LGBTQ Applicants

It is generally helpful for the practitioner to begin assessing a case by reviewing federal court and BIA decisions from the applicant's country of origin to understand issues that courts have addressed in LGBTQ cases. A resource compiling relevant asylum cases may be a useful starting point.²⁴⁰ Cases often hinge on country conditions in the record, and it is always crucial in asylum cases to build a strong record of conditions in the applicant's country for LGBTQ individuals.

The following sections provide general tips on how to approach country conditions research.²⁴¹ CGRS also has a helpful advisory on how to conduct country conditions research generally, which also provides useful tips.²⁴²

A. State Department Country Conditions Reports for LGBTQ Applicants

In preparing any asylum application, practitioners should begin by reading the U.S. Department of State Country Reports on Human Rights Practices (DOS reports) for the country in question.²⁴³ Historically, these reports have generally included information on LGBTQ rights violations; however, the quality of the reports on LGBTQ issues varied greatly from country to country. In addition, the recently published 2024 DOS reports have been politicized and sanitized. Since the government routinely relies on these reports, practitioners must still know what they contain, but the practitioner's research needs to go beyond the limited DOS reports.

Before their release in August 2025, media outlets reported on the Trump administration's plans to streamline the DOS reports and include information only on issues that must be covered according to law.²⁴⁴ Indeed, the recently published 2024 reports have been significantly reduced

²³⁹ See LGBTI training module, *supra* note 21, at 44-46.

²⁴⁰ Immigration Equality, <https://immigrationequality.org/legal/legal-help/asylum/case-law/>. See also footnote 1 of *Practice Advisory: Considerations in Asylum Claims for Transgender People*, *supra* note 23, which links to a searchable chart created by Oasis Legal Services citing to all circuit court precedent in asylum cases concerning transgender applicants, also available at <https://airtable.com/appiSDZA00A7BIIH9/shrNWSTStpkvhsJN9?nn6BM%3Aview=plarmpc9o2F5SjY13>.

²⁴¹ The authors would like to thank colleagues at Immigration Equality for sharing country conditions materials.

²⁴² Center for Gender and Refugee Studies, *Conducting Country Conditions Research for Asylum, Withholding of Removal, And Convention Against Torture Claims*, CGRS Practice Advisory (Mar. 2023), available by request at <https://cgrs.uclawsf.edu/about-technical-assistance-program/how-access-technical-assistance-ta>.

²⁴³ U.S. Department of State, Country Reports on Human Rights Practices, available at <https://www.state.gov/reports/2024-country-reports-on-human-rights-practices/>.

²⁴⁴ Nahal Toosi, *Trump drastically cutting back annual human rights report*, Politico, Mar. 19, 2025, <https://www.politico.com/news/2025/03/19/trump-human-rights-report-00238581>; Graham Smith, *The State Department is changing its mind about what it calls human rights*, NPR, April 18, 2025, <https://www.npr.org/2025/04/18/nx-s1-5357511/state-department-human-rights-report-cuts>; Adam Taylor, Hannah Natanson and John Hudson, *U.S. plans to ease human rights criticism of El Salvador, Israel, Russia*, The Washington Post, Aug. 6, 2025, <https://www.washingtonpost.com/national-security/2025/08/06/trump-human->

and omit sections on the violations of the rights of LGBTQ individuals, removing all references to LGBTQ people and violence, harassment, or other crimes against them.

It is therefore advisable to review and potentially include earlier reports (for example, a copy of the report from 2023 and 2024 to illustrate the differences), and to include reliable evidence of country conditions from other sources. Practitioners may consider including media reports as to the politicization of the reports, which several outlets have documented.²⁴⁵ Advocates should also consider working with an expert to tailor a written report on the client's circumstances. CGRS maintains a comprehensive database of available experts that can be filtered by country or form of relief.²⁴⁶

B. Non-Governmental Organization's Country Conditions Reports

Numerous well known human rights organizations produce country conditions reports that include information regarding LGBTQ concerns in specific countries.²⁴⁷ There are also nonprofit organizations that focus on LGBTQ²⁴⁸ and gender-related²⁴⁹ immigration issues that share country conditions resources with asylum practitioners. These resources can be a helpful starting point for the practitioner, but it is important to thoroughly read all materials before filing them with the IJ and to supplement them with recent information.

C. LGBTQ Media

Other sources of useful information include general interest LGBTQ media websites for articles about international human rights²⁵⁰ and newspaper or other media sites in the country of feared harm on which the practitioner can conduct searches within the site for relevant terms.²⁵¹ If any

rights-el-salvador-israel-russia/; Edward Wong, *Human Rights Report Under Trump Blunts Language on Israel and El Salvador*, Aug. 12, 2025, <https://www.nytimes.com/2025/08/12/us/politics/trump-human-rights-israel-saudi-arabia-china.html>.

²⁴⁵ *Id.*

²⁴⁶ Center for Gender and Refugee Studies, <https://cgrs.uclawsf.edu/expert-witness-database>

²⁴⁷ See Human Rights Watch, <https://www.hrw.org/>; Amnesty International, <https://www.amnesty.org/en/documents/pol10/8515/2025/en/>. For additional reporting on conditions of LGBTQ human rights in Mexico, Guatemala, Honduras, El Salvador, and Cuba, please visit the Lewis & Clark Law School Migration & Asylum Lab, where The Migration & Asylum Lab's thematic bulletin *Beyond Reform: Conditions of LGBTQ Life in Mexico, Guatemala, Honduras, El Salvador, and Cuba* is available, <https://sites.google.com/lclark.edu/migrationasylumlab/thematic-bulletins> (last visited Sept. 10, 2025)

²⁴⁸ Immigration Equality is the country's leading LGBTQ immigration non-profit and can assist with country conditions materials. <https://www.immigrationequality.org/>; see also OutRight International <https://www.outrightinternational.org/>; International Lesbian, Gay, Bisexual, Trans and Intersex Association <http://ilga.org/>; Human Rights First LGBT Project, <https://humanrightsfirst.org/lgbtqi/>.

²⁴⁹ The Center for Gender & Refugee Studies provides technical assistance and country conditions information on gender-related claims as well as LGBTQ claims. Practitioners can submit a technical assistance request here: <https://cgrs.uclawsf.edu/>.

²⁵⁰ LGBTQ media websites which may have helpful information include: THE ADVOCATE <https://www.advocate.com/>; THE WASHINGTON BLADE, <http://www.washingtonblade.com/>; TOWLEROAD <http://www.towleroad.com/>; QUEERTY <https://www.queerty.com/>; GAY CITY NEWS, <https://www.gaycitynews.com/>; GAY TODAY, <https://www.gaytoday.com/>; and PINK NEWS, <https://www.pinknews.co.uk/edition/us/>.

²⁵¹ The terms should be in the language of the website. Thus, on Spanish language sites in addition to searching "gay," it is advisable to search "homosexual," "lesbiana," "transgenero," "travesti," "VIH," or "SIDA."

of the sites do not have a robust internal search feature, it is possible to use Google to search within websites.²⁵²

VI. Conclusion

Practitioners who work with LGBTQ asylum seekers should explore all options for relief and all possible arguments under the law. In an era in which the federal administration is showing extreme hostility to both asylum seekers and the LGBTQ community, this is a particularly vulnerable population. While LGBTQ asylum seekers may have strong asylum, withholding of removal, or CAT claims in light of their country conditions, they will no doubt confront new challenges under this administration.

²⁵² Google's search engine can be used to search for specific terms within sites. To do this, go to Google, Enter "site:www.website.com search term" into the search box. For example, the Google search "site:https://www.advocate.com/ Russia" yields multiple articles about mistreatment of LGBT people in Russia.

VII. Appendices

A. Redacted Sample Pre-Hearing Brief

Note: Please note that this sample brief predates the Trump administration's executive orders on transgender issues, but it remains a helpful guide for advocates. CLINIC Affiliates and members of the National Immigration Project are welcome to access a more recently developed template brief, Practitioner Notes for Template Asylum Brief for a Transgender Applicant, authored by National Immigration Project Supervising Attorney Victoria Neilson and reviewed and edited by Michelle N. Méndez, National Immigration Project Director of Legal Resources and Training, and Bridget Crawford, Immigration Equality Legal Director. CLINIC Affiliates can access this resource in the Practitioner Toolkit for Removal.

B. Redacted Sample Annotated Table of Contents

Redacted sample annotated Table of Contents in support of a transgender applicant's asylum claim.

C. Sample Briefs Addressing Exceptions to the CLP Rule

Sample briefs on exceptions to the rebuttable presumption of asylum ineligibility under the Circumvention of Lawful Pathways (CLP) Rule, including:

- The family-unity exception.
- The imminent and extreme threat to life and safety exception.

[REDACTED]

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**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ANNANDALE, VIRGINIA**

[REDACTED],

File No.: A [REDACTED]

**RESPONDENT'S BRIEF IN SUPPORT OF APPLICATION FOR
ASYLUM, WITHHOLDING OF REMOVAL, AND
PROTECTION UNDER THE CONVENTION AGAINST TORTURE**

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ANNANDALE, VIRGINIA**

In the Matter of:

NON-DETAINED

File No.: A

Respondent

In Removal Proceedings

Next Individual Merits Hearing:

Before IJ

I. INTRODUCTION

The Respondent, Ms. [REDACTED] formerly known as [REDACTED], hereby submits the following brief in support of her applications for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). Ms. [REDACTED] is a transgender woman from Honduras, who meets the definition of a refugee pursuant to Section 101(a)(42)(A) of the Immigration and Nationality Act (“the Act”). She has experienced past persecution and has a well-founded fear of future persecution due to her transgender identity, and she is unable to avail herself of the protection of the Honduran government. Although she did not file within one year of entering the United States, she merits an exception to the one-year filing deadline due to both changed and extraordinary circumstances on the basis of medical interventions undertaken as part of her gender transition and mental disability caused by the ongoing effects of trauma and associated symptoms arising from her persecution. Further, country conditions in Honduras have materially worsened since Ms. [REDACTED] initially filed for asylum, providing her an additional exception to the one-year filing deadline.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Ms. [REDACTED] account of the persecution she suffered in Honduras is set forth in the Statement of [REDACTED] (“Statement”), submitted Tab K. A brief summary of the facts supporting her application is presented below.

A. Despite internally identifying as female, Ms. [REDACTED] presented as a gay or feminine male during her childhood and was subject to homophobic abuse by

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. Fearing for her life, Ms. [REDACTED] fled Honduras as a teenager and reunited with her mother in the United States, where she continued to struggle with her gender identity and turbulent mental health.

[REDACTED]

[REDACTED]

[illegible]

[REDACTED]

C. Ms. [REDACTED] faced domestic violence at the hands of her former boyfriend.

[REDACTED]

[REDACTED]

D. Ms. [REDACTED] learned of the murder of her gay cousin in Honduras, which significantly intensified her fear of returning to Honduras.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

E. Ms. [REDACTED]'s former boyfriend contacted her, increasing her fear of his propensity toward violence and worsening her mental health.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

F. Ms. [REDACTED] took additional steps to further her gender transition process, though her mental health struggles and increased fear of deportation hindered her ability to seek legal assistance.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

III. PROCEDURAL HISTORY

Ms. [REDACTED] left Honduras in [REDACTED] 2003 and entered the United States in [REDACTED] 2003 without inspection through Arizona. She applied for asylum with the Arlington Asylum Office on [REDACTED] 2018. She attended her asylum interview on [REDACTED] 2019 at the Arlington Asylum Office. On [REDACTED] 2019, she received a referral notice, referring her application for asylum to the Executive Office for Immigration Review in Arlington, Virginia.

Ms. [REDACTED] initial Master Calendar hearing (“MCH”) was scheduled for [REDACTED] 2019. This MCH was cancelled. Several subsequent MCH hearings were either cancelled or continued. Prior counsel attended a MCH with Ms. [REDACTED] before IJ [REDACTED] in the Arlington Immigration Court on [REDACTED] 2019 and entered pleadings. The Individual Merits Hearing was originally scheduled for [REDACTED], 2022. Present counsel entered their

appearance and requested a continuance due to the COVID-19 pandemic. The hearing was rescheduled to [REDACTED], 2024, and was scheduled before IJ [REDACTED] in Annandale, Virginia.

IV. ARGUMENT

As an initial matter of eligibility, Ms. [REDACTED] entered the United States in [REDACTED] 2003 and filed for asylum on [REDACTED] 2018. She does not dispute that her application was untimely. However, Ms. [REDACTED] merits an exception to the one-year filing deadline based on both changed and extraordinary circumstances. Changed circumstances occurred and remain ongoing as a result of the many steps taken in Ms. [REDACTED] gender transition as a transgender woman, including various medical interventions, a legal change of name, and updates to United States-issued identity documents. Moreover, extraordinary circumstances exist and remain ongoing as a result of the extreme trauma she endured as a result of her persecution. She has consistently struggled with severe mental health issues that utterly prevented her from pursuing asylum and still materially impact her ability to legally advocate for herself or even discuss her past experiences.

Given that she is eligible for an exception to the one-year filing deadline, Ms. [REDACTED] merits a grant of asylum due to the significant persecution she experienced due to her identity as a transgender woman. In weighing all the evidence and testimony, the Court should find that Ms. [REDACTED] has suffered past persecution due to a protected ground and is thus entitled to a presumption of a well-founded fear of future persecution. Even if the Court should ultimately determine that Ms. [REDACTED] suffered no past persecution, the Court should still find that she has a well-founded fear of future persecution on account of her transgender identity.

Queer individuals often face severe mistreatment and harm by gangs and the general public, and the Honduran government itself is not only unwilling to protect queer individuals, particularly transgender individuals, but it also actively encourages and participates in this persecutory behavior. Country conditions make it abundantly clear that there is at least a ten percent chance that Ms. [REDACTED] would be persecuted if forced to return and that internal relocation is inherently unfeasible. Her identity puts her at serious risk of physical and sexual assault, torture, and even death. The Court should therefore find Ms. [REDACTED] eligible for asylum and provide the requested relief.

A. Ms. [REDACTED] merits an exception to the one-year filing deadline based on changed and extraordinary circumstances.

An exception to the one-year filing deadline is available where an applicant can demonstrate changed circumstances which materially affect the applicant's eligibility for asylum and that they filed within a reasonable time of those changed circumstances. INA § 208(a)(2)(D), 8 CFR § 1208.4(a)(4)(i)(A), (4)(ii). An exception is likewise available where extraordinary circumstances prevented an applicant from filing within one year and that they filed within a reasonable time given those circumstances. INA § 208(a)(2)(D), 8 CFR § 1208.4(a)(5). Extraordinary circumstances may include "serious illness or mental or physical disability, including any effects of persecution or violent harm suffered in the past," and legal disability, such as incapacity for the full enjoyment of ordinary legal rights, including those who experience mental impairment. 8 CFR §§ 1208.4(a)(5)(i), 1208.4(a)(5)(ii).

There is no bright line rule for defining a reasonable period of time following changed or extraordinary circumstances. What constitutes a reasonable period of time is a fact-specific inquiry to be evaluated on a case-by-case basis. *See Matter of T-M-H- & S-W-C-*, 25 I&N Dec. 193 (BIA 2010) (remanding to the Immigration Judge for additional findings of fact with respect to the particular circumstances involved in the delay of Ms. [REDACTED] applications). To determine reasonableness, the Court should determine the date that circumstances changed and then consider the amount of time that elapsed between that date and the date of filing. *Shi Jie Ge v. Holder*, 588 F.3d 90, 94 (2d Cir. 2009). Although the Board of Immigration Appeals ("BIA" or "Board") has suggested that waiting six months or longer would not be reasonable, it has also noted that there may be "'rare cases' involving changed or extraordinary circumstances where a delay of 1 year or more may be justified." *Matter of T-M-H- & S-W-C*, 25 I&N Dec. 193, 194-96.

1. Ms. [REDACTED] merits an exception to the one-year filing deadline based on extraordinary circumstances arising from the mental and legal disabilities that resulted from her history of persecution and trauma.

Ms. [REDACTED] case is one such "rare case" that merits both an exception to the one-year filing deadline and to the "six-month" reasonable period of time, and the Court should consider the extraordinary circumstances arising from her mental disability, which itself arises from the effects of persecution and violent harm suffered in the past. 8 CFR § 1208.4(a)(5)(i). In unpublished decisions, the Board has specifically found that factors such as "obvious signs of

PTSD,” a “reasonable fear” of returning to one’s country of origin, and the resultant depression and grief can constitute extraordinary circumstances, and such factors should be considered within the context of an applicant’s ability to function in society. *M-G-*, AXXX XXX 832 (BIA June 29, 2016). This can be particularly true for individuals who have “no social, professional, or work contacts among people *who could help [them] overcome [their] fears of applying for asylum.*” *Id.* (emphasis added). Mental health issues such as “PTSD and severe depression resulting from the traumatic violence” experienced in one’s home country can further demonstrate extraordinary circumstances when experienced from the time an applicant enters the United States and throughout the relevant time period. *E-A-D-*, AXXX XXX 097 (BIA May 20, 2019).

A psychological evaluation, performed over two sessions on [REDACTED] 2023 and [REDACTED] 2023 by [REDACTED] and [REDACTED] found that Ms. [REDACTED] experiences severe anxiety, depression, and symptoms indicative of significant trauma. *See* Tab M. Within the week prior to the evaluation, Ms. [REDACTED] experienced fear of the worst happening, heart pounding or racing, feeling terrified, nervous and scared, and fear of losing control or dying. *Id.* at 39. Within the past year, she has had numerous flashbacks about her persecution in Honduras and negative experiences with previous romantic and sexual partners, in addition to nightmares about dying in accidents or falling off cliffs. *Id.* at 38.

Her scores on a clinical scale for “anxious arousal” were problematic, which is “a critical feature of trauma- and/or anxiety-related disorders.” *Id.* at 40. When prompted to recall the frequency of experiences in her lifetime, her scores on a clinical scale for dissociation were “clinically elevated,” which can include “disengagement, depersonalization, or derealization as a defensive response to overwhelming psychological distress.” *Id.* Ms. [REDACTED] exhibited defensive avoidance through “cognitive, emotional, and behavioral avoidance, such as suppressing painful thoughts or memories and attempts to avoid stimuli that could trigger such thoughts or memories.” *Id.* Although she was not given a formal diagnosis of PTSD due to her hesitancy to provide additional details about her trauma and hesitation to revisit traumatic memories, Ms. [REDACTED] “exhibits many of the symptoms of PTSD.” *Id.* at 39 Her inability to provide additional details of her experiences is itself “a common reaction among people who have experienced significant trauma.” *Id.* at 35. “In summary, Ms. [REDACTED] describe[d] symptoms of mental distress consistent with those experienced by someone who has survived psychological and

emotional trauma,” and “[t]here is no evidence that her behavior or presentation could be explained by any other pathology.” *Id.* at 40-41.

Cumulatively, the many symptoms of trauma, anxiety, and depression have meaningfully interfered with her ability to function in day-to-day life or ability to pursue immigration relief, and these impairments persist to the current day. After she began experiencing harassment as an older child and young teen due to her feminine presentation, she “often isolated herself because this was the only way for her to manage her anxiety.” *Id.* at 34. She still avoids being in public and dislikes being in places with many people or crowds, “because she remembers the homophobic and transphobic comments people used to make about her.” *Id.* at 38. She even avoids family gatherings, as she feels isolated from her mother, even though she is one of Ms. [REDACTED]’s primary relationships. *Id.* Her family dynamics overall leave her feeling “alone,” and she does not otherwise have significant social contacts. *Id.* Although Ms. [REDACTED] has the desire to “do more,” such as studying and pursuing an education, her isolation and low motivation caused by poor mental health prohibit her from doing so. *Id.* She was unable to adapt to high school after arriving in the United States and never graduated, and she was similarly unable to complete a GED program as recently as in 2019. *Id.* at 33.

Her mental health issues are further compounded by the resulting difficulty in accessing necessary care and resources and the negative influence of various external factors. Although Ms. [REDACTED] first saw a therapist in 2016, she felt it was too challenging to continue going and was unable to continue engaging in behavioral health treatment beyond a few sessions. *Id.* at 38. This reluctance is reinforced by the traumatic memory of being forced to see a healer for spiritual cleansing of “demon spirits of homosexuality” and forced injections of masculinizing hormones. Tab K at 19. Between then and the present day, she has only managed to see a behavioral health provider on a few occasions, primarily in connection with her asylum claim. *See* Tabs M, N. Her extreme reluctance to speak openly about her experiences continues to be a barrier, which was evident in her [REDACTED] 2023 sessions with the psychological evaluator. Tab M at 38. As one example, when asked about her journey to the United States in 2003, Ms. [REDACTED] was only able to provide the most basic details, describe it as “very, very bad,” and assert that she did “not want to speak of that experience or relive it “ever again.”” *Id.* at 35. Even when Ms. [REDACTED] is emotionally and mentally capable of describing her persecution, she maintains a flat and reserved affect and exhibits “discordant smiling” when discussing difficult

topics, such as her aunt bringing her to the healer for conversion therapy. *Id.* at 37. Similarly, she “sometimes smiles unintentionally when she is nervous, especially when it comes to discussing important topics.” *Id.*

Her ability to seek legal assistance has been similarly negatively affected. Although Ms. [REDACTED] first engaged with [REDACTED] in 2015 for assistance filing for a legal change of name, she chose not to pursue immigration assistance due to fears of being deported. *Id.* at 36. Despite receiving counseling on the possibility of applying for asylum, she emphasized hearing from family members and friends that it was better if immigration officers did not know that she was present in the United States at all and that, if found, she would be deported no matter the circumstances. *Id.* The murder of her gay cousin in Honduras in 2014 had increased her fears of return, as she believed she would meet the same fate, but the political climate at the time further exacerbated her fears and affected her “more than anything.” *Id.* at 37. She firmly believed that “if [immigration officials] catch you, they will deport you, no matter who you are,” and her fears, including being deported to Honduras, were heightened leading up to the 2016 presidential election. *Id.*

It wasn’t until she encountered and heard the stories of other trans women who received assistance through [REDACTED] that her trust in the organization was strengthened, facilitating a feeling of safety and confidence in [REDACTED]’s ability to help her. *Id.* Due to their capacity limitations as a non-profit organization, however, [REDACTED] was unable to immediately assist Ms. [REDACTED], and her financial situation did not allow her to hire private counsel. *See* Tab Q at 164. [REDACTED] instead placed Ms. [REDACTED] on a waitlist for pro bono assistance in [REDACTED] 2017, but [REDACTED] was not able to provide formal legal representation for her until having the assistance of a law graduate working under the supervision of a [REDACTED] attorney in [REDACTED] 2018. *Id.* As part of their overall assistance, [REDACTED] recommended that Ms. [REDACTED] undergo a psychological evaluation and were able to help her secure an appointment in [REDACTED] 2018 with [REDACTED]. *Id.* It then took five months for [REDACTED] to receive the completed evaluation on [REDACTED] 2018. *Id.*, *see also* Tab N.. Within six months of securing this crucial piece of evidence, Ms. [REDACTED] submitted her Form I-589 to the asylum office on [REDACTED] 2018.

Given Ms. [REDACTED] history of trauma and abuse, and the resulting mental and behavioral health issues that persist to this day, it is entirely reasonable for her to have waited until [REDACTED] 2018 to file for asylum. Her struggles to cope with anxiety, depression, and trauma

routinely interfere with her ability to function and meaningfully participate in day-to-day activities, let alone necessary mental health care and legal services. Regardless of having a general awareness of the possibility of filing for asylum, her vulnerable mental state left her unable to do so until building a substantial support network of friends and advocates. When considered in the aggregate, her obvious signs of PTSD caused by past persecution, severe avoidant behavior, and inability to discuss past harm, and overwhelming fear of returning to Honduras should constitute extraordinary circumstances sufficient to establish an exception to the one-year filing deadline and that Ms.

██████████ did in fact file within a reasonable timeframe thereof.

2. **Ms. ██████████ similarly merits an exception to the one-year filing deadline based on changed circumstances surrounding both the many steps undertaken as part of her gender transition and the intensification of anti-LGBTQ+ persecution in Honduras.**

Should the Court find that Ms. ██████████ does not merit an exception to the one-year filing deadline based on extraordinary circumstances, it should nonetheless find that she merits an exception based on changed circumstances. Under the Fourth Circuit's precedential decision in *Garcia Hernandez v. Garland*, 27 F.4th 263 (4th Cir 2022), a changed circumstance can still materially impact an applicant's eligibility for asylum even if it arises after the filing of an asylum application. In *Garcia Hernandez*, the Fourth Circuit found that the BIA had erred in finding the purported changed circumstances that took place after the time-barred petition was filed could not be considered. Instead, the Fourth Circuit found that the court must evaluate changed circumstances in line with its prior precedent in *Zambrano v. Sessions*, 878 F.3d 84 (4th Cir. 2017). In the *Zambrano* case, the Fourth Circuit held that new facts that provided additional support for pre-existing asylum claim could constitute "changed circumstance" extending the time period for filing an asylum application. Additionally, the Fourth Circuit's decision in *Salgado-Sosa v. Sessions*, 882 F.3d 451 (4th Cir. 2018) affirmed that the "intensification" of a preexisting threat of persecution qualifies as a "changed circumstance" for purposes of § 1158(a)(2)(D)'s exception. *See also Vahora v. Holder*, 641 F.3d 1038 9th Cir. 2011 (finding that changed circumstances existed when the Gujarat riots in February 2002 were "India's worst religious violence in decades."). The Fourth Circuit ordered the IJ and BIA to consider the deterioration of country conditions, as the BIA had failed to consider "[n]ew facts that provide additional support for a pre-existing asylum claim." (quoting *Zambrano*).

Here, although Ms. [REDACTED] originally applied for asylum outside of the one-year filing deadline, the intensified persecution against transgender women and other LGBTQ+ individuals in Honduras and the many medical interventions that she has pursued, and continues to pursue, as part of her gender transition qualify as changed circumstances for purposes of the exception. Ms. [REDACTED] initially engaged in medical care at [REDACTED] on [REDACTED] 2014 and continues to receive treatment for gender dysphoria to the present day. *See* Tab O at 154. During this time, Ms. [REDACTED] also completed various legal interventions. She obtained a legal change of name from [REDACTED] to [REDACTED] on [REDACTED] 2015 and subsequently updated her various U.S.-issued identity documents to reflect her chosen name and a female gender designation. *See* Tabs F, G, H.

Around [REDACTED] 2015, she officially began receiving hormone replacement therapy (“HRT”) under the care of a licensed physician and began taking estradiol, a feminizing hormone, and spironolactone, a testosterone blocker. *See* Tab O at 146. This is a lifelong treatment regimen that gradually changes an individual’s secondary sex characteristics over the course of months and even years, and Ms. [REDACTED] has continued receiving HRT since she began nearly a decade ago. *See id.* These changes may include development of breast tissue, redistribution of fat to the face and hips, softening of skin and decreased oiliness, and decreased, but not eliminated, bodily and facial hair growth. She also obtained silicone injections in her hips as “an important way to emphasize [her] femaleness” and began laser hair removal. Tab K at 25.

For nearly a decade, Ms. [REDACTED] has continued to consistently receive HRT under the medical supervision of [REDACTED] providers while simultaneously attending laser hair removal appointments every few months with the same provider, [REDACTED] in [REDACTED] Virginia. *See* Tabs L, P. She regularly obtains this therapy on her facial and body hair to further reduce growth and create a more feminine appearance. *Id.* Laser hair removal is an ongoing process, and these appointments are essential to Ms. [REDACTED] gender transition to eliminate current hair growth and prevent new hair from regrowing, which would increase the likelihood of her being “outed” as a transgender person. The Mayo Clinic confirms that laser hair removal treatments do not usually result in true permanent hair removal, and that these

maintenance appointments are necessary to reduce hair growth in the long term.¹ As the nature of her gender transition is ongoing and has continued in the years since her filing for asylum, her constant need for both this and HRT should constitute changed circumstances under the Fourth Circuit’s reasoning in *Garcia Hernandez*.

In addition to her continued steps in furtherance of her gender transition in the years since filing for asylum, conditions in Honduras have significantly worsened and represent an intensification of the pre-existing threats against the LGBTQ+ community and transgender women in particular. Early 2019 saw an immediate increase in violence against LGBTQ+ Hondurans compared to 2018. As of July 2019, Cattrachas, a Honduran LGBTQ+ NGO, reported that twenty-one LGBTQ+ people had been murdered, compared to 18 in the same period in 2018. *See* Tab BBB at 830. The year 2019 ended with LGBTQ+ murders peaking at 41, a number not seen since 2012. Tab GG at 678. Activists feared this increase in violence represented a backlash to legal challenges against LGBTQ+ discrimination the prior year. *See* Tab BBB at 831.

The onset of the COVID-19 pandemic in March 2020 brought sweeping government restrictions that wreaked havoc on Honduras’ LGBTQ+ community. *See* Tab AAA at 826. *See, generally*, Tab LL. Unlike other marginalized and high-risk groups within Honduran society, LGBTQ+ groups were not considered priority groups for receiving aid during government-imposed lockdowns. *See* Tab AAA at 826. Additionally, the Honduran government refused to issue travel permits to all LGBTQ+ organizations, making it extremely difficult for non-governmental organizations (“NGO”) to deliver food and other aid to impoverished and isolated LGBTQ+ individuals. *See* Tab ZZ at 822. Further, Hondurans were required to show their national identity documents to leave their homes and walk down the street and even enter vital locations such as grocery stores and pharmacies. *See* Tab YY at 814. As Honduras does not allow transgender individuals to update their names or gender markers on their identity documents, they were immediately outed each time they attempted to procure necessary supplies. *Id* at 815. *See* Tab NN at 742. Transgender women reported harassment and were denied entry to supermarkets by security guards when the biographic information on their identity documents did not match

¹ “[L]aser hair removal doesn’t guarantee permanent hair removal. [...] You might need maintenance laser treatments for long-term hair reduction.” *Laser hair removal*, Mayo Clinic (03/14/2024), available at: <https://www.mayoclinic.org/tests-procedures/laser-hair-removal/about/pac-20394555>.

their appearance. *See* Tab YY at 815. NGOs reported multiple cases of Honduran soldiers beating and coercing sex acts from transgender women in the street engaging in survival sex work. *See* Tabs ZZ at 822-823, AAA at 827.

In 2021, the members of the Honduran Congress voted to amend the country's constitution to make it virtually impossible to repeal the nation's ban on same-sex marriage. While other changes to the constitution require only a two-thirds majority vote, repealing the bans on same-sex marriage and abortion will now requires a three quarters majority vote, creating a "constitutional lock" on these bans. Tabs XX at 809, GG at 677. In a country that does not allow transgender individuals to change their gender markers, this means that heterosexual transgender women such as Ms. [REDACTED] are almost guaranteed to be permanently banned from marrying men, as it would be considered a marriage between two men rather than a man and a woman. *See* Tabs V at 223, X at 256. Later in 2021, then-President Juan Orlando Hernandez called LGBTQ+ human rights defenders "enemies of the state and of independence." *See* Tab VV at 774.

Early 2022 marked a sharp increase in anti-LGBTQ+ violence, with three LGBTQ+ people murdered on the same day in February 2022. *See* Tab UU at 770. Just one month prior, prominent transgender activist Thalia Rodriguez was killed outside her home. *Id.* At 771. *See* Tab RR at 762. In October 2022, trans femicide made headlines once again when Melissa Núñez, a transgender woman from Honduras who sought asylum in the United States, was murdered in Honduras only months after her deportation from the United States in July 2022. *See* Tab SS. Ms. Núñez's brutal and still unsolved murder mirrors Ms. [REDACTED] greatest fear: that she would be deported to Honduras where she would be murdered. Tab K at 24. *See, generally*, Tab BB at 466. Ms. Núñez's murder represented an increase in violence against LGBTQ+ Hondurans in 2022, as reported by Cattrachas. The organization tracked 46 murders that year. *See* Tab NN at 741. This represented a significant increase over reported LGBTQ+ murders in 2021, which numbered at 17 as of August of that year. *See* Tab W at 224. Violence against LGBTQ+ Hondurans increased again in 2023, with Cattrachas reporting 47 violent deaths as of November 2023. *See* Tab NN at 741. The organization noted that 2022 and 2023 saw significant increases in LGBTQ+ murders, despite new Honduran President Xiomara Castro's promises to protect vulnerable populations. *Id.*

When Ms. [REDACTED] first applied for asylum in 2018, she expressed fear of returning to Honduras as an openly transgender woman, where she had previously suffered harassment, sexual abuse, and persecution specifically due to her gender identity and perceived

sexual orientation. In the years since, country conditions in Honduras have dramatically worsened, showing that LGBTQ+ individuals experience even more severe persecution than when Ms. [REDACTED] initially filed her application, and establish that her likelihood of experiencing future persecution due to her gender identity and perceived sexual orientation is significantly heightened. This intensification can only constitute a changed circumstance such that she merits an exception to the one-year filing deadline on the basis thereof.

B. Ms. [REDACTED] is a member of various cognizable Particular Social Groups.

To qualify as a particular social group, the proposed group must be: (1) composed of members who share a common, immutable characteristic, (2) defined with particularity to delimit its membership, and (3) socially distinct within the society in question. *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014). “The shared characteristic might be an innate one such as sex,” and it must be one that the members of the group either cannot change or should not be required to change because it is fundamental to their individual identities or consciences.” *Matter of Acosta*, 19 I&N Dec. at 233; *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

Here, each of the proposed PSGs share a common, immutable characteristic; is defined with particularity; and is socially distinct within the society in question. Each PSG is cognizable, and the Court should find that they meet the requirements for a protected ground.

Ms. [REDACTED] is an actual and imputed member of several cognizable PSGs: she is a member of “**transgender women in Honduras**,” “**perceived gay men in Honduras**,” “**perceived Honduran men who have sex with men**,” and “**LGBTQ people in Honduras**.” Courts have repeatedly held that sexual orientation and gender identity can form the basis of a cognizable PSG and that PSGs “based on sexual minority status are well-recognized in case law as providing a valid basis for a protection claim.” *See Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822 (BIA 1990); *Hernandez-Montiel v. INS*, 225 F.3d 1084 (9th Cir. 2000); *see also Matter of M-E-V-G-*, 26 I&N Dec. at 245 (affirming that “homosexuals in Cuba” are members of a cognizable particular social group); *Amanfi v. Ashcroft*, 328 F.3d 719 (3rd Cir. 2003) (finding that it is possible to proceed with an asylum claim based on ... sexual orientation); *Karouni v. Gonzales*, 399 F.3d 1163 (9th Cir. 2005) (holding that “all alien homosexuals are members of a ‘particular social group’”); *Matter of C-G-T-*, 28 I&N Dec. 740 (BIA 2023) (recognizing “homosexual Dominican males” and “Dominicans who are HIV-positive” as cognizable particular social groups).

Ms. [REDACTED] is a transgender woman, which is an immutable, particular, and socially distinct characteristic that cannot, and should not, be changed. Given that transgender identities are not considered valid, Ms. [REDACTED] would also be perceived as a gay man, as she was when she lived in Honduras, and she has previously had sexual relationships with men as a young teenager. Her gender identity and sexual orientation inherently make her a member of the LGBTQ community, and country conditions firmly establish that these PSGs are socially distinct. As such, the Court should find these groups cognizable.

C. Ms. [REDACTED] has experienced past persecution on account of her membership in the aforementioned cognizable particular social groups.

Persecution is defined as “a threat to life or freedom of, or the infliction of suffering or harm upon those who differ . . . in a way that is regarded as offensive.” *Matter of Acosta*, 19 I&N Dec. at 222. Persecution includes the “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) (citing *Kondakova v. Ashcroft*, 383 F.3d 792, 797 (8th Cir. 2004)). Persecution means such threats or harm “inflicted either by the government of a country or by persons or an organization that the government [is] unable or unwilling to control.” *Matter of Acosta*, 19 I&N Dec. at 222. The Fourth Circuit has consistently held that threats of death and imprisonment alone are sufficient to rise to the level of persecution. *See Crespin-Valladares v. Holder*, 632 F.3d 117 (4th Cir. 2011); *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (“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.” (internal citations omitted) (emphasis added)).

In determining whether an applicant has suffered harm or fears harm that rises to the level of persecution, it is proper to consider the “cumulative effect” of violence and threats suffered by those who are “similarly situated.” *See Barahon v. Holder*, 588 F.3d 228, 232 (4th Cir. 2009) (citing *Poradisova v. Gonzales*, 420 F.3d 70, 79-81 (2nd Cir. 2005)); *see also Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998) (requiring that harm be considered in the aggregate and holding that it is error to address incidents in isolation). An asylum applicant must also draw a nexus between the persecution suffered or feared and the applicant’s protected ground. INA § 101(a)(42)(A); *see also INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992). Considering the totality of the circumstances, it is clear that Ms. [REDACTED] has suffered past persecution on

account of her actual and imputed membership in the aforementioned cognizable PSGs and that the Honduran government is unable and unwilling to protect her from persecution.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ms. [REDACTED] has also established that the Honduran government was “unwilling or unable” to control the persecutors. The country conditions evidence establishes that there is no government protection for transgender women in Honduras. It is also important to emphasize that much of the harm that Ms. [REDACTED] suffered was as a child. The BIA has recognized that children may not be able to articulate their fear or approach law enforcement officials in the same way that an adult would. *Matter of C-G-T-*, 28 I&N Dec. 740 (BIA 2023). When that abuse comes from a parent or relative, any attempt to report may make the child’s circumstances worse. Therefore, a failure to report harm is not fatal to an asylum case when, as in this case, reporting the harm would likely have made Ms. [REDACTED] circumstance worse.

D. In the absence of past persecution, Ms. [REDACTED] has a well-founded fear of future persecution on account of her actual and imputed membership in the aforementioned cognizable particular social groups.

Ms. [REDACTED] is credible as to her past persecution, and the Court can only find that she merits asylum on that basis. Should however the Court find that past persecution did not occur, it should regardless find that Ms. [REDACTED] merits asylum on the basis of a well-founded fear of future persecution. INA § 101(a)(42). To establish a well-founded fear of persecution, the applicant must demonstrate that she has a subjective fear of persecution and that her fear is objectively reasonable. *See Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). An applicant demonstrates subjective fear by providing “candid, credible, and sincere testimony demonstrating a genuine fear of persecution.” *Chen v. INS*, 195 F.3d 198, 201-02 (4th Cir. 1999) (quoting *Berroteran-Melendez v. INS*, 955 F.3d 1251, 1256 (9th Cir. 1992)). An applicant’s fear is considered objectively reasonable when she demonstrates there is a reasonable possibility, or a “10 percent chance,” that she will be persecuted in the future. *See INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

Overall, an asylum applicant must demonstrate that “a reasonable person in the asylum applicant’s circumstances would fear persecution if she were returning to her native country.” *Matter of Mogharrabi*, 19 I&N Dec. 439, 446 (BIA 1987). The Board of Immigration Appeals (“BIA”) has developed a four-part test to determine whether an asylum applicant has a well-founded fear of future persecution. *Id.* at 446. The applicant must demonstrate that: (1) they possess

a belief or characteristic that the persecutor seeks to overcome; (2) the persecutor is already aware that the applicant possesses this belief or characteristic; (3) the persecutor has the capability of punishing the applicant; and (4) the persecutor has the inclination to punish the applicant. *Id.* The persecutor does not necessarily intend to have to specifically “punish” the applicant, but that “harming” the applicant is enough. *Matter of Kasinga*, 21 I&N Dec. 357, 365 (BIA 1996).

When comparing Ms. [REDACTED] case to *Mogharrabi*, it is abundantly clear that she has at least a 1-in-10 chance of being persecuted due to one or more protected grounds and satisfies the four-part test as laid out by the BIA. It is indisputable that she is a transgender woman, and thus inherently part of the LGBTQ community, and that she would be perceived to be a gay man in Honduras. Ms. [REDACTED] was specifically targeted because of her gender identity and sexual orientation, as evidenced by the use of homophobic insults and slurs, like calling her a faggot, references to cleansing her of demonic homosexual spirits, and use of feminine words and compliments to coerce her into abusive sexual relationships. *See* Tab K. Although she never directly experienced persecution by the government, country conditions overwhelmingly show that the Honduran government has long demonstrated a pattern and practice of human rights abuses targeted at queer communities. Country conditions similarly show that gangs often target queer communities, and both the government and gang members do so with impunity.

Per the United States Department of State, in Honduras “[s]ignificant human rights issues included credible reports of ... unlawful or arbitrary killings, including extrajudicial killings; torture and cases of cruel, inhuman, or degrading treatment or punishment by government agents; harsh and life threatening prison conditions; arbitrary arrest or detention; ... lack of investigation of and accountability for gender-based violence; and crimes involving violence or threats of violence against ... lesbian, gay, bisexual, transgender, queer, and intersex persons.” Tab V at 179. At the intersection of both a patriarchal society and LGBTQ violence, transgender women “experience extreme GBV [Gender Based Violence] vulnerability due to discrimination and social, economic, and political exclusion” Tab X at 242. resulting in “one of the highest estimated rates of homicides and femicides against transgender women in Latin America.” *Id.* at 236. Of the “373 violent deaths among LGBTQI+ people in Honduras between June 2009 and March 2020...111 were trans femicides.” *Id.* at 247. Victims of trans femicides often demonstrate physical signs of torture, *see* Tab BB at 463, a key indicator of the killings function “to communicate a message of exclusion or subordination.” Tab AA at 380. Non-lethal violence against women and LGBTQ

people is also widespread, including “‘corrective rape’ of lesbian or transgender individuals,” Tab V at 197, abuse, other forms of bias motivated assault, and threats on the basis of identity. *See* Tab FF at 561.

Despite recent recommendations of international organizations and NGOs, the pattern of gender and sexual orientation-based violence has not abated. In the most recent 2023 report on Honduras to the UN General Assembly, the United Nations High Commissioner noted that “...violence and insecurity have continued to affect the country, with their impact on women and lesbian, gay, bisexual, transgender and intersex persons being particularly severe.” Tab Y at 286. The report continues, “The observatory for violent deaths of the non-governmental organization Cattrachas reported an increase in violence against lesbian, gay, transgender, bisexual and intersex persons in 2022, with 43 murders (26 of gay persons, 11 of lesbian persons and 6 of transgender persons) and 2 disappearances.” *Id.* at 295. It should be noted that these statistics coincide with a ten year low in Honduras’ murder rate, demonstrating that the progress in reducing homicide has not been extended to LGBTQ persons and that the targeting of these groups constitutes continuing persecution. *Id.* at 286. Between January and November of 2023, 47 LGBTQ+ individuals were killed, 18 of whom were trans women. *See* Tab NN at 741.

In the 2021 *Vicky Hernández* case, the Inter-American Court of Human Rights held that “...there are various indicia of the participation of state agents in those facts that, added to the context of violence against the LGBTI community and, in particular, against trans women sex workers, points to the State’s responsibility for the violation of the rights to life and integrity of Vicky Hernández.” Tab AA at 386-87. Though Hernández’s extrajudicial killing was an individual one, it is indicative of a much larger pattern of anti-female and anti-LGBTQ+ violence of the state that continues through today. As the 2022 State Department Report notes, “NGOs reported police or other government agents incited, perpetrated, condoned, or tolerated violence against LGBTQI+ individuals.” Tab V at 197. This campaign of the government specifically against transgender women has been characterized as constituting “social cleansing.” Tab WW at 801. The state places transgender women in men’s prisons, where state actors have been acquiescent to the torture they may face in that setting, and the 2001 Law on Police and Social Affairs has been “used arbitrarily to justify arrests of transgender women.” Tab EE at 526-27.

More broadly, LGBTQ+ identifying Hondurans have reported gender and sexuality-based discrimination, harassment, assault, and sexual assault being perpetrated by state actors. In a

Human Rights Watch analysis, “of the 25 interviews with LGBT people in or from Honduras, eight recounted violations by state security agents.” Tab FF at 565. When viewed cumulatively, this scale of violence by state actors demonstrates that the Honduran government is actively and intentionally persecuting its LGBTQ population.

Non-state and quasi-state actors also contribute to the violence that LGBTQ+ individuals and minority women suffer. Most notably, gangs may target LGBTQ individuals who run counter towards their sociocultural norms, *see* Tabs BB at 463, GG at 679, and have been reported to engage “corrective rape.” Tab V at 197. Widespread societal corruption makes distinguishing state-sponsored action from non-state action at times difficult.

The Honduran government consistently fails to punish persecutors of LGBTQ+ citizens. Of the 43 LGBTQ+ murders reported in 2022, only eight were being actively investigated as of August 2023. *See* Tab Y at 295. Honduran NGOs reported that “of the 373 violent deaths [including one case of disappearance] of LGTBI persons recorded in the period 2009 to 2020, only 79 cases have been prosecuted and 35 of these have ended with a conviction.” Tab GG at 678. Within the Honduran government itself, “Honduras’s National Human Rights Office, reported that almost 90% of crimes against LGBTQ+ persons go unpunished.” Tab II at 722. The same office reported the impunity for femicides to be 95%, though in both categories under-reporting is an issue. Tab Z at 341-42. This continued failure of justice contributes to creating a society in which “transgender women don’t tend to live past 35,” and hate crime is normalized. *See* Tab KK at 726.

As demonstrated in great detail by the sources above, the level and severity of violence experienced by the Honduran LGBT community at the hands of both public and private actors is staggering. The consistent lack of prosecution of these crimes demonstrates that the government is indifferent towards and unable to control the violence directed at the LGBT community. Transgender persons bear the brunt of much of the violence, mistreatment, and discrimination directed towards sexual minorities. Year after year, the reports of violence against transgender individuals increase while government action to protect this population continues to be woefully inadequate.

E. Ms. [REDACTED] is eligible for withholding of removal because of the clear probability of future persecution if returned to Honduras.

In the alternative, [REDACTED] is eligible for withholding of removal. To meet her burden of proof, an applicant must demonstrate that there is a “clear probability” that she will

be persecuted in the future. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 438 (1987). The applicant must demonstrate that it is more likely than not that her life or freedom would be threatened. *See* 8 C.F.R. § 208.16(b)(i). Based on the facts detailed above, Ms. [REDACTED] has met her burden for asylum, but she has also met the more demanding standard for withholding of removal.

F. Ms. [REDACTED] is eligible for protection under CAT because it is more likely than not that she will be tortured at the acquiescence of the government if returned to Honduras.

In consideration of the claim under the U.N. Convention Against Torture (“CAT”), Ms. [REDACTED] has the burden of proof to establish that it is more likely than not that she would be tortured if she were returned to Honduras. *See* 8 C.F.R. § 1208.16(c)(2); CAT, Art. 3. “To prevail, the Applicant must show that she is more likely than not to suffer intentionally-inflicted cruel and inhumane treatment that either (1) is not lawfully sanctioned by that country or (2) is lawfully sanctioned by that country but defeats the object and purpose of CAT.” *Matter of J-F-F*, 23 I&N Dec. 912, 917 (AG 2006). Although torture must be generally committed at the hands of the government, an application for CAT may obtain relief when such pain or suffering is inflicted by a private party with the consent or acquiescence of a public official. 8 C.F.R. § 1208.18(a)(1). The regulation states that a public official acquiesces to torture when, prior to the activity constituting torture, the public official has awareness of such activity and thereafter breaches his or her legal responsibility to intervene to prevent such activity. 8 C.F.R. § 1208.18(a)(7).

According to the regulations, in evaluating a claim for relief pursuant to CAT, the following evidence shall be considered: evidence of past torture inflicted upon the applicant; evidence that the applicant could relocate to a part of the country of removal where [they are] not likely to be tortured; evidence of gross, flagrant, or mass violations of human rights within the country of removal; and other relevant information regarding conditions in the country of removal. 8 CFR § 208.16(c)(3). As discussed above, it is clear that the government acquiesces and turns a blind eye to violence against LGBT+ minorities and transgender women in particular. Therefore, Ms. [REDACTED] will likely suffer beatings, rape, and other forms of torture if returned to Honduras.

V. CONCLUSION

Ms. [REDACTED] fears that if she returns to Honduras, she will suffer harm at the hands of the government or from individuals and groups that the government cannot or will not

control. As she discussed in her Statement, she cannot change her identity and if forced to return to Honduras, people will recognize her as transgender and target her for violence. As a transgender woman, she will be at extreme risk for assault, rape, torture, and murder, a fate which befalls countless transgender and LGBTQ+ women each year in Honduras. In addition, Ms. [REDACTED] [REDACTED] meets the requirement for an exception to the one-year filing deadline because: 1) she can establish the existence of “extraordinary circumstances” material to her asylum claim in the form of mental and legal disability that resulted from her history of persecution and trauma and; 2) she can establish the existence of “changed circumstances” material to her asylum claim in the form of worsening country conditions and her ongoing laser hair removal treatments.

For the reasons stated above, Ms. [REDACTED] respectfully requests that this Court find that she meets the definition of a refugee and that she has met her burden to establish her eligibility for asylum. In the alternative, she asks that this Court grant her withholding of removal or protection under the Convention Against Torture.

Respectfully submitted,

[REDACTED] *Counsel for Respondent*

Date

[REDACTED] *Counsel for Respondent*

Date



NON-DETAINED

Counsels for Respondent

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ANNANDALE, VIRGINIA**

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In the Matter of:	)	
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	)	
Respondent,	)	
<u>In Removal Proceedings</u>	)	

Next Individual Merits Hearing: 
Immigration Judge: 

**INDEX OF SUPPLEMENTAL DOCUMENTS IN SUPPORT OF RESPONDENT'S
APPLICATION FOR ASYLUM, WITHHOLDING OF REMOVAL, AND
PROTECTION UNDER THE CONVENTION AGAINST TORTURE**

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ANNANDALE, VIRGINIA**

In the Matter of:

NOT DETAINED

File No.:

Respondent

Next Individual Merits Hearing:

In Removal Proceedings

Before IJ

**INDEX OF SUPPLEMENTAL DOCUMENTS IN SUPPORT OF RESPONDENT'S
APPLICATION FOR ASYLUM, WITHHOLDING OF REMOVAL, AND PROTECTION
UNDER THE CONVENTION AGAINST TORTURE¹**

COMES NOW the Respondent, [REDACTED] by and through undersigned counsels, and hereby submits the following exhibits A through BBB in support of her application for asylum, withholding of removal, and protection under the convention against torture:

TAB	SUMMARY	PAGE
A.	Form E-28, Notice of Entry of Appearance as Attorney for [REDACTED] [REDACTED]	1-2
B.	Form E-28, Notice of Entry of Appearance as Attorney for [REDACTED] [REDACTED]	3-4
PERSONAL DOCUMENTS FOR RESPONDENT		
C.	Updates to I-589 / Errata Sheet	5-6
D.	Biographic page of Passport with male gender designation	7
E.	Birth certificate with certified translation	8-11
F.	Court Order for Change of Name from [REDACTED] to [REDACTED] [REDACTED]	12
G.	Employment Authorization Document reflecting a female gender designation	13
H.	Driver's License reflecting a female gender designation	14

¹ Respondent respectfully notes for the Court that this filing contains evidence that was previously submitted to the asylum office and that the Court should already have this evidence after the case was referred. However, Respondent is aware that the full body of evidence is not always transferred to the Court upon referral. Thus, she submits the evidence to ensure that it is included in the record before this Court and to ensure an efficient means of citation to the record. Respondent further notes some reports herein include only relevant pages due to length. Respondent apologizes to the Court for any inconvenience that may be caused by duplicative submissions and excerpts.

I.	Medical certification by [REDACTED], attesting that “she has received appropriate clinical treatment for gender transition from male to female,” and that in his “professional opinion, Ms [REDACTED] gender identity is consistent with a designation of female.”	15
J.	Stamped biometrics notice	16
	EVIDENCE OF PAST PERSECUTION, WELL-FOUNDED FEAR OF FUTURE PERSECUTION, AND EXCEPTIONS TO THE ONE-YEAR FILING DEADLINE	
K.	Declaration from affirmative application for asylum filed with Asylum Office	17-26
L.	Supplemental Declaration in support of Respondent’s brief	27-29
M.	Psychological evaluation performed by [REDACTED] with CVs	30-45
N.	Psychological evaluation performed by Dr. [REDACTED]	46-49
O.	Medical records from [REDACTED]	50-160
P.	Treatment records for laser hair removal performed by [REDACTED] with business card	161-162
Q.	Declaration by [REDACTED] former attorney for Respondent	163-164
R.	[REDACTED] Police Department Incident/Investigation Report, pertaining to domestic violence incident by Respondent’s then-boyfriend	165-171
S.	Photos of Respondent’s facial injuries resulting from domestic violence	172-173
T.	Article reporting on the murder of Respondent’s cousin in Honduras: [REDACTED] [REDACTED] [REDACTED]	174-177
U.	Business card of <i>notario</i> who provided Respondent with incorrect advice regarding her eligibility for asylum, upon which Respondent relied on to her detriment	178
	DOCUMENTATION OF COUNTRY CONDITIONS REGARDING PERSECUTION OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER (LGBT) PERSONS IN HONDURAS	
V.	U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., <i>Country Report on Human Rights Practices: Honduras (2022)</i> available at: https://www.state.gov/wp-content/uploads/2023/02/415610_HONDURAS-2022-HUMAN-	179-204

	RIGHTS-REPORT.pdf [https://perma.cc/3PVU-57F4] “Significant human rights issues included credible reports of: unlawful or arbitrary killings, including extrajudicial killings; torture and cases of cruel, inhuman, or degrading treatment or punishment by government agents... lack of investigation of and accountability for gender-based violence; and crimes involving violence or threats of violence against Indigenous and Afro-descendant communities, and against lesbian, gay, bisexual, transgender, queer, and intersex persons.” “The government prosecuted some officials who committed human rights abuses or engaged in corruption, but a weak judicial system and corruption were major obstacles to obtaining convictions.” “Criminal groups, including local and transnational gangs and narcotics traffickers, were significant perpetrators of violent crimes and committed acts of homicide, torture, kidnapping, extortion, human trafficking, intimidation, and other threats... The government investigated and prosecuted some of these crimes, but impunity was widespread.” “NGOs reported police or other government agents incited, perpetrated, condoned, or tolerated violence against LGBTQI+ individuals. Impunity for such crimes was high. The Public Ministry reported 17 violent deaths of LGBTQI+ persons as of September. NGOs reported 33 violent deaths as of October and 17 hate crimes against LGBTQI+ persons as of August. On January 10, unknown assailants shot and killed transgender activist Thalía Rodríguez in her home in Tegucigalpa, Francisco Morazán Department.” “The law criminalizes discrimination based on sexual orientation and gender identity characteristics and includes crimes committed against individuals because of their sexual orientation or gender identity as aggravating circumstances to increase penalties for criminal offenses. Nevertheless, discrimination against LGBTQI+ persons throughout society persisted.” “NGOs reported gangs engaged in ‘corrective rape’ of lesbian or transgender individuals.” “LGBTQI+ rights groups asserted that government agencies and private employers engaged in discriminatory hiring practices. Transgender women were particularly vulnerable to employment and education discrimination; many could find employment only as sex workers, increasing their vulnerability to violence and extortion.”	
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	“Transgender persons are prohibited from changing their name and legal gender status.” “The law criminalizes all forms of rape, including spousal rape. The government considers rape a crime of public concern, and the state prosecutes suspected rapists even if survivors do not press charges. The penalties for rape range from nine to 13 years’ imprisonment. The law was not effectively enforced, and weak public institutional structures contributed to the inadequate enforcement.”	
W.	U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., <i>Country Report on Human Rights Practices: Honduras (2021)</i> available at: https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/honduras/. “The Cattrachas Lesbian Network reported 17 violent deaths of LGBTQI+ persons as of August. On March 28, transgender activist Vanessa Zuniga was killed in Tela, Atlantida Department. Vanessa worked as a volunteer in the Association for Prevention and Education in Health, Sexuality, AIDS, and Human Rights.” “LGBTQI+ rights groups asserted that government agencies and private employers engaged in discriminatory hiring practices. Transgender women were particularly vulnerable to employment and education discrimination; many could find employment only as sex workers, increasing their vulnerability to violence and extortion. Transgender persons are prohibited from changing their legal gender status.”	205-231
X.	Latin America and Caribbean Learning and Rapid Response (LACLEARN), Excerpts of <i>Gender-Based Violence Impunity: Honduras Case Study</i>, United States Agency for International Development (USAID), (10/2022), available at: https://pdf.usaid.gov/pdf_docs/PA00ZQ54.pdf [https://perma.cc/78AF-2KJE] “Transgender and Garifuna women (both cisgender and transgender) are disproportionately affected by GBV [gender-based violence] impunity, and face catastrophic consequences of impunity in the near and long term. These women have the least resources to access justice, protection, or recovery support services, are socioeconomically marginalized, and are politically targeted for their gender and ethnic identities and as human rights defenders.” “Honduras reports one of the highest estimated rates of homicides and femicides against transgender women in Latin America.” “Societal patriarchal norms tolerate revictimizing practices in public	232-283

	institutions tasked with preventing and responding to GBV. Legal frameworks do not recognize or protect transgender identities...” “GBV protection initiatives provided by Honduran institutions are generally under-resourced, precarious, overwhelmed, and inefficient... Existing prevention and protection programs exclude transgender women.” “[In Honduras]...since 2012, high levels of GBV, including femicide, persist against women and gender and ethnic minorities.” “Lack of recognition of diverse gender and indigenous minority identities in legal frameworks and inadequate implementation of existing legal protections for women, LGBTQI+, and indigenous groups shape the current state of GBV impunity in Honduras.” “These data [Compiled by NGO Cattrachas] recorded 373 violent deaths among LGBTQI+ people in Honduras between June 2009 and March 2020, of which 111 were trans femicides.” “Findings from the case study interviews corroborate that multiple structural inequalities contribute to conditions for and persistence of GBV impunity in Honduras. Poverty, racism, a culture of male dominance, conservative religious values, and political corruption ensure power to those with political, social, and economic advantage, excluding gender and ethnic minorities access to justice.” “Transgender interview participants discussed facing gender-based threats and intimidation on reporting cases to the police or in seeking protection. Participants identified military and police officers as both the clients of transgender women sex workers, and the perpetrators of violence and discrimination against transgender women.” “Education and classroom practices in schools reinforce exclusionary gender norms against LGBTQI+ people, becoming an important site of intolerance and hate against transgender women...” “Without a transgender inclusive gender identity law, the state does not recognize transgender women as women and consequently lacking identity papers, they do not have access to public health, education, employment, or justice services. The Honduran state was obligated to create this law as part of the sentence of the IACHR 2021 case of Vicky Hernández, the transgender woman assassinated by members of the security forces during the coup in 2009. Civil society efforts to promote the creation of a gender identity law started in 2019, but without success to date.” “In interviews, [GBV] survivors also discussed how violence and	
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	harassment against transgender women increased during the COVID-19 pandemic lockdown measures, from security forces – mainly the military – deployed to control the public in the streets during curfews.”	
Y.	United Nations High Commissioner of Human Rights, <i>Situation of Human Rights in Honduras</i>, (08/24/2023), U.N.Docs. A/HRC/52/24, available at: https://documents.un.org/doc/undoc/gen/g23/039/78/pdf/g2303978.pdf?token=tfCsn5prSDQmUQrcbY&fe=true “...violence and insecurity have continued to affect the country, with their impact on women and lesbian, gay, bisexual, transgender and intersex persons being particularly severe.” “Ensuring timely access to justice with a gender perspective remains a challenge.” “The Office recorded at least 173 attacks against human rights defenders and journalists in 2022, resulting in a total of 242 victims, of whom 191 were human rights defenders and 51 were journalists. Of these victims, 147 (60.7 per cent) were defending land, territory or the environment, 36 (14.9 per cent) were engaged in journalism and 19 (7.9 per cent) were defending or promoting the rights of lesbian, gay, bisexual, transgender and intersex persons.” “Violence against women continues to be extremely serious. The National Violence Observatory of the National Autonomous University of Honduras reported 252 femicides and violent deaths of women from January to October 2022, compared to 330 cases registered in 2021 as a whole.” “As at 31 October, the Public Prosecutor’s Office had recorded 292 reports of domestic abuse, while the 911 national emergency system had recorded 50,351 reports. It is concerning that the majority of cases reported do not reach the courts, attesting to high levels of impunity and the need for greater inter-agency coordination in order to ensure a timely response for victims.” “Lesbian, gay, bisexual, transgender and intersex persons continue to suffer widespread stigma and discrimination that perpetuate violence against them because of their sexual orientation or gender identity or expression. The observatory for violent deaths of the non-governmental organization Cattrachas reported an increase in violence against lesbian, gay, transgender, bisexual and intersex persons in 2022, with 43 murders (26 of gay persons, 11 of lesbian persons and 6 of transgender persons) and 2 disappearances. Just eight of these cases remain under criminal investigation.” “Despite the State’s efforts to comply with the judgment of the Inter-	284-298

	American Court of Human Rights in the case of Vicky Hernández v. Honduras... several steps remain pending, such as the development of a procedure for recognizing gender identity.”	
Z.	Inter-Am. Comm’n H.R. Chapter V: Third Report On the Follow-Up of Recommendations Made by the IACHR in its Report on the Situation in Honduras, (2022), available at: https://www.oas.org/en/iachr/docs/annual/2022/Chapters/13-IA2022_Cap_5_HO_EN.pdf [https://perma.cc/882V-6AUB] “...from January to August 2022, the Commission learned about the murder of eight human right defenders, including Brayan Josué López Guzmán, an LGBTI defender who was murdered on June 5 in San Pedro Sula...” “Likewise, the Commission recalled its condemnation of the murder of Pablo Isabel Hernández Rivera, an indigenous leader and community journalist, and Thalía Rodríguez, a trans woman and human rights defender.” “Conversely the CONADEH [Honduran National Commission on Human Rights] underscored that 95 percent of violent deaths of women and femicides remain unpunished.” “...the Commission exhorts the State to report information on the fulfillment of this recommendation with respect to women, but with a special emphasis on femicides of trans women.” “The CONADEH indicated that the KAI Observatory of Kukulcan had registered 30 violent deaths of LGBTI persons up to August 2022.” “It [the Honduran National Commission on Human Rights] argued that it does not know the exact rate of impunity in cases handled by the National Committee for Access to Justice for LGBTI Persons... Furthermore, the CONADEH has pointed out that the protocol ordered by the Inter-American Court ruling regarding the case of Vicky Hernández has not been drawn up yet. It highlighted that the lack of protocols covering the specificities of violence against LGBTI persons contributed to an increase in the rate of impunity.” “In addition, the unconstitutionality appeal filed by civil society organizations before the Constitutional Chamber of the Supreme Court of Justice regarding the amendments to Article 112 (same-sex marriage) of the Constitution of the Republic has not been resolved.” “The Commission has further observed that various population groups continue to be in a particularly vulnerable situation. Of particular concern is	299-359

	the unceasing violence against women, LGBTI persons, journalists and human rights defenders in Honduras.” “Violence against women is another issue of particular concern, as are the high rates of impunity for these crimes.”	
AA.	Inter-Am. Ct. H.R. <i>Vicky Hernández et al. vs. Honduras</i>, (ser. C) No. 422, Judgment of (03/26/2021), available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_422_ing.pdf [https://perma.cc/88W6-BW7F] “... expert witness Carlos Zelada informed the Court that a context of continual violence against the LGBTI community existed in Honduras that went back to at least 1994. He also referred to a context of violence and murders of trans women. In particular, he reported that most of the trans women who were murdered were under 35 years of age and that they were particularly vulnerable to violence by the State’s security forces responsible for enforcing law and order.” “She [witness Claudia Spellmant Sosa] also stated that the police agents told them that they gave ‘the city a bad image’ and that they were men and had no reason to dress as women. She indicated that this was and continued to be a constant reality in Honduras. The witness also narrated that she had witnessed the murder of a trans woman by the police during an arrest.” “...violence against the LGBTI community has a symbolic purpose; the victim is chosen in order to communicate a message of exclusion or subordination.” “The modus operandi of the hate crime demonstrated that the murder of Vicky Hernández occurred ‘as part of a pattern of human rights violations against trans women in Honduras, and of social cleansing tolerated by the State.’” [Court quoting representatives]. “...there is a general context of violence against the LGBTI community in Honduras and, in particular, against trans women who are also sex workers (supra para. 31); (c) within this context the Police have been associated with acts of violence against LGBTI persons and against trans women sex workers (supra para. 31)...” “Regarding the relationship between the rights to liberty in the broadest sense, gender expression, gender identity, and privacy, the Court has indicated in other cases that recognition of the affirmation of a person’s sexual and gender identity is protected by the American Convention under Articles 7 and 11(2). Accordingly, gender and sexual identity are linked to the concept of liberty, the right to privacy and the possibility of self-determination of all human beings and to freely choose the options and	360-412

	circumstances that give a meaning to their existence in keeping with their personal convictions. Therefore, the State’s recognition of gender identity is of crucial importance to ensure that trans persons may fully enjoy their human rights, including protection against violence, torture and ill-treatment.”	
BB.	UK Visas and Immigration, <i>Country Policy and Information Note, Gangs, Honduras, (11/29/2023)</i> full report available at: https://www.gov.uk/government/publications/honduras-country-policy-and-information-notes/country-policy-and-information-note-gangs-honduras-november-2023-accessible [https://perma.cc/T33Y-JGZ9] “ACCORD [Austrian Center for Country of Origin and Asylum Research and Documentation] in their December 2022 report stated: ‘UNHCR in a March 2021 report on displacement and violence against women in Honduras assesses that in Tegucigalpa, San Pedro Sula and Choluteca crimes such as extortion, murder, kidnappings and other types of violence against women, against the LGBTQ+ population and other vulnerable groups are part of the daily life for a large number of inhabitants...’” “IDMC [Internal Displacement Monitoring Center] in a March 2019 report stated: ‘...Signs of torture were found on the bodies of all LGBTQ+ people examined at autopsy in 2017... Violence and abuse is particularly extreme for those who do not conform to patriarchal gender norms and for LGBTQ+ rights defenders. Street gangs’ macho codes or códigos mean LGBTQ+ people living in areas they control face particular risks and movement restrictions....’” [Quoting IDMC] “‘Gangs may forbid LGBTQ+ people to live in areas they control and may harass them and order them to leave. They may also flee to avoid being forced to undertake criminal activities. Trans women engaged in sex work flee if they ... experience difficulties in paying extortion or if they are targeted with violence as a result.’” “The 2019 IDMC report added: ‘LGBTQ+ people generally do not receive support from either their families or the state but rely instead on the broader LGBTQ+ community.’” [Quoting Latin American Working Group] “‘In many cases, the fears migrants have of returning to their communities are the same ones that propelled them to leave in the first place, including threats from gangs and organized crime. These risks are heightened for unaccompanied children, women, youth, and LGBTI individuals.’” “‘In her December 2022 e-mail response Elizabeth Kennedy states that the risks upon return to Honduras are probably the highest for males, aged 15 to	413-515

	39, LGBTI individuals, indigenous and Garífuna persons as well as for persons from neighborhoods with high levels of violence. Kennedy has documented 100 persons killed after their deportation to Honduras since 2014, and she stresses that this number does not reflect the total of cases of persons deported to and then killed in Honduras.”	
CC.	Amnesty International, <i>Honduras: Report to the UN Human Rights Committee</i>, (05/01/2023), available at: https://www.amnesty.org/en/wp-content/uploads/2023/05/AMR3767192023ENGLISH.pdf [https://perma.cc/JGV3-N6DQ] “...there has still been no successful prosecution and punishment of those responsible for human rights violations that could constitute crimes under international human rights law.” “Women and girls face high levels of gender-based violence. The National Violence Observatory at the National Autonomous University of Honduras (UNAH) recorded 330 violent deaths of women and femicides between January and December 2021, which equates to an average of 28 deaths per month or approximately one every 26 hours.” “LGBTIQ people also face high levels of violence and discrimination because of their sexual orientation and gender identity. The organization Cattrachas reported that 40 LGBTIQ people were murdered in 2022-. The great majority of these attacks remain unpunished.” “Although the authorities initially complied with some reparation measures ordered by the court [in <i>Vicky Hernandez v. Honduras</i>], such as publication of the sentence and an act recognizing the state’s responsibility, we are concerned about the lack of planning and of sustained efforts to comply with other structural reparation measures, such as implementation of training of officials, design of a protocol for investigating attacks against LGBTIQ people, development of a procedure for the recognition of gender identity and guarantees for the collection of statistics on violence against LGBTIQ people.”	516-519
DD.	Human Rights Watch, <i>Excerpt of World Report 2024, Events of 2023</i>, full report available at: https://www.hrw.org/world-report/2024/country-chapters/honduras [https://perma.cc/W48X-VRCT] “Lesbian, gay, bisexual, and transgender (LGBT) people in Honduras continue to suffer high levels of violence and discrimination in all areas of life, forcing some to flee the country. Cattrachas, a Honduran organization that monitors media reports, registered 40 homophobic or transphobic killings from January through October 2023.” “Honduras has failed to comply with key measures ordered by the Inter-	520-523

	American Court of Human Rights in 2021 in response to the killing of Vicky Hernández, a transgender woman, during the 2009 military coup. Among other requirements, the ruling ordered the creation of a protocol for criminal investigations in cases motivated by anti-LGBT bias and a procedure through which trans people could change their name and gender on official documents to reflect their gender identity. No such protocol or procedure had been established as of October.” “Based on 2021 data from the UN Economic Commission for Latin America and the Caribbean, Honduras has the highest rate of femicide—defined as “the killing of a woman by a man in the context of unequal power relations between men and women”—in Latin America. The Centro de Derechos de Mujeres, a Honduran nongovernmental organization (NGO) that monitors media, counted 317 femicides from January through September 2023.”	
EE.	Human Rights Watch, <i>Submission to the United Nations Committee on the Elimination of Discrimination Against Women, Review of Honduras</i>, (09/20/2022), available at: https://www.hrw.org/news/2022/09/20/honduras-submission-un-committee-elimination-discrimination-against-women [https://perma.cc/7PWQ-PYRG] “Discrimination and violence against lesbian, bisexual, and trans women are pervasive in Honduras. In 2020, Human Rights Watch released a report documenting abuses against LGBT Hondurans, including discrimination in access to employment and education, domestic violence, sexual assault, and murder. Human Rights Watch interviewed six lesbian or bisexual women, and nine trans women, all of whom were victims of anti-LGBT abuses.” “Honduras places transgender women in men’s prisons, which can lead to physical and sexual abuse. A judge informed Human Rights Watch of a case in which a trans woman was raped by her fellow detainees with the complicity of prison guards.” “The law [2001 Law on Police and Social Affairs] includes sanctions against particular groups of people, including ‘vagabonds,’ defined as including ‘street people, scoundrels, street prostitutes, drug addicts, drunkards, and gamblers.’ Human Rights Watch found in a 2009 report that the law was used arbitrarily to justify arrests of transgender women.” “Women we interviewed recounted violence and harassment by state security forces. Perla M., a 29-year-old trans woman from San Pedro Sula, told Human Rights Watch that police harassed her on the street when she was engaging in sex work.”	524-529

	“In May 2022, the president of Honduras committed to creating a legal gender recognition procedure, but her government and the civil registry had not done so at the time of writing.” “Lesbian, bisexual, and trans women in Honduras experience discrimination both during job searches and in the workplace. Human Rights Watch documented several cases of discrimination. For instance, Carla T., a 24-year-old trans woman from Comayagüela, said she applied for a job at a clothing store but was turned away on grounds that she would ‘ruin the clientele.’” “Interviewees told Human Rights Watch that they had experienced bullying and discrimination in educational settings. They described being targeted by peers, teachers, and administrators. Some said they felt compelled to leave school as a result, reducing their opportunities in life and placing them on a path to heightened economic insecurity.”	
FF.	Human Rights Watch, Excerpts from <i>Every Day I Live in Fear</i>, (10/07/2020), full report available at: https://www.hrw.org/report/2020/10/07/every-day-i-live-fear/violence-and-discrimination-against-lgbt-people-el-salvador [https://perma.cc/546P-KZZ6] “Honduras, by some estimates, has the highest rate of murders of transgender people in the world. Other forms of violence against trans people are also common.” “Human Rights Watch first reported on violence against trans women in Honduras in 2009. At that time we reported on a range of abuses based on gender identity and expression, including rape, beatings, extortion, and arbitrary detentions by law enforcement officials, as well as police inaction and recurrent failure to investigate violence against transgender people...Such violations persist.” “Of the 25 interviews with LGBT people in or from Honduras, eight recounted violations by state security agents.” “Four reported being sexually or physically assaulted, while others said the National or Military police had humiliated, sexually harassed, or discriminated against them.” “In May 2019, William Alejandro Martínez, a 36-year-old transgender man, was on his way home from work at an LGBT rights organization in Comayagüela when three military police officers stopped him and asked for his identification, then sexually assaulted and threatened to arrest him because his gender expression did not match the female sex marker on his ID card.”	530-612

	“Perla M., a 29-year-old trans woman from San Pedro Sula, told Human Rights Watch that in 2017, three military police officers came to her home and told her that someone had filed a complaint against her, and that she needed to come with them. ‘But they didn’t take me to a court, or a jail,’ she said. ‘They told me I was about to live my worst nightmare, and they took me to an abandoned house and raped me.’” “As with other forms of violence against LGBT people, several factors prevent access to justice: fear of repercussions or skepticism about the likelihood of a positive outcome that discourages victims from filing complaints; actual and perceived anti-LGBT attitudes on the part of police; and a broken, corrupt judicial system.” “Several interviewees described being targeted and stigmatized from a young age because of their non-normative gender expression. Their perceived difference rendered them vulnerable to bullying and abuse. The cumulative effect of being rejected at home, bullied at school and ostracized from the community is to reinforce a cycle of marginalization and poverty.” “Interviewees described school as an unsafe space, especially for those who are visibly gender non-conforming. For two trans people interviewed by Human Rights Watch, pervasive bullying led them to drop out of school.” “Kendra Jordany, a 31-year-old transgender woman and activist from San Pedro Sula, said that her high school sent her to a psychologist who tried to ‘change’ her.”	
GG.	Austrian Centre for Country of Origin Research and Asylum Documentation, Austrian Red Cross, Excerpt of <i>Honduras: gang based violence, criminality and violations against specific groups</i>, (12/2022), full report available at: https://www.ecoi.net/en/file/local/2083691/ACCORD-Honduras-Gang+Violence-December+2022.pdf [https://perma.cc/7EXT-E4LU] “The constitution prohibits same-sex marriages. In January 2021, the threshold for changing this provision was increased from a two-thirds to a three-quarters majority, and at a later occasion President Hernández accused those advocating for same-sex marriages of “attacking Christian principles” and “the notion of the family”, according to HRW (HRW, 13 January 2022).” “The number of killings of LGBTI persons peaked in the years 2012 and 2019 (with 41 killings each) as well as 2015 (37 killings) (Cattrachas, 2020, p. 21).”	613-713

	“In more than half of the cases (64) in this group [trans women], the victim’s body was found in the street, continuing – as Cattrachas notes – the tendency that the killing of trans persons happens predominantly in public places. With regard to the violent deaths of women, Cattrachas stresses the difficulty to identify the killing of lesbian or bisexual women in the context of femicides (Cattrachas, 2020, pp. 4; 9; 14-15; 19).” “In the period January to March 2022, KAI recorded 11 killings of LGBTI+ persons, noting that 4 of them were human rights defenders. As of April 2022, only one of these cases had been tried; nine cases continued to be under preliminary investigation (Unidad de Vigilancia KAI, April 2022, pp. 1; 3; 5).” “Cattrachas notes that of the 373 violent deaths [including one case of disappearance] of LGTBI persons recorded in the period 2009 to 2020, only 79 cases have been prosecuted and 35 of these have ended with a conviction.” “An article published by swissinfo.ch, originally provided by the Spanish news agency EFE, quotes a trans activist who explains that the community was living in difficult circumstances, sometime not knowing whether they would survive the day.” “In August 2022, the Honduran online newspapers La Tribuna and El Heraldo report on a press release by the Association of Pastors of Tegucigalpa speaking out against the participation of the LGBTI community in a patriotic parade celebrating Honduras’ Independence Day, traditionally formed by students and staff of educational centres.” “Similarly, HRW noted in November 2020, that “in some cases gangs specifically target LGBT people” for reasons that might be connected to personal aversion to LGBT persons, to show social control or dominance, or because they are aware that LGBT persons lack a strong social support system to protect them (HRW, November 2020, p. 12).” “PBI [Peace Brigades International] notes in relation to the killings of LGBTIQ+ people that ‘at times, families and public institutions do not recognise or report that these killings are related to sexual orientation or gender identity, reporting them as common crimes’.” “In May 2020, PBI states that in recent weeks the organization had “received reports of at least 10 attacks against trans women by soldiers, the National Police and private security agents, including verbal and physical attacks, threats and the use of tear gas” for violating the lockdown order. Some victims reported to have been forced into having sex to avoid being arrested (PBI, May 2020 (b)).”	
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	“According to the BTI [Bertelsmann Stiftung’s Transformation Index], several groups, including minority groups such as LGBTQ+ persons suffer not only from violence but are also ‘systematically discriminated against when it comes to accessing social and other state services as well as the labor market’ (BTI, 2022, p. 15).” “Honduras has the highest femicide rate in the region with 6.79 femicides per 100,000 inhabitants, according to an analysis by the Global Protection Cluster (GPC) of September 2022 (GPC, 12 September 2022, p. 4).”	
HH.	F&M Global Barometers (C) F&M College. <i>Asylum Profile: Honduras. GBGR, GBTR, and GBPI Datasets</i>, (02/2024), available at: https://www.fandmglobalbarometers.org/wp-content/uploads/2024/02/honduras-asylum-profile-1.pdf [https://perma.cc/3BZ7-CNAA] “Based on the data from the F&M Global Barometer of Gay Rights (GBGR), the F&M Global Barometer of Transgender Rights (GBTR), and the F&M Global Barometers LGBTQI+ Perception Index (GBPI), Honduras fails to protect, and instead actively persecutes, their LGBTQI+ citizens.” GBGR (2020) [Global Barometer of Gay Rights, Score out of 100] = F (59%) GBTR (2020) [Global Barometer of Transgender Rights, Score out of 100] = F (41%) GBPI (2022) [Global Barometers LGBTQI+ Perception Index, Score out of 100] = F (52%) “‘Our environment really discriminates and makes us feel less! The vulnerability of being a person with a different sexual idiology [sic]! It affects us daily [and] is a constant struggle with society, religion and family. They do not realize that we only want to be loved and that they accept us as we are.’ - Bisexual, city, aged 25-35”. “‘The situation of LGBTQ+ rights and security in Honduras is very sad, and practically non-existent.’ - Bisexual, rural, aged under 25”. “‘I believe I might be trans, but I do not present as female, precisely out of self-preservation. Trans women in Honduras face a huge amount of discrimination and frequently are subject of hate crimes and violence.’ - Trans Woman/bisexual, city, aged under 25”. “‘... the LGTBQ community is so vulnerable that even in the same family there is a lot Homicides for homophobia [sic]...’ - Gay, city, aged 25-35”.	714-720

	“‘It is better to be secret and alone.’ - Bisexual, rural, aged 25-35”.	
II.	International Rescue Committee, <i>LGBTQ+ Persons in Honduras: discrimination impacts mental health and livelihoods</i>, IRC warns, (06/22/2023), available at: https://www.rescue.org/press-release/lgbtq-persons-honduras-discrimination-impacts-mental-health-and-livelihoods-irc-warns [https://perma.cc/M9DB-FJPU] “A recent study conducted by Asociación Kukulcán analyzed the impact of discrimination on the mental health of LGBTQ+ persons living in Tegucigalpa, Honduras. According to the report, 1 of every 3 participants expressed experiencing moderate to severe symptoms of depression. The document also emphasized employment discrimination, as 20% of respondents reported that they have lost their job or had been rejected due to their gender identity.” “In 2022, 43 LGBTQ+ persons were murdered, including 3 advocates. The CONADEH, Honduras’s National Human Rights Office, reported that almost 90% of crimes against LGBTQ+ persons go unpunished.” “IRC data revealed that 50% of safe space users were forced to leave their homes due to violence because of their identity, and 40% live away from their family due to discrimination.”	721-723
JJ.	Alianza Americas, <i>On International Women’s Day Migrant Leaders Call for Policies That Address Gender Violence in Central America and Mexico</i>, (03/07/2022), available at: https://www.alianzaamericas.org/press-release/on-internationalwomensday-migrant-leaders-call-for-policies-that-address-gender-violence-in-central-america-and-mexico/?lang=en [https://perma.cc/EPW7-FSNQ] “According to the World Bank, El Salvador has the highest rate of homicides involving women globally. Honduras and Guatemala rank seventh and eighth in place within the global top ten, and Mexico ranks eleventh. Moreover, impunity for gender violence crimes is widespread. In Guatemala, 97% of gender-based crimes go unresolved or unprosecuted; in Honduras, an estimated 90% of femicides are never investigated; and in El Salvador, only 5% of crimes against women result in a trial. Trans women also see high rates of violence and impunity.” “‘As seen from the lack of justice for gender violence cases across Central America and Mexico, there is a prevailing culture of tolerance for violence against women and trans women,’ said Patricia Montes, director of Centro Presente, an organization that defends migrant communities in Boston. ‘As long as gender violence crimes go unpunished, without opportunities for due process and support for victims, this rampant impunity will leave	724-725

	women, girls, and trans women under threat with no other choice except to migrate to save their lives. Mexico and Central America need to enforce the rule of law to protect women.”	
KK.	Jennifer Venis, <i>Fighting transfemicide in the Americas</i>, International Bar Association, (07/26/2021), available at: https://www.ibanet.org/Fighting-transfemicide-in-the-Americas [https://perma.cc/SE2X-X9VG] “In Honduras and across Latin America, transgender women don’t tend to live past 35. Thanks to social stigma reinforced by a lack of rights and legal protections, they face extreme violence and limitations on the scope of their lives.” “Astrid Ramos, a lawyer for Cattrachas, tells <i>Global Insight</i> that ‘when we looked at the statistics registered by our observatory, we figured out that there was an actual pattern of social cleansing against trans women during the coup.’” “She says the killings were localised, and shared certain characteristics. ‘The majority of the 15 trans women were sex workers. Their bodies were found in the streets. All of their bodies reported several signs of extreme violence. And most of them were killed by gunshots during curfews.’” “Lloyd Vergara, Member of the IBA LGBTI Law Committee Advisory Board, says, ‘The cold-blooded way Hernández was killed [...] is very indicative of how Honduras has failed to take steps to remove, or at least, mitigate bias and discrimination against the trans community at the hands of its law enforcement agents.’” “The violence perpetrated against LGBTI people during the coup, Mejía [Nadia Mejía, an attorney for Cattrachas] argues, sent a message to the rest of society. ‘Now, anyone feels in the right to kill LGBTI people and especially trans women because they are the most marginalised and most visible because of the work they do to survive.’” “...the Director of the UN Latin America Institute for the Prevention of Crime and the Treatment of Offenders, Douglas Durán Chavarria, acknowledged that the recognition of fundamental rights through international instruments is not enough, and that the gap between formal recognition of rights and their fulfilment needs to be overcome.” “‘When the state chooses to ignore the existence of a politically unpopular group, or knowingly fails to protect them from harm, the state is complicit in the violence that the community faces’, adds Levasseur [Dru Levasseur, Director of Diversity, Equity, and Inclusion at the National LGBT Bar Association].”	726-734
LL.	Natalia Marsicovetere, <i>The pandemic marks a new, brutal chapter in a</i>	735-737

	<i>history of violence against LGBTQIA+ people in Central America</i>, Oxfam International, (11/29/2021), available at: https://www.oxfam.org/en/blogs/pandemic-marks-new-brutal-chapter-history-violence-against-lgbtqia-people-central-america [https://perma.cc/F73H-WD3H] “Central America has historically been a particularly violent region for the LGBTQIA+ population who face everything from street violence, to displacement, to lack of opportunities, to discriminatory public policies. The region has had an epidemic of systemic exclusion that heightens inequality and threatens the human rights of gender and sexually diverse people.” “Governments in Central America actively participate in perpetuating the violence.” “The problems have been compounded by the coronavirus pandemic. Lockdown measures in particular have closed secure and safe spaces where LGBTQIA+ people, particularly youth, could find shelter, community, support, wellness and even protection from unsupportive families. At the same time, many in the community have been locked in abusive and violent households. In many cases this loss of safe spaces has led to displacement and homelessness, and widespread damage to mental health.” “The decline in the informal economy meant many jobs and ways of making a living were lost or reduced. This further widened the socioeconomic gap between LGBTQIA+ people and the rest of the population, especially when factoring in racial inequality.” “Health services have been always difficult to access due to discrimination, lack of legal identification documents for gender diverse people, and poor knowledge among medical professionals about how to address LGBTQIA+ specific health issues... Yet, at this critical time, service barriers for LGBTQIA+ populations heightened.” “Specifically, on Covid-19, LGBTQIA+ people found themselves more vulnerable to the virus and had difficulty getting medical attention, and accessing vaccination programs.”	
MM.	Breidy Hernández, <i>In light of violent deaths of LGBTIQ+ people, implementation of differentiated investigation protocol urged</i>, CE Latin America Migration English, (1/31/2024), available at: https://drive.google.com/file/d/18Sq2ebHajR3mHm_Az6RGaBk10iKa1bf/view?usp=sharing [https://perma.cc/J5YY-YK3U] “The violent death[s] of two people during the weekend have generated	738-740

	uncertainty in the LGBTIQ+ population, because the identity of the persons is unknown. The media reported that it was a couple of trans women, however, it is preliminarily believed that it is a trans woman, and the second person is suspected.” “Because of the way in which these people's lives were taken -who were found without clothes, with gunshots and stab wounds-, LGBTIQ+ organizations consider these to be hate crimes.” “The Inter-American Court of Human Rights (IACHR), in the Vicky Hernandez case, determined as a reparation measure that the State of Honduras should implement a protocol for the investigation of deaths of LGBTIQ+ persons, however, almost three years after the sentence, it has not been fully complied with.” “In 2023 the Special Rapporteur on extrajudicial, summary or arbitrary executions of the United Nations (UN), Morris Tidball-Binz, visited the Central American country, in that sense, he expressed his concern about the high rate of femicides and violent deaths of lesbian, gay, bisexual, transgender and intersex people. ‘Given this worrying panorama, the lack of specialized protocols for the investigation of femicides and violent deaths against the LGBTIQ+ population is alarming,’ said Morris Tidball-Binz.”	
NN.	Breidy Hernández, <i>LGBTQI+ Murders Have Increased in 2023</i>, CE Latin America Migration English, (11/15/2023), available at: https://drive.google.com/file/d/1HRIurWufSDNrwxRfqA-kdICPq3wFOOTI/view?usp=sharing [https://perma.cc/QU23-M6PG] “According to Seydi Irías, coordinator of the Violence Observatory of the Cattrachas Lesbian Network, from January to November there have been 47 violent deaths of LGBTIQ+ people.” “In recent days, two trans women were murdered: Monica Santos in La Ceiba, Atlantida, and Abigaíl Zelaya in Guaimaca, Francisco Morazán.” “In view of the alarming figures, La Red Lésbica Cattrachas points out that in two years of President Xiomara Castro's government the numbers have not gone down. In this sense, Grecia O'hara expressed ‘we cannot assimilate that in the government plan and when they needed the votes of LGBTI people they promised an inclusive government, with less discrimination.’” “In an interview with Criterio.hn, Seydi Irías pointed out that in 2023 there were 18 violent deaths of trans women. She also pointed out that this increase should be analyzed because during the Covid-19 pandemic, the dynamics of violence against trans women had improved.”	741-743

	“The State of Honduras really gave the demonstration that they do not have the tools to decrease the violent deaths of LGBTIQ+ people with the murder of Thalía Rodríguez,’ expressed Seydi Irías.” “For the case, Honduras still does not recognize gender identity through the National Identity Card, which allows trans people to be identified at any time.”	
OO.	Peace Brigades International UK, <i>The Fight for LGBTQ Rights in Honduras Continues</i>, (05/2023) available at: https://peacebrigades.org.uk/news/the-fight-for-lgbt-rights-in-honduras-continues [https://perma.cc/AL4D-D7C6] “Local LGBT rights groups have denounced the imposition of a conservative crusade which targets LGBT people and publicly condemns so-called ‘gender ideology’. During the electoral campaign of 2021 the then-president labelled LGBT defenders as ‘enemies of independence’.” “Due to societal marginalisation, exclusion and abuse, many trans women leave Honduras together in caravans, forced to flee their homes with the hope of one day living free from fear.” “The victory of Xiomara Castro of the left-wing Libre party in the 2021 elections ended the eight-year term of ex-President Juan Orlando Hernández, currently facing drug trafficking charges in the United States. Castro made history as the first woman president of Honduras. Her Pro-Women, Pro-LGBTI campaign aimed to counter hate speech and promised laws to protect LGBT people. Yet the following year was an especially distressing year for the LGBT community. An investigation by the NGO Unidad de Vigilancia KAI registered 42 violent deaths of LGBT people in 2022, including six trans women and seven LGBT rights defenders.” “Moreover, in over half of the incidents reported to PBI by members of the LGBT community, State actors - particularly the National Police, Preventative Police, and the Army – are described as aggressors.” “PBI is extremely concerned at the security situation facing the LGBT collective in Honduras, and disappointment at the pace of action by government to meet their commitments.”	744-749
PP.	Frauke Decoodt, <i>On the Pink Corridor</i>, Human Rights In Context, (2/17/2023), available at: https://www.humanrightsincontext.be/post/on-the-pink-corridor [https://perma.cc/47L5-9NFX] “Gangs often coerce trans women to work for them because many are sex	750-758

	workers who are strolling the streets anyway. After a gang threatened Nicolle, she conceded to selling drugs for them. Opposing the gangs in Honduras is not an option, it gets you killed.” “Honduras is a conservative Christian country. According to the Pew Research Center, about 88% of Hondurans oppose equal marriage and 83% consider homosexuality a sin. Machismo - which considers men need to behave as aggressive, heterosexual, dominant men - is considered a virtue. This heteronormativity is one of the causes of the constant discrimination and violence the LGBTQI+ community faces.” ““This is our identity,’ Brithany says indignantly. ‘Its purpose was to tell us that they don’t consider us women.’ Other ways of erasing their identity included not being allowed to wear women’s clothes on visiting days and having to take showers alongside men. What pains the girls, even more, is that it’s prisoners who make these rules, that it was another trans woman who cut their hair.” ““It’s crazy to say, but outside we often feel more vulnerable, there is more discrimination and violence against us,’ Nicolle asserts. ‘Even though in prison we’re at the mercy of the gangs, they also somehow support and protect us. It would be worse if state security forces controlled the prisons.””	
QQ.	CE Noticias Financieras English, <i>In front of the Presidential House, trans community demands fulfillment of President Xiomara Castro’s promises</i>, (12/13/2022), available at: https://drive.google.com/file/d/1rls_kY6ybwMj33FtllmJAa9XuBUQy4Q/view?usp=sharing [https://perma.cc/4SQU-BU62] “Since early hours of this Monday, different organizations of the trans population presented themselves in front of the Presidential House to demand President Xiomara Castro to receive the diverse community in her office and at the same time demand the fulfillment of campaign promises.” “Banners in hand and raising their voices to be heard, the trans community also demanded the Honduran government to comply with the approval of the Gender Identity Law. The protesters claim that without this law, the trans community does not have the right to their own identity, a situation that puts them in constant danger.” “Members of the LGTBIQ+ community in Honduras have been protesting for years in the country for their human rights to be respected, however, governments pass and promises simply remain in the air.” “In an interview with Criterio.hn the representative of the lesbian, trans and feminist organization Ixchel, Ana Ramirez said that there is indignation in	759-761

	the trans community nationwide, ‘we see that they give priority to other issues and we have been fighting for years for our rights and we are not heard,’ she said.”	
RR.	CE Noticias Financieras English, <i>Without justice for the murder of transgender people, emblematic cases of Leonela Zelaya, Vicky Hernández, and Thalia Rodríguez are remembered</i>, (11/24/2022), available at: https://drive.google.com/file/d/1nToDThAMLTUcOd-IJP5BY6swO5tfGJs/view?usp=sharing [https://perma.cc/H8S4-4EDK] “So far there has been little or almost no progress in the fulfillment of the reparation measures dictated by the Inter-American Court of Human Rights (IACHR Court), especially because there are 12, which LGBTIQ+ populations are still waiting with so many expectations, to attract changes that will strengthen respect for their human rights.” “Every time the rights of LGBTIQ+ people and the reparation measures dictated by the IACHR Court are mentioned in Honduras, the issue is demonized, giving rise to misinformation and discrimination, which leads to hate crimes... The most recent emblematic case, but not the last on record, was that of Thalía Rodríguez, a human rights defender and transgender leader murdered on January 10, 2022 in the capital of Honduras.” “Cattrachas had pointed out that ‘the murder of Thalia Rodriguez shows how the State of Honduras does not protect LGBTIQ+ people, failing to comply with the recent decision of the Inter-American Court of Human Rights for the murder of Vicky Hernandez.’”	762-764
SS.	Michael K. Lavers, <i>Transgender Woman Deported From U.S. Murdered in Honduras</i>, The Washington Blade, (10/22/2022), available at: https://www.washingtonblade.com/2022/10/20/transgender-woman-deported-from-u-s-murdered-in-honduras/ [https://perma.cc/S675-9BT8] “A transgender woman who the U.S. deported to Honduras earlier this year has been murdered.” “Reportar sin Miedo, the Washington Blade’s media partner in Honduras, reported a group of ‘hooded subjects’ shot Melissa Núñez in Moroceli, a municipality in El Paraíso department in eastern Honduras, on Tuesday night.” “Indyra Mendoza, general coordinator of Cattrachas, a lesbian feminist network based in the Honduran capital of Tegucigalpa, on Thursday confirmed to the Blade that Núñez asked for asylum in the U.S.”	765-766
TT.	Hondudiario Redacción, <i>Structural violence and social political conflict</i>	767-769

	<i>‘behind’ violence against LGBTIQ people in Honduras, CE Latin America Migration English, (7/11/2022), available at:</i> https://drive.google.com/file/d/1otU8GQmKh0H12T8A4MJUbKdarsl9EoYI/view?usp=sharing [https://perma.cc/M7R3-4VPA] “Honduras is the country with the highest homicide rate among trans women in the world...” “These countries [Honduras, El Salvador, and Guatemala] live in a high level of social and political conflict, coupled with corruption and impunity, where the lesbian, gay, bisexual, trans, intersex and queer LGBTIQ population is at a structural disadvantage and vulnerable to gender violence systems based on cisheteronorma, intersected with systems of social and economic inequality.” “In recent years, Honduras worsened its score in the Corruption Perception Index, going from 146th to 157th place out of 180 countries evaluated.” “The human rights situation of LGBTIQ+ people in Honduras is marked by the high number of hate crimes, discrimination based on sexual orientation and gender identity, non-recognition and non-compliance with fundamental human rights, impunity, and constant violence by state entities against the LGBTIQ+ community.” “In these cases, most of the deaths are related to the use of weapons, particularly firearms.”	
UU.	Michael K. Lavers, <i>Three LGBTQ people murdered in Honduras on same day</i>, The Washington Blade (02/04/2022), available at: https://www.washingtonblade.com/2022/02/04/three-lgbtq-people-murdered-in-honduras-on-same-day/. “Three LGBTQ people in Honduras were reported killed on Feb. 2. Reportar sin Miedo reported Jonathan Gabriel Martínez, and his partner, César Gustavo Zúñiga, were killed in San Pedro Sula’s Ticamaya neighborhood. The Washington Blade’s Honduran media partner also noted María Fernanda Martínez was shot to death in La Libertad, a municipality in Comayagua department.” “Reportar sin Miedo cited witnesses who said men dressed as police officers shot Jonathan Martínez and his partner in the liquor store that he owned. María Martínez, according to Reportar sin Miedo, had previously joined a migrant caravan that had hoped to reach the U.S.”	770-771

	“Thalía Rodríguez, a prominent transgender activist, was killed outside her Tegucigalpa home on Jan. 11. Authorities have arrested a suspected MS-13 member in connection with Rodríguez’s murder.”	
VV.	Telma Quiroz, Amílcar Cárcamo & Helen Julissa Montoya, <i>Discrimination, Prejudice, and Exclusion: Obstacles to Accessing Work for Trans Women in Honduras</i>, International Women’s Media Foundation/Reportar Sin Miedo, (2/1/2022), available at: https://www.iwmf.org/reporting/discrimination-prejudice-and-exclusion-obstacles-to-accessing-work-for-trans-women-in-honduras/ [https://perma.cc/PQ34-XTA7] “Author’s Note: This article was published before Thalía Rodríguez was killed at her home on January 10 of this year.” “‘Who really is the real responsible for all the damages that we do to the trans women community?’ Thalía asks. ‘It’s the state itself,’ she replies. ‘The one that says it watches over and protects is the [same] one that kills us, the one that hurts us.’” “Recently, the current head of state himself, Juan Orlando Hernández, took up the anti-rights flags by calling the defenders of the rights of women and LGTBQ+ populations ‘enemies of the state and of independence.’ But it’s not only state institutions that close their doors to people like Thalía. The church has also joined its state peers with speeches against sexual diversity, according to complaints filed by more than 20 LGBTI+ organizations in September.” “State and religious institutions prevent LGTBQ+ people like Thalía from accessing all spaces, except for sex work and other activities that endanger their health and lives. Nor do they allow them to guarantee the comprehensive health to which all citizens are entitled. They carry a heavy burden reinforced by prejudice and by the lack of education, opportunities, and employment.” “The obstacles that Daryana and Thalía face span trans women of all ages. Young women with gender expressions outside of heteronormativity are the most vulnerable because they suffer verbal, physical, and psychological violence.” “Violence in the streets can end the lives of trans women when they are still young. At just 19 years old, Amelian is still young, but if we take the IACHR figures at face value, her life expectancy, like that of most trans women in Latin America, is 30 to 35 years.”	772-797
WW.	Frances Robles and Daniele Volpe, <i>They Call it Social Cleansing: Court May Force Honduras to Better Protect Trans People</i>, The New York Times, (04/29/2021), available at:	798-808

	https://www.nytimes.com/2021/04/29/world/americas/honduras-transgender-rights.html [https://perma.cc/XF6P-2D8C] “‘They call it social cleansing,’ said Claudia Spellmant, a transgender activist who fled the country in 2013 after repeated attacks, and now lives in New York. ‘They don’t want trans people on the street.’” “Krishna Flores, 24, a transgender sex worker in Tegucigalpa, the capital, said she had been assaulted twice this year. Police officers cut off her hair, burned her makeup and purse and lobbed tear gas at her. Finally, she said, she ran into a stranger’s home for safety.” “‘The truth is,’ Ms. Flores said, ‘here in Honduras, where we are, there’s a lot of violence against trans people. From the police, or people who seek us out to have relations with us, people who don’t want to pay us. And sometimes it’s the military. They scream horrible things at us.’” “Rosa Seaman, Honduras’ vice secretary of Human Rights, said the government had created a special investigations unit for crimes against the vulnerable, including gay and transgender people...But, she conceded, training for police officials has had mixed results.” “Victor Madrigal-Borloz, an expert on gender identity discrimination for the United Nations, said that even in the context of the ‘worrisome violence’ in Honduras, crime against transgender people was ‘exacerbated’ and disproportionate.” “‘There is a pattern in all of these cases: They are all shot in the head, there were no autopsies and no investigations,’ said Indyra Mendoza, the founder of Cattrachas. ‘And while it’s true that in Honduras they also kill teachers and cabdrivers, those murders are not the result of religious prejudice and fundamentalism. And those have some chance of getting justice.’”	
XX.	Gustavo Palencia, <i>Honduran lawmakers vote to lock in bans on abortion, same-sex marriage</i>, Reuters (01/28/2021), available at: https://www.reuters.com/article/idUSKBN29R03C/. “Members of the Honduran Congress voted on Thursday to amend the constitution making it much harder to reverse existing hard-line bans on abortion and same-sex marriage, as lawmakers double down on socially conservative priorities.” “Lawmakers voted to require a three-quarters super-majority to change a constitutional article that gives a fetus the same legal status of a person, and another that states that civil marriage in the Central American nation can only be between a man and a woman.”	809-810

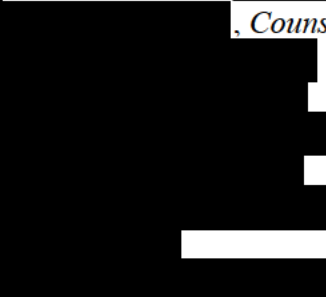
	“Currently, all constitutional changes require a two-thirds majority vote of the 128-member body.” “Mario Perez, a lawmaker with the ruling party of President Juan Orlando Hernandez, explained during a virtual floor debate that the change will create a ‘constitutional lock’ on any would-be softening of the existing articles.” “Kevihn Ramos, the head of a gay rights advocacy group in Honduras, blasted the lawmakers who voted to make it harder to change the two constitutional articles. ‘This reform is the product of a state-imposed religion on Honduras,’ he said.”	
YY.	<i>Honduras, ‘It’s more than putting food on the table for LGBT+ people – it’s inclusion’, World Food Programme (10/01/2020), available at: https://www.wfp.org/stories/honduras-its-more-putting-food-table-lgbt-people-its-inclusion.</i> “For transgender people, the absence laws empowering them to self-identify adds a further layer of complication.” “Over the past six months, showing ID has become a precondition to entering a supermarket, pharmacy or bank, and even to walk the streets — people are allowed out on alternate days based on the last digits on their identity card.” ““As transgender women, we often face discrimination at the hands of security personnel in shops and even of the authorities, because we look different from the photo on our identity papers,’ says JLo Córdoba, who coordinates the Muñecas de Arcoiris collective, which campaigns for the rights of transgender women. ‘Security guards often make fun of us and refuse to let us into shops,’ she says. ‘This affects our self-esteem, so we prefer not to go into the shops and end up being unable to buy what we need.’”	811-820
ZZ.	<i>Under lockdown in Honduras, trans women face a double violation of their rights, PBI Honduras (05/2020), available at: https://pbi-honduras.org/news/2020-05/under-lockdown-honduras-trans-women-face-double-violation-their-rights.</i> “The Sexual Diversity Committee states that those who identify as Lesbian, Gay, Bisexual, Transgender, Queer, Intersex or other (LGBTQI+) ‘are disproportionately suffering from the ravages of the pandemic and its consequences due to their historic social, labour and economic exclusion under the Honduran state’. [...] Due to the restrictions imposed by the Honduran Government, which declared a complete lockdown throughout the country and the suspension of constitutional guarantees on 20 March, those with less resources find it increasingly difficult to access essential services, from personal protective equipment to food and water.”	821-824

	“The main problem, according to Donny Reyes, coordinator of Arcoiris Association, ‘is that the LGBT collective is not considered a priority group in the distribution of government aid. Other groups, like over-60’s and the disabled are given priority’. Arcoiris is therefore working to find food, housing support and biosecurity materials like bleach, soap, gloves and masks to help the LGBTQI+ collective. In order to raise the necessary funds, Arcoiris has requested humanitarian aid. ‘But at the moment, it is not going very well for us’, they explain.” “Currently, obtaining a travel permit in Honduras for members of national and international human rights or humanitarian aid organisations is a long and complicated process. In fact, many organisations denounce that the Honduran state is minimising the work of human rights defenders, as they were not included in the list of exceptions to the lockdown. This closes their spaces for action, and blocks their fundamental work in this critical situation of suspended guarantees. [...] ‘On top of this, they’re not giving travel permits to any LGBT organisation in the country, because it would be an official recognition and accreditation of our work,’ says Donny Reyes.” “In recent weeks, we have received reports of at least 10 attacks against trans women by soldiers, the National Police and private security agents, including verbal and physical attacks, threats and the use of tear gas. ‘They take advantage of the fact that we are violating the lockdown order to threaten us and hit us. But we need to pay our rent and buy food. Going out on the street is our only option’, says Adriana (not her real name), a trans woman who recently suffered an attack by soldiers in the centre of Tegucigalpa. Some of them have even reported being coerced into performing sexual acts in order to avoid being arrested.” “On 5 May, Honduras recorded its first hate crime during the health emergency when a 23 year old trans woman in the Caribbean city of La Ceiba was murdered. Although the arrival of COVID-19 has intensified the violence against the LGBTQI+ collective, this is not a new development. According to the Observatory of Violent Deaths of the LGBTI Community in Honduras, part of the Cattrachas Lesbian Network, so far in 2020 there have been at least six murders of LGBTQI+ individuals, one trans woman among them.”	
AAA.	Brendan Fernando Kelly Palenque, <i>Honduras LGBT+ community, particularly trans women, face violence and discrimination during lockdown</i>, GCN (Gay Community News) (05/15/2020), available at: https://gcn.ie/trans-women-honduras-facing-violence-lockdown/. “Lockdown in Honduras is exacerbating violence against LGBT+ people, and trans women in particular, according to the Arcoiris LGBT Association.”	825-828

	“The country went into lockdown on March 20 and on that same day constitutional guarantees were suspended – making it incredibly difficult for those with little resources to access essentials such as food and water.” “Donny Reyes – the coordinator of the Arcoiris Association – said the main problem is that the LGBT+ community are not considered a priority group in the distribution of government aid. As a result, Arcoiris are finding it incredibly difficult to give out important supplies like food, water and biomedical equipment such as soap and face masks.” “That’s not the only issue trans women in Honduras are facing though. Due to the lack of work opportunities, many trans women must turn to sex work. In the last few weeks, 10 trans women have been attacked by either the national police, soldiers or private security agents.” “One trans women who reticently suffered an attack, Adriana (not her real name), spoke out against the violence she faced in the country’s capital, Tegucigalpa. ‘They take advantage of the fact that we are violating the lockdown order to threaten us and hit us. But we need to pay our rent and buy food. Going out on the street is our only option,’ she said.” “So far this year, six members of the LGBT+ community have already been murdered in Honduras.”	
BBB.	Oscar Lopez, <i>Transgender murders in Honduras stoking fear of backlash against LGBT rights</i>, Reuters (07/16/2019), available at: https://www.reuters.com/article/us-honduras-lgbt-murders-feature/transgender-murders-in-honduras-stoke-fears-of-backlash-against-lgbt-rights-idUSKCN1UB2TB. “The murder of three transgender women in Honduras this month has raised fears that a push for LGBT+ rights in the country has prompted a backlash. Bessy Ferrera, a 40-year-old LGBT+ rights activist, was gunned down by unknown assailants early on July 8 in the capital Tegucigalpa. Santi Carvajal, a trans TV show host, was shot on July 5 and died a day later in the northern city of Puerto Cortes, and a third trans woman was killed in the city of El Negrito on July 3, local media reported.” “Trans people are being ‘kidnapped and killed with gunshots, kicks and punches,’ said Ferrera’s sister, Rihanna Ferrera Sanchez, who ran as the first ever trans candidate for office in Honduras’ 2017 elections. ‘There has never been so many attacks of hate.’” “Twenty-one LGBT+ people have been murdered since January, according to Cattrachas, a local watchdog group, compared to 18 in the same period last year.”	829-835

	“Some fear the attacks signal a backlash against a region-wide push for increased LGBT+ rights, which saw the Mexican Supreme Court rule in 2015 same-sex marriage bans unconstitutional. ‘There is a kind of retaliation,’ said Carlos Eduardo Calix, a 35-year-old trans man and local activist from Choloma. ‘If (the gender identity law) is approved, then we’ll be waiting to see who’s next, who are they going to kill.’” “Rights groups have called on the government to respond to hate crimes with proper investigations and prosecutions. But impunity rates in Honduras range between 95% and 98%, according to the Inter-American Commission on Human Rights, the autonomous, member-funded human rights arm of the Organisation of American States.” “Fearing for their safety, many LGBT+ people have fled Honduras and sought asylum in the U.S., with dozens of gay and trans migrants reaching the border in recent months.”	
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Respectfully submitted,

, *Counsel for Respondent*

Date

, *Counsel for Respondent*

Date

APPENDIX C. 1: Sample Brief Addressing Exception to CLP Rule - Family Unity

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[REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]

NON-DETAINED

Attorney for Respondents

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

[REDACTED]

In the Matter of:

Jane Doe
Lead Respondent

Jane Doe Jr.
Rider Respondent

Respondents in Removal Proceedings

File Nos. A xxx xxx xxx
xxx xxx xxx

Immigration Judge:
Next Hearing: .
Time:

RESPONDENTS' BRIEF IN SUPPORT OF A FINDING THAT THEY QUALIFY
FOR THE FAMILY UNITY EXCEPTION TO THE CIRCUMVENTION OF
LAWFUL PATHWAYS RULE

**RESPONDENTS' BRIEF IN SUPPORT OF A FINDING THAT THEY QUALIFY
FOR THE FAMILY UNITY EXCEPTION TO THE CIRCUMVENTION OF
LAWFUL PATHWAYS RULE**

I. INTRODUCTION

Respondents Jane Doe and Jane Doe Jr., through undersigned counsel, respectfully submit the following brief to show why they should be found to have rebutted the presumption that they are not eligible for asylum under the Circumvention of Lawful Pathways (CLP) regulations. On [REDACTED] at Respondents' individual hearing, the Court indicated that Respondents qualify for withholding of removal but not asylum, because they could not rebut the presumption that they are ineligible for asylum pursuant to the CLP regulations. However, the family unity exception established by 8 C.F.R. §1208.33(c) serves to rebut the presumption that Respondents do not qualify for asylum because Lead Respondent's minor son is in Guatemala.

The only question remaining before the Court is whether Lead Respondent has a spouse or child who would be eligible to follow to join her if she is granted asylum, as described in section 208(b)(3)(A) of the INA, 8 U.S.C. 1158(b)(3)(A).

II. STATEMENT OF FACTS

In the individual hearing, Lead Respondent Jane Doe demonstrated through her testimony that she had experienced past persecution and had a well-founded fear of future persecution based on her race, political opinion and social groups based on her status as an indigenous woman in Guatemala.

During the hearing, the Court found that Lead Respondent is eligible for statutory withholding of removal or CAT withholding and would be granted asylum but for the rebuttable presumption pursuant to the Circumvention of Lawful Pathways (CLP) Final Rule, see 8 CFR § 1208.33.

III. ISSUE PRESENTED

Whether Lead Respondent has a spouse and/ or children who would be eligible to follow to join them if she is granted asylum, as described in section 208(b)(3)(A) of the INA, 8 U.S.C. 1158(b)(3)(A), thus rebutting the presumption as an exceptionally compelling circumstance. See 8 CFR 1208.33(c)

IV. THE FAMILY UNITY EXCEPTION TO THE CLP RULE APPLIES TO RESPONDENTS

a. **The Family Unity Exception Applies to Asylum Applicants Subject to CLP who Have a Spouse or Children who would be Otherwise Eligible to Follow to Join them**

Recognizing that the implementation of the CLP could lead to family separation, the rule provides a family unity exception to allow asylum seekers who are otherwise barred under the rule to be granted asylum. Specifically, 8 C.F.R. §1208.33(c) states:

Family unity and removal proceedings. In removal proceedings under section 240 of the Act, where a principal asylum applicant is eligible for withholding of removal under section 241(b)(3) of the Act or withholding of removal under § 1208.16(c)(2) and would be granted asylum but for the presumption in paragraph (a)(1) of this section, and where an accompanying spouse or child as defined in section 208(b)(3)(A) of the Act does not independently qualify for asylum or other protection from removal or the principal asylum applicant has a spouse or child who would be eligible to follow to join that applicant as described in section 208(b)(3)(A) of the Act, the presumption shall be deemed rebutted as an exceptionally compelling circumstance in accordance with paragraph (a)(3) of this section. (Emphasis added).

Section 208(b)(3)(A) of the INA provides the definition of a “spouse or child who would be eligible to follow to join” for the purposes of determining whether the family unity exception applies:

A spouse or child (as defined in section 1101(b)(1) (A), (B), (C), (D), or (E) of this title) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.

The Department of State Foreign Affairs Manual (“FAM”) 203.2-2(c)(1) states that “the spouse or child of an approved Form I-730 filed by the principal asylee is often referred to as a follow-to-join asylee (FTJ-A), or a “Visas 92” or V92 beneficiary.” 9 FAM 203.2-3 describes the role of consular officers and the National Visa Center in processing asylee relative petitions, called I-730 petitions. Following to join in the asylum context therefore refers to the beneficiary of an asylee relative petition, and specifically applies to the spouses and children of asylees who live abroad and are eligible to enter the United States through the I-730 process.

The Notice of Proposed Rulemaking for the CLP rule provided that where a principal applicant is eligible for statutory withholding of removal or CAT withholding and would be granted asylum but for the presumption, and where an accompanying spouse or child does not independently qualify for asylum or other protection from removal, the presumption shall be deemed rebutted as an exceptionally compelling circumstance. Circumvention of Lawful Pathways, 88 Fed. Reg. 36, 11704 (proposed 8 CFR 1208.33(d)). The Federal Register explains how during the rulemaking process, a concern was raised about the implications of the proposed rule for migrants with family members residing abroad:

Commenters raised concerns that excluding asylum applicants who travel without their families may inadvertently incentivize families to engage in irregular migration together so as not to risk that the principal applicant would be prevented from later applying for their family members to join them. This could involve making a dangerous journey with vulnerable family members, such as children. Accordingly, as discussed in Section IV.E.7.ii of the preamble to the final rule, in response to these comments, the Departments have expanded the provision to also cover principal asylum applicants who have a spouse or child who would be eligible to follow to join that applicant as described in section 208(b)(3)(A) of the INA, 8 U.S.C. 1158(b)(3)(A). (Emphasis added) Circumvention of Lawful Pathways, 88 Fed. Reg. 94, 31321

- b. Lead Respondent has a son in Guatemala who would be eligible to follow to join her if she were to be granted asylum**

The Family Unity provision should clearly be applied to Respondents' case. Here, the Court found that Respondents were subject to the CLP, giving rise to a rebuttable presumption that they are barred from asylum. The Court indicated that it would grant withholding of removal rather than asylum as a result of the CLP, and because there are no follow to join benefits available for noncitizens who are granted withholding of removal, Lead Respondent would remain permanently separated from her son, but for this provision of the regulations. See Exhibit A: Copy of Guatemalan Birth certificate of Applicant's Son John Doe with certified English translation. Lead Respondent's son is eligible to follow to join her in the United States. He was under 21 years old at the time she filed for asylum (and is still under 21 years old), and is her biological son, registered as her son at the time of his birth certificate's issuance.

c. No support exists for a determination that the Family Unity Exception does not apply when a spouse or child is in another country

Notably, no support whatsoever exists for an argument that the presumption of asylum ineligibility pursuant to CLP only applies to situations where an asylum applicant's qualifying spouse or children reside in the United States. The plain text of the regulations describes any situation where an applicant would be able to file an asylee relative petition were they to be granted asylum rather than withholding of removal. To read into the regulations a requirement that the relative must be present in the United States would be arbitrary, as it would not be grounded in any applicable provision of law.

V. THE PRESUMPTION OF ASYLUM INELIGIBILITY MUST BE DEEMED REBUTTED

The regulations unequivocally state that in this scenario "the presumption is deemed rebutted as an exceptionally compelling circumstance," leaving no room for discretion in applying this per se rebuttal to the presumption against asylum.

9 CONCLUSION

Due to the reasons described in this brief, Respondents should be granted asylum.

Thank you for your consideration in this matter.

Dated: XXXXX

Respectfully submitted:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

**Jane Doe
Jane Doe Jr.**

**File Nos. A xxx xxx xxx
xxx xxx xxx**

PROOF OF SERVICE

The Department of Homeland Security participates in ECAS and therefore received notice upon filing through ECAS. Therefore, no further service is necessary.

<u>EXHIBIT</u>	<u>TITLE</u>	<u>PAGES</u>
EXHIBIT A	Copy of Guatemalan Birth certificate of Applicant's Son John Doe with certified English translation	9-13

APPENDIX C. 2: Sample Brief on Exception to CLP Rule - Imminent Threat to Life

[REDACTED])

DETAINED

Amica Center for Immigrants' Rights
1025 Connecticut Ave NW, Suite 701
Washington, DC 20036

[REDACTED]

Pro Bono counsel for Respondent

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ANNANDALE, VIRGINIA**

In the Matter of:)
)
[REDACTED])
Respondent)
)
In Removal Proceedings)
)
_____)

File No. A [REDACTED]

Immigration Judge Karen Donoso-Stevens

Next hearing: [REDACTED]
[REDACTED]

MEMO RE: The Circumvention of Lawful Pathways Bar as applied to the case of Mr.

[REDACTED]

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ANNANDALE, VIRGINIA**

In the Matter of: _____

Respondent

In Removal Proceedings

File No. _____

Immigration Judge Karen Donoso-Stevens

Next hearing: _____

Re: The Circumvention of Lawful Pathways Bar as applied to the case of Mr. _____

The Circumvention of Lawful Pathways Bar (“the CLP”) assumes that a person who crossed the southern border after May 11, 2023 is presumptively ineligible for asylum, unless that person qualifies for an exception or can rebut the presumption. Mr. _____ rebuts the presumption in two ways.

I. The Circumvention of Lawful Pathways Bar: Relevant Provisions

The CLP imposes “a rebuttable presumption of ineligibility for asylum” for any person who enters the United States via the southwest land border between May 11, 2023 and May 11, 2025. 8 CFR § 208.33(a)(1).

An asylum applicant can rebut that presumption by a showing that “exceptionally compelling circumstances exist.” 8 CFR § 208.33(a)(3). “Exceptionally compelling circumstances” exist where the person seeking asylum or a member of their family with whom they were travelling “(A) faced an acute medical emergency; (B) faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or (C) satisfied the definition of ‘victim of a severe form of trafficking in persons.’” 8 CFR § 208.33(a)(3)(i). This emergency or threat must have occurred “at the time of entry.” *Id.*

“Exceptionally compelling circumstances” also exist where a principal applicant would be granted asylum but for the CLP, and where an accompanying spouse or child does not independently qualify for asylum or another protection from removal. 8 CFR § 1208.33(c). Known as the “family unity” provision, this allows IJs to grant asylum to keep families together. *Id.* In the preamble to the CLP, the Departments who promulgated the rule clearly and repeatedly

stated that this provision was meant to “specifically avoid family separation.” 88 Fed. Reg. 31,334 (May 16, 2023).

In both cases, where an applicant demonstrates the necessary “exceptionally compelling circumstances,” the presumption is necessarily rebutted. 8 CFR § 208.33(a)(3)(ii) (stating that such a showing “*shall necessarily* rebut the presumption” (emphasis added)); 8 CFR § 1208.33(c) (stating “the presumption *shall* be deemed rebutted” (emphasis added)).

II. Imminent and Extreme Threat to Life or Safety

A *per se* exceptionally compelling circumstance exists where, at the time of entry, the principal applicant or a member of their family with whom they are travelling faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder. 8 CFR § 208.33(a)(3)(B).

In the present case, Mexican cartels communicated to Mr. [REDACTED] and his family that they would be kidnapped if they did not cross the border within hours.

According to Mr. [REDACTED]'s oral testimony, the threats occurred at the time of entry. The threat was directed at Mr. [REDACTED], the principal applicant, as well as at his family with whom he was traveling. Mr. [REDACTED] was traveling with his partner, his partner's daughter who he considers his own, and his biological son. The threat was unambiguously about kidnapping. And, the threat was imminent. The cartels communicated their intention to execute the threat within hours.

The plausibility of Mr. [REDACTED]'s account is corroborated at various points in the country conditions. *See, e.g.,* Tab C5, Musalo, Dutton, and Hetfield, *Deploring the Violence, Abandoning the Victim* (discussing Mexican cartels who kidnapped a woman and tortured her in front of her son); Tab D1, Stanford Asylum and Migration Lab, *Honduras Country Conditions Bulletin* (discussing Hondurans kidnapped by the Mexican cartels and forced to traffic drugs); Tab F1, Reuters, *Honduran migrant gunned down shortly after U.S. deportation* (discussing Honduran teens who were strangled, stabbed, and found dead near the Mexican border); Tab H3, Guillen, *Honduras, the country where the Bukele method failed* (calling Mexican cartels “bloodthirsty”).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

IV. Conclusion

Mr. [REDACTED] is eligible for asylum. Though he is subject to the presumption of asylum ineligibility in the CLP, he can successfully rebut the presumption via a showing of *per se* exceptionally compelling circumstances. Firstly, he and his family faced an imminent threat of kidnapping at the border. Secondly, if this court finds that Mr. [REDACTED] would be eligible for asylum *but for* the CLP, the family unity exception applies, as his 7-year old son does not have an independent claim for asylum or other relief, and as such Mr. [REDACTED] should be granted asylum. Because Mr. [REDACTED] has demonstrated exceptionally compelling circumstances via his testimony and the supporting evidence in the record, the presumption against him is necessarily rebutted.

_____, _____
A _____

CERTIFICATE OF SERVICE

I, _____, certify that on August 26, 2024, I submitted Respondent's Memo re:
The Circumvention Bar to both the Immigration Court and the Department of Homeland
Security.

