

DETAINED

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

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

In the Matter of )  
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)  
[REDACTED] )  
)  
Respondent )  
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In removal proceedings )  
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**File No.: A [REDACTED]**

Immigration Judge Karen Donoso-Stevens

Individual Hearing: February 15, 2022, at  
1:00 pm

**PRE-HEARING BRIEF IN SUPPORT OF RESPONDENT'S APPLICATIONS FOR  
ASYLUM, WITHHOLDING OF REMOVAL, PROTECTION UNDER THE  
CONVENTION AGAINST TORTURE**

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
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In the Matter of )  
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**File No.: A [REDACTED]**

**PRE-HEARING BRIEF OF [REDACTED] IN SUPPORT OF HIS APPLICATIONS  
FOR ASYLUM, WITHHOLDING OF REMOVAL, RELIEF UNDER THE  
CONVENTION AGAINST TORTURE**

**I. INTRODUCTION**

Respondent, [REDACTED] (hereinafter “Mr. [REDACTED]”) respectfully requests that this Court grant him asylum, withholding of removal, or alternatively, protection under the Convention Against Torture (“CAT”) because Mr. [REDACTED] experienced past persecution based on his imputed political opinion as someone who defied the Taliban rule, and he has a well-founded fear of future persecution on account of his ethnicity, imputed religion, imputed political opinion, and his membership in a particular social group. Mr. [REDACTED] fled Afghanistan in August 2021 because he was afraid for his life and he currently fears future persecution and torture at the hands of the Taliban government who has already identified him as “a collaborator,” and “non-Muslim.” Additionally, Mr. [REDACTED] is entitled to a mandatory grant of Withholding of Removal because he has demonstrated that there is a clear probability of his torture at the hands of the Taliban and other insurgent groups in Afghanistan. Finally, Mr. [REDACTED] also qualifies for a mandatory grant of protection under CAT because it is more likely than not that the Taliban government as well as other groups will torture Mr. [REDACTED].

**II. FACTS AND PROCEDURAL HISTORY**

Mr. ██████ was born in Kabul, Afghanistan in ██████ and spent most of his adult life there along with his parents and his eight other siblings.<sup>1</sup> He and his entire family belong to Tajik ethnic minority group and are fluent in Dari, a dialect of the Persian/Farsi language.<sup>2</sup> They have practiced Islam as their religion. However, Mr. ██████ and his family have always opposed the Taliban rule.<sup>3</sup>

In the early 90s, Mr. ██████'s father, ██████ served as an Army General in the Afghanistan National Army in late 90s.<sup>4</sup> However, in 1996, following the Taliban's first takeover of Kabul and assassination of the president, the Taliban started capturing and torturing everyone who worked in the previous government.<sup>5</sup> Mr. ██████'s father feared for his life and the safety of his family because of his position as an Army General and the fact that the Tajik people opposed the Taliban rule.<sup>6</sup> Sometime around 1996, they fled to Pakistan.<sup>7</sup> In 2001, after the fall of the Taliban and the return of the U.S. forces in Afghanistan, Mr. ██████'s family returned to Kabul.<sup>8</sup> Since then, Mr. ██████ and his family have lived in Kabul and have always maintained their position as people who opposed the Taliban rule.<sup>9</sup>

Sometime around 2008, when Mr. ██████ was young and unmarried, he was accused of having a sexual relationship with a woman.<sup>10</sup> The Imam of Mr. ██████'s town held a community hearing and decided that Mr. ██████ was not guilty of fornication.<sup>11</sup> However, because the woman's family connections to the government official, she reported Mr. ██████ to the Afghan police.<sup>12</sup> The police arrested Mr. ██████ and demanded a bribe from him.<sup>13</sup> They told him if he did not pay, they would charge him with the crime of fornication or adultery.<sup>14</sup> Mr. ██████ did not want to pay the bribe to the police and insisted he was innocent.<sup>15</sup> However, without any lawyer, an opportunity to challenge the allegations against him, or any hope for due process, Mr. ██████

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<sup>1</sup> Tab A, Declaration of ██████, with a certificate of translation.

<sup>2</sup> *Id.*

<sup>3</sup> *See Id*; *see also* Tab C, Declaration of ██████ (mother), with a certificate of translation.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Tab A, Declaration of ██████, with a certificate of translation; *see also* Tab C, Declaration of ██████ (mother), with a certificate of translation; Tab D, Declaration of ██████ (sister), with a certificate of translation.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Tab A, Declaration of ██████, with a certificate of translation.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

was sentenced to 5 years in Pul-e-Charkhil prison in Kabul.<sup>16</sup> While there, Mr. ██████ experienced significant physical harm: he was constantly beaten by the iron rod, he has visible scars on his head, and he was hung upside down for hours to force him confess the crime.<sup>17</sup> Mr. ██████ was released from jail 2.5. years later.<sup>18</sup>

Since Mr. ██████ became an adult, he always wanted to have his own business. As a young man, he was interested in trading goods and make his life as a successful businessman.<sup>19</sup> Everyone in his family and his neighborhood knew of Mr. ██████ as a “businessman.”<sup>20</sup> Mr. ██████ had never held any other job but being a businessman.<sup>21</sup> Approximately, in 2013, Mr. ██████ got married to his wife, ██████.<sup>22</sup> Around the same year, he decided to open up his own shop by the largest U.S. military base in Kabul, the “Bagram Base.”<sup>23</sup> Mr. ██████’s shop was about a half a mile from the entrance of the base.<sup>24</sup> He bought various types of goods from the employees of the Bagram base, such as TVs, auto parts, air compressors, and generators.<sup>25</sup> Most of these goods were American made, and thus, many vendors around the Bagram base knew of Mr. ██████ as a vendor who sold American merchandise.<sup>26</sup> Mr. ██████ was also able to obtain these goods because he had permission from his brother-in-law (a member of the National Army and a security guard inside the Bagram base) to go inside the Base and buy used technologies, goods, and scrap metal from the employees there.<sup>27</sup> For over a decade, he traded with the American soldiers and various Bagram employees who would come to his shop and buy items from him.<sup>28</sup>

Sometime in 2019, Mr. ██████ participated in a political campaign of the political candidate, ██████ to help him get elected as the Parliament member.<sup>29</sup> ██████ closely worked with the employees at the Bagram, including the Americans. Mr. ██████ canvassed

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<sup>16</sup> *Id.*

<sup>17</sup> Tab A, Declaration of ██████.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Tab A, Declaration of ██████, with a certificate of translation; *see also* Tab C, Declaration of ██████ (mother), with a certificate of translation; Tab D, Declaration of ██████ (sister), with a certificate of translation.

<sup>21</sup> *Id.*

<sup>22</sup> Tab A, Declaration of ██████, with a certificate of translation; *see also* Tab B, Declaration of ██████ (wife), with a certificate of translation.

<sup>23</sup> *Id.*

<sup>24</sup> Tab A, Declaration of ██████, with a certificate of translation.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

in the communities, spoke in local schools about [REDACTED] candidacy.<sup>30</sup> Mr. [REDACTED] wanted to support him because [REDACTED] was the Tajik candidate and supported progressive politics, including working with the Americans at the Bagram base.<sup>31</sup> Mr. [REDACTED] worked with the Americans, other employees of the Bagram, as well as with [REDACTED] because he believed in making allies with the Americans and establishment of peace in Afghanistan.<sup>32</sup> He always considered himself as someone who opposes the Taliban regime and their strict enforcement of Shari'a law.<sup>33</sup>

Around August 2021, when the Taliban took over Kabul, Mr. [REDACTED] realized he was in immediate danger.<sup>34</sup> As the Taliban members started tracking down everyone who was working with U.S. forces, or had any affiliations with the Americans, or former Afghan government, they also started investigating everyone who worked inside or nearby the Bagram base.<sup>35</sup> Around the same time, Mr. [REDACTED] learned that the Taliban was looking for his fellow vendors who owned shops at the Bagram base.<sup>36</sup> As Mr. [REDACTED] learned that the Taliban was approaching all gates of Kabul, Mr. [REDACTED] and other vendors closed their shops immediately, taking their merchandise at home, and hiding away at various places.<sup>37</sup> However, as the Taliban marched into the city, soon after, armed with AK47s, a few members of the Taliban knocked on Mr. [REDACTED]'s door and said to his wife: "we know this is [REDACTED]'s house, where is [REDACTED]?, we know he is doing business with non-Muslims, the Americans."<sup>38</sup> While Mr. [REDACTED] was able to survive the danger that day, he knew that this meant that the Taliban knew about his shop, and that he had a working relationship with the Americans.<sup>39</sup> A couple days later, he decided to flee the country.<sup>40</sup>

Around the same time, Mr. [REDACTED] caught the flight to the United States in the midst of chaos and the state of emergency.<sup>41</sup> He first arrived in Qatar where he spent about 25 days.<sup>42</sup> After passing the background checks, Mr. [REDACTED] was cleared to come to the U.S. and arrived at

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<sup>30</sup> *Id.*

<sup>31</sup> Tab A, Declaration of [REDACTED]; *see also* Twitter Page of [REDACTED] [https://twitter.com/h\[REDACTED\]?lang=en](https://twitter.com/h[REDACTED]?lang=en) (Showing that [REDACTED] has stopped posting on Twitter since August, 2021, when the Taliban took over Kabul).

<sup>32</sup> Tab A, Declaration of [REDACTED].

<sup>33</sup> Tab A, Declaration of [REDACTED].

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*; *see also* Tab B, Declaration of [REDACTED] (wife).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

Washington Dulles Airport around September 9, 2021.<sup>43</sup> Upon his arrival, he was interviewed by the U.S. Customs and Border Protection (CBP) with the help of a Farsi translator.<sup>44</sup> Due to the confusion of the process and interview Mr. █████ continued with the interview despite the fact that his best language is Dari not Farsi.<sup>45</sup> During the interview, the Farsi translator transcribed that Mr. █████ stated he was convicted of “rape” in Afghanistan.<sup>46</sup> Mr. █████ explains that neither the CBP officer, nor the interpreter read the transcript back to Mr. █████.<sup>47</sup> They just told him to sign it without any further explanation.<sup>48</sup> As explained however, Mr. █████’s conviction was for fornication.<sup>49</sup> Mr. █████ was then transferred to the █████ and has been detained there since then.

Despite fleeing, Mr. █████’s family reports that the Taliban continue looking for him. Taliban members have visited Mr. █████’s marital home on a few occasions, threatening Mr. █████’s wife and children, and inquiring about Mr. █████’s whereabouts.<sup>50</sup> The last time they visited Mr. █████’s home, they burnt Mr. █████’s business supplies and burnt his entire house down.<sup>51</sup> As a result, Mr. █████’s wife and children were forced to flee and they are currently in hiding.<sup>52</sup> As Mr. █████’s wife reports, the house is currently used as storage for the Taliban’s firewood supply.<sup>53</sup> Additionally, the Taliban has visited Mr. █████’s parents’ home and threatened to “kill everyone in the family” if they do not give the Taliban information about Mr. █████.<sup>54</sup> They have already kidnapped Mr. █████’s father-in-law and have interrogated him about Mr. █████.<sup>55</sup> Further, Mr. █████’s sister has also fled Afghanistan in fear for her life.<sup>56</sup>

While detained at the █████ detention facility, Mr. █████ has been facing various difficulties in communicating with his wife, children, parents, and siblings. Most of his family members are in hiding, especially because the Taliban has visited Mr. █████’s home on multiple occasions at this point. He is afraid to return because he believes the Taliban already know of his

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Tab A; *see also* Tab E, A Copy of █████’s Passport Request Form, with a certified translation.

<sup>50</sup> Tab B, Declaration of █████; Tab C, Declaration of █████; Tab D, Declaration of █████.

<sup>51</sup> *Id.*

<sup>52</sup> Tab B, Declaration of █████; Tab C, Declaration of █████.

<sup>53</sup> Tab B, Declaration of █████.

<sup>54</sup> Tab C, Declaration of █████.

<sup>55</sup> *Id.*

<sup>56</sup> Tab B, Declaration of █████; Tab C, Declaration of █████.

business dealings with the Americans, and they will treat him as a “non-Muslim,” “a collaborator,” or “an American sympathizer” upon his return and punish him with death.

### III. COUNTRY CONDITIONS IN AFGHANISTAN UNDER TALIBAN RULE

Afghanistan is the least peaceful country in the world with the highest total number of deaths from internal conflict.<sup>57</sup> Just in 2021, Afghanistan was the third largest refugee-producing country in the world, behind Syria.<sup>58</sup> Over the years, there have been numerous reports of civilian deaths, explosions, suicide attacks, bombings, assassinations, and political unrest. Criminal activity, as well as activity of insurgent groups, like Al-Qa'ida and ISIS is widespread and includes the operation of several terrorist organizations.<sup>59</sup> Over 52% of poll respondents from Afghanistan reported suffering or knowing someone suffering serious harm from violent crime.<sup>60</sup> There has historically been a high level of impunity and widespread disregard of the rule of law; the government does not investigate or prosecute consistently or effectively abuses by officials, including the security forces.<sup>61</sup> Detention and torture are widespread: the United Nations reports that 30% of detained Afghans gave credible and reliable reports of torture and ill-treatment.<sup>62</sup> In June 2020, John Sopko, head of the leading U.S. government oversight agency for Afghanistan reconstruction (SIGAR), warned that the corruption was “the most insidious threat” facing the Afghan government.”<sup>63</sup>

On August 15, 2021, the Taliban overthrew the Islamic Republic government and took over Kabul. This takeover precipitated multiple levels of humanitarian crises.<sup>64</sup> While the Taliban is one of the 13 recognized terrorist groups currently operating in Afghanistan, it is now the ruling

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<sup>57</sup> See Tab M, Institute for Economics & Peace, *Global Peace Index 2021* (2021); see also Tab Q, *Afghanistan: Government collapse marked by ‘repeated war crimes and relentless bloodshed’ - new report*, Amnesty International (Dec. 15, 2021) (reporting that the United Nations Assistance Mission in Afghanistan reported that about 1,659 civilians were killed and another 3,524 injured in the first six months of 2021, an increase of 47% from the prior year).

<sup>58</sup> Tab F, Declaration of Dr. ██████████ ██████████, at 19.

<sup>59</sup> Tab L, OSAC, *Afghanistan Country Security Report* (July 27, 2021).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> See Tab I, Afghanistan U.S. Dep’t of State-Human Rights Report 2020, (March 30, 2021) (stating that The methods of torture noted by this report include: beating (combined instances of beating of different parts of the body, including feet), beating with pipe/cable, inserting needles, shackling, slapping, suspension/hanging, electric shock, blindfolding/hooding during questioning, sexual assault or threats of sexual abuse, sleep deprivation, stress position, suffocation, and waterboarding or forced water consumption).

<sup>63</sup> Tab E, Declaration of Dr. ██████████ ██████████, at 4-5 (also stating that extortion and bribery within the law enforcement agencies and the judiciary became so endemic that the “Afghan civilians have viewed them as being systematically corrupt with zero accountability and a source of predation instead of protection.)

<sup>64</sup> Tab F, Declaration of Dr. ██████████ ██████████, at 20.

government force.<sup>65</sup> The Taliban are already attacking civilian protestors and imposing strict order through violent means.<sup>66</sup> The Taliban has actively started tracking down and threatening to arrest or kill individuals identified as “collaborators, traitors, and *kafirs*” (an infidel, the God denier) for having worked with the Americans, or in U.S.-affiliated organizations.<sup>67</sup> Human rights organizations have reported torture, extra-judicial executions and killings by the Taliban; the Taliban have cut mobile phone service and severely restricted internet access in many rural areas.<sup>68</sup> The Department of State officials have expressed deep concerns regarding the allegations of human rights abuses and violations.<sup>69</sup>

### 1. The Taliban Government and the State of Terror

Prior to their most recent ascent to power, the Taliban first rose to power in the early 1990s by guerrilla fights seeking to drive out Soviet Union forces in Afghanistan.<sup>70</sup> The Taliban were the ruling government of Afghanistan once before, between 1996 and 2001, when they formed what is referred to as the Islamic Emirate of Afghanistan.<sup>71</sup> Members of the Taliban are fundamentalist Sunni Muslims, and they believe that active participation in this jihad is obligatory for Afghan Muslims, and failure to comply is a rejection of Islam itself.<sup>72</sup> The current goal of the Taliban, now that it has returned to power, is to reinstate their vision of Islamic law.<sup>73</sup> Shari‘a law has many different meanings and interpretations, but the Taliban’s interpretation of Shari‘a law is a hardline approach which seeks to divorce Islamic principles from so-called liberal world order promulgated by the West.<sup>74</sup> The early days of the new regime has shown much of the same, though the Taliban

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<sup>65</sup> See Tab AI, The World Factbook: Afghanistan (last visited January 5, 2022) (stating that the 13 groups are as follows, per the CIA factbook: Haqqani Taliban Network; Harakat ul-Mujahidin; Harakat ul-Jihad-i-Islami; Islamic Jihad Union; Islamic Movement of Uzbekistan; Islamic State of Iraq and ash-Sham-Khorasan Province; Islamic Revolutionary Guard Corps/Qods Force; Jaish-e-Mohammed; Jaysh al Adl (Jundallah); Lashkar i Jhangvi; Lashkar-e Tayyiba; al-Qa’ida; al-Qa’ida in the Indian Subcontinent; Tehrik-e-Taliban Pakistan.).

<sup>66</sup> Tab F, Declaration of Dr. ██████████ ██████████, at 21; see also Tab AH, United Nations report, General Assembly Security Council; Tab AE, Matthew Rosenberg, *Hunted by the Taliban, U.S.-Allied Afghan Forces Are in Hiding*; Tab AF, Tarah Welsh, ‘The Taliban killed my brother for protecting my family’ BBC London; Tab AG Brianna Keilar & Veronica Stracqualursi, *Taliban issue death sentence for brother of Afghan translator who helped US troops, according to letters obtained by CNN*.

<sup>67</sup> Tab F, Declaration of Dr. ██████████ ██████████, at 21.

<sup>68</sup> Tab Q, *Afghanistan: Government collapse marked by ‘repeated war crimes and relentless bloodshed’ - new report*, Amnesty International (Dec. 15, 2021).

<sup>69</sup> Tab K, U.S. Dep’t of State, Readout: U.S. Delegation Meeting with Taliban Representatives (Nov. 30, 2021).

<sup>70</sup> See Tab F, Declaration of Dr. ██████████ ██████████; see also Tab AA, Human Rights Watch, Afghanistan, World Report 1999.

<sup>71</sup> *Id.*

<sup>72</sup> See Tab AB, Michael Semple, *Rhetoric, Ideology, and Organizational Structure of the Taliban Movement*, United States Institute of Peace (Dec. 2014).

<sup>73</sup> See Tab F, Declaration of Dr. ██████████ ██████████.

<sup>74</sup> See Tab AJ, Arwa Ibrahim, *Explainer: The Taliban and Islamic Law in Afghanistan*, Aljazeera (Aug. 23, 2021).



leaders have denied the humanitarian catastrophe rippling through the country.<sup>75</sup> Since the takeover, the Taliban spokesperson has suggested that the new Taliban government would not follow international legal standards or human rights law.<sup>76</sup> An expert in Afghanistan, Dr. ██████ states in her expert report that “the Taliban have their own brand of justice” demonstrated by “their re-establishment of the Ministry of Vice and Virtue . . . and their mobilization of young Talibs to mete out immediate punishment for crimes committed e.g. executions through firing squads and stoning for crimes of rape, and adultery, amputations for theft,” or publicly flogging people who violate the Taliban moral code.<sup>77</sup>

## 2. The Taliban’s Treatment of “Collaborators” and “non-Muslims”

Since the takeover, the Taliban has systematically targeted members (of any rank) of the Afghan military and the police as well as those who have served as interpreters or seen as collaborators with U.S. and NATO military forces.<sup>78</sup> Dr. ██████ describes that under the Taliban rule, affiliations with any Western forces are a violation of the Taliban's “zero tolerance” policy and a specific code of conduct; “the Taliban has stepped up door-to-door searches of those they consider to be “traitors, collaborators, American spies, and *kafirs* [infidels].”<sup>79</sup> This is taking place in conjunction with issuing threats, messages of intimidation, and deploying local Talibs to collect information on any individual they consider and enemy.<sup>80</sup> The Taliban, through their intelligence operations access employment records that the former government left behind have identified new targets for arrest and execution.<sup>81</sup> The Taliban have also engaged in abusive search operations, including night raids, to apprehend or forcibly disappear former security forces officials, or their family members if they refuse to give up the whereabouts.<sup>82</sup> Dr. ██████ describes that the biggest U.S. military base in Kabul, the “Bagram Base,” has a long history of housing U.S. forces, and

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<sup>75</sup> See Tab N, Jane Ferguson, *Afghanistan Has Become The World’s Largest Humanitarian Crisis*, The New Yorker (Jan. 5, 2022).

<sup>76</sup> See Tab R, *Afghanistan: Taliban Rights Pledges Raise Concerns: International Monitoring Mechanism Urgently Needed*, Human Rights Watch, (August 18, 2021).

<sup>77</sup> See Tab F, Declaration of Dr. ██████ ██████, at 6-7.

<sup>78</sup> Tab F, Declaration of Dr. ██████ ██████, at 17.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> See Tab AC, “No Forgiveness for People Like You”: *Executions and Enforced Disappearances in Afghanistan under the Taliban*, Human Rights Watch (Nov. 30, 2021).

<sup>82</sup> *Id.*; see also Tab E, Declaration of Dr. ██████ ██████; see also Tab AC, “No Forgiveness for People Like You”: *Executions and Enforced Disappearances in Afghanistan under the Taliban*, Human Rights Watch (Nov. 30, 2021) (stating that “In smaller Afghan towns and villages, residents tend to know each other within communities and established neighborhoods. Because of these relationships, the Taliban, even when not from the area, have been able to obtain information as well as identify individuals.”).

other personnel working with the Americans.<sup>83</sup> For this reason, Afghans working inside, or nearby the Bagram base may easily be perceived as "Westerners," "kefirs," or "collaborators."<sup>84</sup>

The Taliban also targets individuals they perceive as "non-Muslims," but being "a collaborator" in the eyes of the Taliban equals to being a "non-Muslim," since collaborating with the Western forces is perceived as an un-Islamic behavior. As explained, the Taliban have implemented Islamic Shari'a law and created the Ministry of Vice and Virtue which has a long list of actions that constitute "un-Islamic" deserving harsh punishment.<sup>85</sup> There are accounts of ordinary men who have been executed, stoned, or severely punished for adultery, or violating the rules, such as smoking, shaving, playing cards, listening to American music, having American haircuts, or working during prayer times.<sup>86</sup> The Taliban official has publicly stated on Twitter that the punishment of stoning for fornication/adultery was an "Islamic ruling that cannot be rejected by any Muslim."<sup>87</sup> Since the takeover, the Taliban has deployed special Taliban inspectors in businesses to ensure that rules and regulations are strictly followed.<sup>88</sup> Those who fail to obey the rules must be reported as "non-pious," "non-observing," and "Un Islamic" which "need to be rectified immediately with severe and public punishment, including executions and stoning to death."<sup>89</sup> The Taliban has ordered street vendors to "behead mannequins, insisting figures representing the human form violate Islamic law."<sup>90</sup> The Taliban has already forcibly displaced residents and burned homes in retaliation of cooperating with the former Afghan government, or even having provided support to the former Afghan government.<sup>91</sup> They have also punished, threatened, and killed individuals they suspect being "collaborators" with the Americans.<sup>92</sup>

### 3. The Taliban's Treatment of Tajik people in Afghanistan

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<sup>83</sup> See Tab F, Declaration of Dr. ██████████ ██████████, at 9.

<sup>84</sup> *Id.* at 22.

<sup>85</sup> See Tab F, Declaration of Dr. ██████████ ██████████, at 13.

<sup>86</sup> *Id.* (also stating that there have been various reports and videos circulated on social media of women and men being stoned); see also Tab AS, *Musician Weeps as Taliban Fighters Burn His Instruments in Public*, VICE (Jan. 17, 2022).

<sup>87</sup> Tab F, Declaration of Dr. ██████████ ██████████, at 14.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 15.

<sup>90</sup> See Tab AS, *Taliban order Afghan shop owners to behead mannequins*, Arab News (Jan. 05, 2022).

<sup>91</sup> See Tab AD, "Afghanistan: Taliban Forcibly Displace Civilians," Human Rights Watch (Jul. 7, 2021) (stating that "...Taliban forces ordered residents to evacuate and threatened those they said had provided past support to the Afghan government. Taliban fighters looted and burned down homes.").

<sup>92</sup> See Tab AE, Matthew Rosenberg, *Hunted by the Taliban, U.S.-Allied Afghan Forces Are in Hiding*, The New York Times (Aug 29, 2021) (stating that The militants are threatening to arrest or punish family members if they cannot find the people they are seeking); see also Tab AE, Tarah Welsh, 'The Taliban killed my brother for protecting my family' BBC London (Aug 28, 2021); Tab AG, Brianna Keilar and Veronica Stracqualursi, *Taliban issue death sentence for brother of Afghan translator who helped US troops, according to letters obtained by CNN*.

Because the Taliban predominantly includes Pashtuns, they use various tactics of suppression against non-Pashtun Afghans, such as Tajiks, Uzbeks, and Hazara. The 2020 Department of State report documents significant human rights issues and violence targeting members of ethnic minority groups by the Taliban.<sup>93</sup> The Tajiks are the second most prominent ethnic group in Afghanistan after the Pashtuns comprising of about 27% of the population.<sup>94</sup> The Tajik people are infamous for their historical resistance to the previous Taliban governments which is why they have become one of the main targets for constant discrimination, harassment and torture by the Taliban.<sup>95</sup> For this reason, Tajiks are particularly afraid of the new Taliban government “because their rule will likely result in increased targeting of Tajiks due to their prominent opposition to the Taliban. . . heightened by the assassination by a Taliban militant of former Tajik President, Burhaunuddin Rabbani.”<sup>96</sup> As Dr. ██████ explains, these fears and tensions have a legitimate basis because the Taliban has always associated Tajik people with the opposition because of their Northern Alliance coalition and its historical political resistance to the Taliban rule.<sup>97</sup> Additionally, the Taliban’s “zero tolerance” policy against those who oppose the Taliban puts the Tajik people at a higher risk of discrimination and harassment.<sup>98</sup> Notably, just this month, hundreds of minority Tajiks founded a new resistance under the name of “Afghanistan Freedom Front (AFF) which plans to fight against the Taliban, and as a result, the Taliban has designated a special group of soldiers to fight against AFF.”<sup>99</sup>

#### **4. Extreme Punishment of Moral Crimes (“Zina”) in Afghanistan**

The Islamic law in Afghanistan has always categorized all intercourse outside of marriage as the crime of *zina*: adultery or fornication.<sup>100</sup> The Taliban has implemented their own interpretations of the Shari’a law and has prioritized its enforcement against moral crimes.<sup>101</sup> Historically, stoning or public executions had been an official punishment for crimes like fornication or adultery, but in the areas controlled by the Taliban, “the punishment for women and

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<sup>93</sup> Tab I, *Afghanistan 2020 Human Rights Report*, U.S. Dep’t of State (March 30, 2021).

<sup>94</sup> Tab X, “*Afghanistan – Tajiks*,” Minority Rights Group International (Accessed Jan 28, 2022); *see also* Tab F, Declaration of Dr. ██████ ██████, at 7.

<sup>95</sup> Tab F, Declaration of Dr. ██████ ██████, at 7.

<sup>96</sup> Tab X, “*Afghanistan – Tajiks*,” Minority Rights Group International (Accessed Jan 28, 2022).

<sup>97</sup> Tab F, Declaration of Dr. ██████ ██████, at 7-9.

<sup>98</sup> *Id.*

<sup>99</sup> *See* Tab Z, “*Tajik Group Offers to Fight Alongside Anti-Taliban Militias in Afghanistan*,” RadioFree Europe (Aug. 27, 2021); Tab ZZ, Kamal Joshi, “*Afghanistan: Tajik Minority Forms New Resistance Front Against Taliban*,” Republic World (Feb. 5, 2022).

<sup>100</sup> Tab F, Declaration of Dr. ██████ ██████, at 10; *see generally* Tab AK, Aziz Hakimi, Torunn Wimpleman, *Missing from the picture: Men imprisoned for ‘moral crimes in Afghanistan*, Chr. Michelsen Institute (2018).

<sup>101</sup> *Id.*

men found guilty of having a relationship outside of marriage or an extramarital affair continued to be the death sentence largely via stoning or public flogging.<sup>102</sup> Since the takeover, the Taliban’s new By-Laws, revised as of February 2021, dictates prohibition of sex outside of marriage along with adultery, same-sex relations and “immorality and vice.”<sup>103</sup> Strong allegations of adultery or homosexuality must be reported to the Ministry of Vice and Virtue.<sup>104</sup>

#### IV. LEGAL ARGUMENT

Mr. ██████ is eligible for asylum, withholding of removal, and protection under the Convention Against Torture (CAT).

##### 1. Mr. ██████ is statutorily eligible for Asylum under INA § 208

This Court has broad discretion to “grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the... Attorney General...” 8 U.S.C. §1158(b)(1)(A). Under INA §208(b) an applicant may be granted asylum if it is determined that such noncitizen is a refugee within the meaning of INA §101(a)(42)(A). An asylum applicant may qualify as a refugee based on past persecution or a well-founded fear of persecution. 8 C.F.R. § 208.13(b)(2011); *Lin v. Holder*, 11 F.3d 228, 236 (4<sup>th</sup> Cir 2010). If an applicant establishes that he has suffered past persecution, he “shall also be presumed to have a well-founded fear of persecution on the basis of the original claim.” *Id.* at 236. This presumption may be rebutted under a preponderance of the evidence standard by an immigration judge due to fundamentally changed circumstances or if it is established that the applicant could avoid future persecution by relocating to another part of the applicant’s country of nationality. 8 C.F.R. § 1208.13(b)(1)(i)-(ii). An applicant may establish eligibility based solely on a testimony that is credible, persuasive, and specific, without further corroboration. 8 C.F.R. 1208.13(a); *see also Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987). The Supreme Court has held that the asylum standard does not require that persecution be more likely than not; a reasonable possibility can be as low as a 10% chance of persecution. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987) (quoting *INS v. Stevic*, 467 U.S. 407, 425 (1984)).

Here, Mr. ██████’s corroborating evidence demonstrates that he suffered past persecution and will likely suffer future persecution, torture, or death if he is returned to Afghanistan. Thus, he qualifies as a “refugee.”

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<sup>102</sup> Tab F, Declaration of Dr. ██████ ██████, at 12.

<sup>103</sup> *Id.* at 13.

<sup>104</sup> *Id.*

**a. Mr. ██████ has established that he has suffered past persecution and is entitled to presumption of a well-founded fear of persecution**

The BIA has defined “persecution” as the “infliction of harm or suffering by the government, or persons a government is either unwilling or unable to control, to overcome a characteristic of the victim.” *Matter of Kasinga*, Int. Dec. 3278 at 12 (BIA 1996). An applicant establishes eligibility for asylum based on past persecution where the applicant shows that (1) the applicant suffered persecution, (2) the persecution was on account of one or more protected grounds, and (3) the persecution was committed by the government or by forces the government is unwilling or unable to control.<sup>105</sup>

**i. The death threats, psychological torment, and severe economic deprivation the Taliban subjected Mr. ██████ to constitute past persecution**

Persecution encompasses both psychological and physical harm, and “threats of confinement, torture, and economic restrictions so severe that they constitute a threat to life or freedom”.<sup>106</sup> The Fourth Circuit has acknowledged that death threats undeniably constitute persecution.<sup>107</sup> Threats of injury to one’s person or freedom also constitute persecution.<sup>108</sup> Threats to others referencing the applicant suffice to establish persecution or a likelihood of persecution.<sup>109</sup> Persecution constitutes a requisite degree of harm that rises above “mere harassment” but physical harm need not require medical attention to rise to the level of persecution.<sup>110</sup> An applicant does not need to prove physical harm in order to prove persecution resulting from death threats.<sup>111</sup> Further, while isolated incidents do not rise to the level of persecution, a pattern of incidents or threats do.<sup>112</sup> Notably, persecution may also encompass the “deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment or other essentials

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<sup>105</sup> *Zavaleta-Policiano v. Sessions*, 873 F.3d 241, 246 (4th Cir. 2017); 8 U.S.C. §§ 1101(a)(42), 1158.

<sup>106</sup> See *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985).

<sup>107</sup> *Portillo-Flores v. Garland*, No. 19-1591, \*1 (4th Cir., June 29, 2021); *Bedoya v. Barr*, 981 F.3d 240, 246 (4th Cir. 2020) (collecting cases holding that death threats amount to persecution), *Tairou v. Whitaker*, 909 F.3d 702, 707 (4th Cir. 2018); *Crespin–Valladares v. Holder*, 632 F.3d 117, 126 (4th Cir. 2011).

<sup>108</sup> See *Cordova v. Holder*, 759 F.3d 332, 337 (4th Cir. 2014); *Lizama v. Holder*, 629 F.3d 440, 446 n.3 (4th Cir. 2011) (explaining relief under withholding of removal is based on persecution).

<sup>109</sup> *Portillo-Flores*, No. 19-1591 at \*14.

<sup>110</sup> *Portillo-Flores*, No. 19-1591 at \*4, n. 4.

<sup>111</sup> *Arita-Deras v. Wilkinson*, 990 F.3d 350 (4th Cir. 2021).

<sup>112</sup> *Baharon v. Holder*, 588 F.3d 228, 232 (4th Cir. 2009).

of life.”<sup>113</sup> Finally, threats and harm are considered “*in the aggregate*” to determine whether an applicant has suffered past harm that rises to the level of persecution.<sup>114</sup>

Here, after the takeover, the Taliban immediately assumed control of the entire Bagram base, and started investigating all the shops located there, forcing Mr. ██████ and other vendors to permanently vacate the base and close their shops.<sup>115</sup> The main source of income for Mr. ██████ and his family’s livelihood for over a decade has been the operation of his shop by the Bagram base and trading the American goods.<sup>116</sup> However, under the new Taliban rule, he was deprived of his livelihood as he feared he would be identified and labeled as “a collaborator” or a “*kafir*.” His fear was confirmed when the Taliban showed up at his home.<sup>117</sup> The Taliban's intent became clear when they showed up at Mr. ██████’s house, armed with guns, and asking for his whereabouts.<sup>118</sup> They expressly told his wife: “we know this is ██████’s house, where is ██████, we know he is doing business with non-Muslims.”<sup>119</sup> While the Taliban may not have directly threatened Mr. ██████, direct threats against the applicants are not required nor is it required that he know personally his persecutors.<sup>120</sup> To understand the significance of the Taliban identifying him as someone doing business with “non-Muslims”, it is important to review how the Taliban have historically marked and sought to eliminate anyone deemed a traitor or “non-Muslim.” The Taliban has burnt houses of those who defy them, they have tortured, and murder individuals they perceive as traitors and affiliates to the Americans or Western forces.<sup>121</sup> Dr. ██████ states that the fact that the Taliban

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<sup>113</sup> See also *Matter of T-Z-*, 24 I&N Dec. 163, 170–72 (BIA 2007) (finding that the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment, or other essentials of life may amount to persecution); *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (finding that deliberate imposition of severe economic disadvantage may rise to the level of persecution); See *Generally Vincent v. Holder*, 632 F.3d 351, 355–56 (6th Cir. 2011) (finding that burning down a person’s home is persecution); *Fei Mei Cheng v. U.S. Att’y Gen.*, 623 F.3d 175, 194 (3d Cir. 2010) (finding that the applicant, whose family farm was confiscated due to her refusal to have an abortion, suffered persecution because “severe economic sanctions constitute persecution”); *Zhang v. Gonzales*, 408 F.3d 1239, 1247–50 (9th Cir. 2005) (finding that the cumulative effect of economic deprivation, denial of education, and violence directed to applicant’s father in her presence may be persecution).

<sup>114</sup> *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23 (BIA 1998) (stating that cumulative instances of harassment or discrimination considered in totality may amount to persecution if each instance of harm was inflicted on account of

<sup>115</sup> Tab A, Declaration of ██████.

<sup>116</sup> Tab A, Declaration of ██████.

<sup>117</sup> *Id.*

<sup>118</sup> Tab A, Declaration of ██████; Tab B, Declaration of ██████ (Wife).

<sup>119</sup> Tab B, Declaration of ██████.

<sup>120</sup> *Portillo-Flores*, No. 19-1591 at \*14; *Baharon v. Holder*, 588 F.3d 228, 232 (4th Cir. 2009) (“violence or threats to an applicant’s close relatives is an important factor” when determining whether mistreatment constitutes persecution, particularly when that harm adds “immediacy and severity” to threats against the applicant).; see also *Arita-Deras v. Wilkinson*, 990 F.3d 350 (4th Cir. 2021) (a person can suffer persecution without ever learning the names of the individuals who have subjected him to that persecution) (citing *Cardenas v. INS*, 294 F.3d 1062, 1066 (9th Cir. 2002); and *Romilus v. Ashcroft*, 385 F.3d 1, 7 (1st Cir. 2004)).

<sup>121</sup> See Tab AE, Matthew Rosenberg, *Hunted by the Taliban, U.S.-Allied Afghan Forces Are in Hiding*, The New York Times (Aug 29, 2021) (stating that The militants are threatening to arrest or punish family members if they

forces have already come to Mr. ██████’s home as part of their door-to-door operations and have issued a threat, is” extremely troubling.”<sup>122</sup> Local Afghans, like Mr. ██████ and his wife, are well aware that the Taliban’s visit to one’s home signals an immediate death sentence.<sup>123</sup> Thus, taking the death threats, psychological torment, and severe economic deprivation Mr. ██████ suffered at the hands of the Taliban “” rise to the level of persecution.<sup>124</sup>

**ii. Mr. ██████ was persecuted “on account” of his actual and imputed political opinion at the hands of the Taliban controlled government in Afghanistan.**

There must be a nexus between the protected ground and persecution. The protected ground must be one central reason for the persecution.<sup>125</sup> Fourth Circuit precedent requires that the protected ground be *a* central reason for the past and future persecution.<sup>126</sup> The protected ground “need not be the sole, or even dominant motivation for [their] persecution.”<sup>127</sup> The applicant has shown nexus as long as they can show that why them and not another person was persecuted.<sup>128</sup> Analyzing nexus requires factual context and specificity, and the articulation of a persecutor’s motive is not determinative.<sup>129</sup> The fact that persecutors may impact a population as a whole does not settle the question.<sup>130</sup> An applicant must also show that his persecution would come at the hands of the government “or by persons or an organization that the government [is] unable or unwilling to control.”<sup>131</sup>

Further, an applicant may actually hold a political opinion or have the opinion “imputed to him by his persecutors.”<sup>132</sup> A political opinion is a “sincerely held or expressed belief.”<sup>133</sup> What constitutes “political opinion” is broad, and adjudicators should view an applicant’s claim within

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cannot find the people they are seeking); *see also* Tab AE, Tarah Welsh, ‘*The Taliban killed my brother for protecting my family*’ BBC London (Aug 28, 2021); Tab AG, Brianna Keilar and Veronica Stracqualursi, *Taliban issue death sentence for brother of Afghan translator who helped US troops, according to letters obtained by CNN*.

<sup>122</sup> Tab F, Declaration of Dr. ██████ ██████, at

<sup>123</sup> Tab A, Declaration of ██████ ██████; *see also* Tab B, Declaration of ██████ ██████; Tab C, Declaration of ██████ ██████ (mother); Tab D, Declaration of ██████ ██████ (sister); Tab AF, Tarah Welsh, ‘*The Taliban killed my brother for protecting my family*’ BBC London (Aug 28, 2021).

<sup>124</sup> *See Matter of O–Z– & I–Z–*, 22 I&N Dec. 23 (BIA 1998).

<sup>125</sup> 8 U.S.C. § 1158 (b)(1)(B)(i).

<sup>126</sup> *See Zavaleta-Ponciano v. Sessions*, 873 F.3d 241 (4th Cir. 2017); *Oliva v. Lynch*, 807 F.3d 53 (4th Cir. 2015); *Hernandez Avalos v. Lynch*, 784 F.3d 944, 947 (4th Cir. 2015); *Temu v. Holder*, 740 F.3d 887 (4th Cir. 2014).

<sup>127</sup> *Alvarez-Lagos v. Barr*, 927 F.3d 236 (4th Cir. 2019) (quotations and citations omitted).

<sup>128</sup> *Id.*

<sup>129</sup> *See Zavaleta-Policiano v. Sessions*, 873 F.3d 241, 248 (4th Cir. 2017).

<sup>130</sup> *Id.* (“That “the criminal activities of MS–13 affect the population as a whole,” we have explained, is simply “beside the point” in evaluating an individual’s particular claim.”) (quoting *Crespin–Valladares*, 632 F.3d at 127).

<sup>131</sup> *Crespin–Valladares v. Holder*, 632 F.3d 117, 126 (4th Cir. 2011).

<sup>132</sup> *Lopez-Ordonez v. Barr*, 956 F.3d 328 (4th Cir. 2020).

<sup>133</sup> *Alvarez-Lagos*. 927 F.3d at 236.

the political context of the country of persecution. “[T]he relevant inquiry is not the political views sincerely held or expressed by the victim, but rather the persecutor’s subjective perception of the victim’s views.”<sup>134</sup> “It does not matter . . . whether the victim in fact held a particular political opinion; what matters is that [he] proves that [his] persecutors believed that [he] held that opinion.”<sup>135</sup> Thus, one must show, from the perspective of the persecutors, that the “persecutors actually imputed a political opinion” to him.<sup>136</sup>

Here, when the Taliban showed up at Mr. ██████’s house, they expressly told his wife: “we know this is ██████’s house, where is ██████, we know he is doing business with non-Muslims, the Americans.”<sup>137</sup> This alone is an indication that the Mr. ██████’s business dealings with the Americans was the central reason why Taliban perceived him as not Muslim enough, or someone who opposes the rules and moral codes of the Taliban. The country conditions and expert opinion from Dr. ██████ demonstrate that the Taliban perceives any association, or affiliation with the Americans, or other Western persons as an anti-Muslim, or anti-Taliban act.<sup>138</sup> Mr. ██████’s mother states in her declaration, “If the Taliban finds out that there is someone who works with the American forces, or even Canadian forces, ... if the Taliban catches them, they cut their heads or throats.”<sup>139</sup> She states, “I am very sure they will kill him right away because the Taliban came here so many times, they burnt his house, and they have not stopped looking for him since he left.”

Being associated with the previous Afghan government or affiliating with the American or other Western forces is seen as an active expression of an anti-Taliban political opinion in the eyes of the Taliban.<sup>140</sup> Mr. ██████ states in his declaration that he and his family never liked or supported the Taliban government. Mr. ██████ openly conducted business with American soldiers and even participated in the political campaign of the Tajik political candidate for the previous Afghan Parliament.<sup>141</sup> Thus, due his previous political affiliation with the former Afghan government, his political stance against Taliban, as well as his very visible former business dealings with the Americans, the Taliban imputed “anti-Muslim” and “anti-Taliban” political opinion on Mr. ██████ and subjected him to death threats and torment.

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<sup>134</sup> *Id.* at 254.

<sup>135</sup> *Id.*

<sup>136</sup> *Abdel-Rahman v. Gonzales*, 493 F.3d 444, 450–51 (4th Cir. 2007).

<sup>137</sup> Tab B, Declaration of ██████.

<sup>138</sup> Tab F, Declaration of Dr. ██████ ██████, at 13-18; *see also* Tab AC-AH.

<sup>139</sup> Tab C, Declaration of ██████.

<sup>140</sup> Tab F, Declaration of Dr. ██████ ██████, at 13-18; *see also* Tab AC-AH.

<sup>141</sup> Tab A, Declaration of ██████.



**iii. Mr. ██████'s Past Persecution based on his actual and imputed political opinion Gives Rise to A Regulatory Presumption of a Well-Founded Fear of Future Persecution That Cannot be Overcome**

Because the record reflects that Mr. ██████ suffered past persecution based on his actual and imputed political opinion, there is now a presumption in favor of a well-founded fear of persecution.<sup>142</sup> The burden now shifts to the government to rebut the well-founded fear of future persecution by demonstrating either that a fundamental change in country conditions has occurred or that internal relocation is possible.<sup>143</sup> The government is unable to meet its burden and therefore Mr. ██████'s well-founded fear of persecution must stand. Mr. ██████ is the son of a former Tajik Army General whose family has a history of opposing previous Taliban governments.<sup>144</sup> Dr. ██████ states that if this information “becomes common knowledge in Taliban circles, given that the Taliban are targeting and expanding their list of “collaborators and traitors,” and because they have already assassinated members of the Afghan military and the police,” Mr. ██████ will be in a vulnerable situation and runs the risk of being classified as a “collaborator or traitor.”<sup>145</sup>

***1. Country Conditions in Afghanistan have worsened***

Conditions in Afghanistan have worsened since Mr. ██████ fled the country in August 2021. The Taliban has now fully overtaken the governmental institutions and has instilled a sense of fear and terror among the remaining citizens of the country. Notably, since Mr. ██████'s departure from Afghanistan, the Taliban has been more explicit and insistent about investigating and finding Mr. ██████. So far, they have burnt his marital home down, along with his business supplies; they have told his wife they want “[Mr. ██████'s] head,” and if the wife does not give them information, the wife and children will “be kidnapped as a replacement.”<sup>146</sup> Now, most of Mr. ██████'s family members are in hiding as the Taliban members are knocking door to door, looking for Mr. ██████, someone who defied them by associating himself with the Americans.

***2. Mr. ██████ cannot reasonably relocate within Afghanistan***

The Taliban now control the government of Afghanistan and have enacted repressive rules on most of the territory, including controlling checkpoints.<sup>147</sup> This gives them widespread control over the entire territory of Afghanistan and therefore there is no place Mr. ██████ can safely move.

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<sup>142</sup> See 8 C.F.R. § 1208.13(b)(1).

<sup>143</sup> See 8 C.F.R. § 1208.16(b)(1)(i)(A).

<sup>144</sup> Tab A, Declaration of ██████; Tab C, Declaration of ██████.

<sup>145</sup> Tab F, Declaration of Dr. ██████ ██████, at 22-23.

<sup>146</sup> Tab B, Declaration of ██████; Tab C, Declaration of ██████.

<sup>147</sup> See Tab L, OSAC, Afghanistan Country Security Report (July 27, 2021); Tab N, Jane Ferguson, *Afghanistan Has Become The World's Largest Humanitarian Crisis*, The New Yorker (Jan. 5, 2022); Tab Q, *Afghanistan: Government collapse marked by 'repeated war crimes and relentless bloodshed' - new report*, Amnesty International (Dec. 15, 2021).

The Taliban has already labeled Mr. ██████ as non-Muslim, and anti-Taliban, and he will have no place to hide. The Taliban, through their “intelligence operations and access to employment records that the former government left behind, have identified new targets for arrest and execution.”<sup>148</sup> Mr. ██████ would be unable to hide as a married man and a father of three children who is the main breadwinner for the family, he will have to seek employment and leave his hiding place. He will be immediately identified, singled out for harassment, and probably tortured or murdered. Even if he seeks employment, the Taliban will investigate him and find his former association with the Americans.

**b. Mr. ██████ also has a well-founded fear of future persecution on account of his membership in a particular social group “Afghan male vendors at the Bagram military base (“Bagram Bazaar”) who have conducted business with the Americans”**

To establish a claim of future persecution, the applicant must prove both a “genuine subjective fear of persecution” and that a “reasonable person in like circumstances would fear persecution.”<sup>149</sup> An applicant may simply demonstrate a subjective fear of future persecution that “a reasonable person in like circumstances would share” through objective and subjective means.<sup>150</sup> The standard may be “satisfied ‘by presenting candid, credible, and sincere testimony demonstrating a genuine fear of persecution.’”<sup>151</sup> The objective component “requires specific, concrete facts that a reasonable person in like circumstances would fear persecution.”<sup>152</sup>

Even if the Court were to find that Mr. ██████’s past persecution did not raise a presumption of future persecution, he also has an independent well-founded fear of future persecution based on the imputed political opinion (as discussed), membership in a particular social group “Afghan Male Vendors at the Bagram military base market (“Bagram Bazaar”) who have conducted business with the Americans,” his Tajik ethnicity, and imputed religion.

**i. “Afghan Male Vendors at the Bagram military base market (“Bagram Bazaar”) who have conducted business with the Americans”<sup>153</sup> is a cognizable PSG of which Mr. ██████ is a member.**

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<sup>148</sup> See Tab AC, “No Forgiveness for People Like You”: Executions and Enforced Disappearances in Afghanistan under the Taliban, Human Rights Watch (Nov. 30, 2021).

<sup>149</sup> *Chen v. INS*, 195 F.3d 198, 201-02 (4th Cir. 1999).

<sup>150</sup> *Kourouma v. Holder*, 588 F.3d 234, 240 (4th Cir. 2009).

<sup>151</sup> 588 F.3d at 240; *Marynenka v. Holder*, 592 F.3d 594, 600 (4th Cir. 2010) (quoting *Chen v. INS*, 195 F.3d 198, 201 (4th Cir. 1999)).

<sup>152</sup> *Gandziamia-Mickhou v. Gonzales*, 445 F.3d 351, 353 (4th Cir. 2006) (internal citation omitted).

<sup>153</sup> Additional PSG’s include: “Afghan Male Vendors at the Bagram Military Base market (“Bagram Bazaar”) who have conducted business with the Americans and are perceived as Kafirs;” “Afghan Male Vendors at the Bagram base market in Kabul;” “Afghan male vendors labeled as affiliates with the Americans.”; “Afghan vendors at

Fourth Circuit precedent and the Board of Immigration Appeals (BIA) requires a PSG to meet three criteria: “(1) its members share common, immutable characteristics, (2) the common characteristics give its members social visibility, and (3) the group is defined with sufficient particularity to delimit its membership.”<sup>154</sup>

First, the status of individuals in this group is immutable. An immutable characteristic “either is beyond the power of an individual to change or is so fundamental to individual identity or conscience that it ought not be required to be changed.”<sup>155</sup> The BIA and the Fourth Circuit have acknowledged that past experiences are an immutable characteristic.<sup>156</sup> In an unpublished decision, the BIA acknowledged that “having cooperated or worked with Americans or American entities or organizations is, by its very nature, immutable.”<sup>157</sup> Here, Mr. ██████ cannot change his gender, or his nationality as an Afghan national. Additionally, he cannot change his past experiences conducting business with the Americans at the Bagram base. In his declaration, Mr. ██████ states that he has always been a businessman and being a street vendor near the Bagram base is a fundamental trait of his identity.<sup>158</sup> Thus, being a vendor at the Bagram military base is an immutable characteristic.

Second, this PSG meets the particularity requirement.<sup>159</sup> “[T]he key question is whether the proposed description is ‘too amorphous... to create a benchmark for determining group membership.’”<sup>160</sup> In making the particularity analysis, the court must take the proffered PSG as a whole, not split it into its components.<sup>161</sup> As the Fourth Circuit has previously observed, the Board “often requires petitioners to add modifiers to their social group definition to meet the particularity requirement.”<sup>162</sup> The “size and breadth of a group alone does not preclude a group from qualifying as such a social group.”<sup>163</sup> Here, this PSG is particular because it only includes Afghan males who are (or have worked as) vendors at the Bagram military base in Kabul and have conducted business

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*Bagram labeled as ‘Western spies’ or ‘non-Muslim’ by the Taliban’; ‘Immediate family members of former Afghan military members;’ ” ‘Afghan deportees perceived as affiliates with the American forces.’ ”*

<sup>154</sup> *Lizama v. Holder*, 629 F.3d 440, 446–47 (4th Cir. 2011) (citing *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (B.I.A. 1985), overruled on other grounds by *Matter of Mogharrabi*, 19 I. & N. Dec. 439 (B.I.A. 1987)).

<sup>155</sup> *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985); *Lizama v. Holder*, 629 F.3d 440, 446–47 (4th Cir. 2011)

<sup>156</sup> *Matter of C-A-*, 23 I&N Dec. 951, 9959-60 (BIA 2006); see also *Martinez v. Holder*, 740 F.3d 902, 913 (4th Cir. 2014).

<sup>157</sup> See N-A-M-A-, AXXX XXX 783 (BIA Sep. 10, 2015), at 3 (Unpublished).

<sup>158</sup> Tab A, Declaration of ██████.

<sup>159</sup> *Amaya v. Rosen*, 986 F.3d 424, 435 (4th Cir. 2021).

<sup>160</sup> *Matter of S-E-G-*, 24 I&N Dec. 579, 584 (BIA 2008).

<sup>161</sup> See *Temu v. Holder*, 740 F.3d 887, 895 (4th Cir. 2014).

<sup>162</sup> *Oliva v. Lynch*, 807 F.3d 53, 61 n.4 (4th Cir. 2015).

<sup>163</sup> *Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2010).

with the American there. The boundaries cannot be clearer: it defines a particular geographic place (the Bagram military base) and excludes all other vendors in Kabul who have never conducted business, or traded with the American soldiers at the Bagram base. The Bagram base limits this group and ensures it is not too amorphous. Additionally, this group is limited because it clearly excludes customers, or military forces from other nationalities.

Finally, this PSG meets the social distinction requirement. First, the persecution of a group serves as a catalyst that causes “the society to distinguish the [group] in a meaningful way” as the maltreatment lease “these people [to] experience a sense of “group” and others to see it as one.<sup>164</sup> To qualify, the particular social group must be perceived by society as a whole, not solely by the group’s alleged persecutors.<sup>165</sup> Perception in this context does not require ocular visibility: “[s]ociety can consider persons to comprise a group without being able to identify the group’s members on sight.”<sup>166</sup> “Evidence such as country conditions reports, expert witness testimony, and press accounts of discriminatory laws and policies, historical animosities, and the like may establish that a group exists and is perceived as ‘distinct’ or ‘other’ in a particular society.”<sup>167</sup> Here, street vendors in Kabul are recognized as socially distinct group by the Afghan society. The new Taliban government has even implemented a robust “Urban Discipline“ policy that aims to remove millions of poor street vendors from roadsides by evicting them, destroying pushcarts, removing hoardings.<sup>168</sup> This targeted policy is an indication that street vendors are recognized as a distinct group. Additionally, Mr. ██████’s proposed PSG is even more socially distinct because it only includes street vendors at the Bagram military base, the base where the U.S. military forces were located before the Taliban took over in August, 2021.<sup>169</sup> For these reasons, street vendors who have sold their merchandise at, or within short distances of the Bagram base are automatically assumed to have worked with the Americans, or other Westerners, including the interpreters and other contractors alike. Dr. ██████ states “the Bagram local economy was extremely dependent on the U.S. military base, and it was common knowledge that many local Afghans were in close

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<sup>164</sup> See *Matter of M-E-V-G-*, 26 I&N Dec. at 243.

<sup>165</sup> See *id.* at 242; *Matter of W-G-R-*, 26 I. & N. Dec. at 218; *Santos Mejia v. Sessions*, 717 Fed. App. 257, 260 (4th Cir. 2018).

<sup>166</sup> *Matter of M-E-V-G-*, 26 I. & N. Dec. at 240.

<sup>167</sup> *Id.* at 244.

<sup>168</sup> See Tab AM, Shadi Khan Saif, *Kabul evicts street vendors in ‘discipline’ drive*, Reuters (Oct 22, 2020).

<sup>169</sup> See Tab AN, Dan Lamothe, *U.S. military vacates main air base in Afghanistan but slows withdrawal plan*, The Washington Post (July 2, 2021); see also Tab E, Declaration of Dr. ██████ ██████, at 9-10 (stating that Bagram did not only house military equipment and medical facilities, but it also served as a sprawling min-city complex.”)

contact with, and/or conducting business with the U.S. military and NATO forces.”<sup>170</sup> As Mr. █████ states, his customers were predominantly Americans who would buy various types of items from him.<sup>171</sup> Thus, vendors who would do business with employees of the Bagram base are viewed as collaborators, or affiliates with the American forces in the eyes of the Afghan society as well as in the eyes of the Taliban.

**ii. Mr. █████ will suffer persecution on account of his membership in “Afghan Male Vendors at the Bagram Bazaar Who Have Conducted Business with the Americans”**

In accordance with the particular social group analysis articulated in *Matter of M-E-V-G*, 26 I&N Dec. 227 (BIA 2014), and *Matter of W-G-R*, 26 I&N Dec. 208 (BIA 2014), longstanding controlling Fourth Circuit law requires that applicants establish that a protected ground would be a central reason for their persecution.<sup>172</sup> The BIA has held that there can be multiple central reasons for persecution.<sup>173</sup> The Fourth Circuit is clear that a central reason requires only a showing “that the protected ground was more than an ‘incidental, tangential, superficial, or subordinate’ reason underlying the persecution.”<sup>174</sup> Analyzing the nexus of a claim requires context and specificity as to the facts, and the articulation of a persecutor’s motive is not determinative.<sup>175</sup> An applicant must demonstrate a nexus between the persecution suffered and the membership in a particular group.<sup>176</sup>

Here, the record demonstrates that Mr. █████ will be persecuted on account of his membership in this PSG. Mr. █████ was a vendor and a salesman who owned a shop at the Bagram base.<sup>177</sup> He bought and sold various items from the employees at the Bagram base, including the American soldiers.<sup>178</sup> His status as a vendor who worked with the Americans is the central reason why the Taliban came to his house the first time.<sup>179</sup> The Taliban members specifically referenced Mr. █████ as someone who “did business with non-Muslims, the Americans.”<sup>180</sup> After Mr. █████ left, the Taliban went to his marital house, threatened Mr. █████’s wife and children, burned his

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<sup>170</sup> see Tab F, Declaration of Dr. █████, at 22-23.

<sup>171</sup> Tab A, Declaration of █████.

<sup>172</sup> See *Zavaleta-Ponciano v. Sessions*, 873 F.3d 241 (4th Cir. 2017); *Oliva v. Lynch*, 807 F.3d 53 (4th Cir. 2015); *Hernandez Avalos v. Lynch*, 784 F.3d 944, 947 (4th Cir. 2015); *Temu v. Holder*, 740 F.3d 887 (4th Cir. 2014).

<sup>173</sup> *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007).

<sup>174</sup> *Zavaleta-Policiano v. Sessions*, 873 F.3d 241, 247 (4th Cir. 2017) (internal citation omitted).

<sup>175</sup> *Id.* at 248.

<sup>176</sup> *Alvarez Lagos v. Barr*, 927 F.3d 236, 246 (4th Cir. 2019); see also *Oliva v. Lynch*, 807 F.3d 53, 58 n.3 (4th Cir. 2015) (noting that both asylum and withholding of removal claims rely on the same factual basis).

<sup>177</sup> Tab A, Declaration of █████.

<sup>178</sup> *Id.*

<sup>179</sup> Tab A, Declaration of █████; Tab B, Declaration of █████.

<sup>180</sup> Tab A; Tab B.

business supplies, and his entire house down.<sup>181</sup> Burning of the business supplies is another clear indication of the Taliban's reason for targeting Mr. ██████. The declarations from Mr. ██████'s wife and mother state that since Mr. ██████'s departure, the Taliban has been knocking on their doors, and asking Mr. ██████'s neighbors: "where is that guy who did business with the Americans"<sup>182</sup> The Taliban's intent cannot be anymore clearer: Mr. ██████ has done business with the Americans and this is what makes him a prime target for the Taliban. Their threats, harm, and probable plans to torture and kill him all rise to the level of persecution. The continued threats toward his family demonstrate what the Taliban government officials are capable of including destroying his home, forcing his wife and children into hiding, kidnapping his father-in-law; and threatening his wife and children with kidnapping. All these death threats and actions combined *cumulatively* show that Mr. ██████ will face immense threat of harm if he is deported.<sup>183</sup> Mr. ██████ has an objective and subjective fear of persecution because through immense corroborating evidence, he has provided "specific, concrete facts that a reasonable person in like circumstances would fear persecution."<sup>184</sup>

**c. Mr. ██████ also has a well-founded fear of future persecution on account of his ethnicity as a Tajik person opposing the Taliban government**

Race has been interpreted in its widest sense to include "all kinds of ethnic groups that are referred to as 'races' in common usage."<sup>185</sup> Generally, widespread harassment and discrimination on account of race or ethnicity may strengthen the severity of individualized harm suffered by the applicant.<sup>186</sup>

Tajiks currently make up approximately 27% of the population in Afghanistan, making them the second largest minority group in Afghanistan.<sup>187</sup> However, Tajiks have historically experienced discrimination and harassment from the Taliban government as well as from the

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<sup>181</sup> Tab B, Declaration of ██████.

<sup>182</sup> *Id*; see also Tab C, Declaration of Shaikba Akbari (mother).

<sup>183</sup> *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23 (BIA 1998) (stating that cumulative instances of harassment or discrimination considered in totality may amount to persecution if each instance of harm was inflicted on account of the protected group).

<sup>184</sup> See *Kourouma v. Holder*, 588 F.3d 234, 240 (4th Cir. 2009); see also *Gandziamia-Mickhou v. Gonzales*, 445 F.3d 351, 353 (4th Cir. 2006) (internal citation omitted).

<sup>185</sup> See, e.g., *Stserba v. Holder*, 646 F.3d 964 (6th Cir. 2011) (finding that a person of Russian "ethnicity" who suffered harm in Estonia suffered harm on account of race and may be eligible for relief); *Haile v. Holder*, 591 F.3d 572 (7th Cir. 2010) (finding that an ethnic Eritrean living in Ethiopia who was stripped of Ethiopian citizenship because of his ethnicity may have suffered past persecution on account of race); See also *Karapetyan v. Mukasey*, 543 F.3d 1118, 1127 (9th Cir. 2008) (court noted that use of ethnic slurs amply established the connection between the acts of persecution and the applicant's ethnicity).

<sup>186</sup> See, e.g., *Sinha v. Holder*, 564 F.3d 1015 (9th Cir. 2009).

<sup>187</sup> See Tab X, *Afghanistan – Tajiks*, Minority Rights Group International (Accessed Jan 28, 2022).

ordinary members of the Afghan society.<sup>188</sup> During the early 90s, Tajiks dominated what came to be referred to as the Northern Alliance – the conglomeration of opposition groups fighting the Taliban that the international community recognized as the government of Afghanistan after the fall of the Taliban.<sup>189</sup> During the Taliban regime, Tajiks along with other ethnic groups were suppressed, and many were killed after the Taliban’s takeover of the northern city.<sup>190</sup> Here, Mr. ██████ is Tajik, and so is the rest of his family. His family already once fled Afghanistan because his father was afraid of being targeted by the Taliban because of his ethnicity and his association with the Afghanistan National Army.<sup>191</sup> During the most recent takeover of the Taliban government, discrimination and harassment against Tajiks is heightened.<sup>192</sup> The newest reports indicate that hundreds of Tajiks have already formed a resistance group to fight against the Taliban government, and that the Taliban has also deployed dedicated soldiers to fight the Tajik resistance group.<sup>193</sup> Mr. ██████’s mother states in her declaration that her fellow Tajik neighbors are often arbitrarily detained and beaten by the Taliban members, for simply being of the Tajik ethnicity.<sup>194</sup> It is clear that historical conflict between the Taliban and Tajiks are intensifying again, and thus, there is at least 10% chance that Mr. ██████ will be targeted and singled out as a Tajik man who has previously defied the Taliban and even supported the Tajik candidate.

**d. Mr. ██████ has a well-founded fear of future persecution on account of his imputed religion as a “non-Muslim”**

An applicant for asylum may be persecuted on account of his religion even though he may not in fact be particularly religious, or for not practicing a certain religion. For instance, in *Matter of S-A-*, the BIA found that where a daughter’s religious opinions were different than her father’s concerning how she should dress and whom she should associate with, and the father attempted to impose his religious beliefs on his daughter through physical force, the serious harm suffered was “persecution on account of religion.” 11 I&N. Dec 1328 (BIA 2000). Additionally, religion-based persecution claims often overlap with other protected grounds, especially in countries where the state has adopted a particular religion for its population. *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1993)

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<sup>188</sup> *Id*; see also Tab Y, Paul Kerley and Lucia Blasco, *Afghanistan: The ‘undefeated’ Panjshir Valley – an hour from Kabul*, BBC News, (Aug. 26, 2021).

<sup>189</sup> *Id*.

<sup>190</sup> *Id*; Tab F, Declaration of Dr. ██████ ██████, at 7.

<sup>191</sup> Tab A, Declaration of ██████; Tab C, Declaration of ██████.

<sup>192</sup> Tab X, *Afghanistan – Tajiks*, Minority Rights Group International (Accessed Jan 28, 2022).

<sup>193</sup> See Tab Z, “*Tajik Group Offers to Fight Alongside Anti-Taliban Militias in Afghanistan*,” RadioFree Europe (Aug. 27, 2021); Tab ZZ, Kamal Joshi, “*Afghanistan: Tajik Minority Forms New Resistance Front Against Taliban*,” Republic World (Feb. 5, 2022).

<sup>194</sup> Tab C, Declaration of ██████.

(finding that forced compliance with laws that are fundamentally abhorrent to a person’s deeply held religious convictions may constitute persecution).

Here, Mr. ██████ states in his declaration that he has always grown up as a Sunni Muslim.<sup>195</sup> However, the Taliban government has adopted a particular religion for the whole country of Afghanistan, a radical form of Islam where certain acts by ordinary citizens are seen as “non-Muslim.”<sup>196</sup> Such acts are punishable under the Shari’a law, and the Taliban’s newly created Ministry of Vice and Virtue enforces these new moral codes.<sup>197</sup> For instance, the citizens who are perceived as affiliates with the Americans, or those who have worked with the Western organizations are seen as “anti-Taliban” or “non-Muslim.”<sup>198</sup> Listening to Western music, or even cutting a beard can be a punishable crime under the new laws.<sup>199</sup> Here, when searching for Mr. ██████, the Taliban members have referred to him as “non-Muslim” due to his willingness and experience for having worked with the Americans.<sup>200</sup> Although Mr. ██████ is Muslim himself, the Taliban has imputed a lack of religious practice of Islam on Mr. ██████. The context and country conditions must be taken into account as corroborating evidence to evaluate the religious based persecution. The declarations from Mr. ██████, as well as Dr. ██████ demonstrate that there is high likelihood that Mr. ██████ will be perceived by the Taliban government as a violator of Muslim and Shari’a moral codes, and someone who has defied the entire religion of Islam by cooperating and having worked with the Americans at the Bagram base.

**e. Mr. ██████ is not barred by the serious non-political crime bar**

An applicant is barred from asylum if “there are serious reasons to believe the [applicant] has committed a serious non-political crime” prior to their arrival in the United States. 8 U.S.C. § 1158(b)(2)(A)(ii). The standard of “serious reasons to believe” equals probable cause. *Matter of E-A*, 26 I&N Dec. 1, 3 (BIA 2012). If the government meets its burden, the applicant can show by a preponderance of the evidence that the bar does not apply. 8 C.F.R. § 1240.8(d). Law enforcement documents that do not contain “information about the investigator, how the

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<sup>195</sup> Tab A, Declaration of ██████.

<sup>196</sup> Tab F, Declaration of Dr. ██████ ██████, at 13-15.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*; see also Tab AE, Matthew Rosenberg, *Hunted by the Taliban, U.S.-Allied Afghan Forces Are in Hiding*, The New York Times (Aug 29, 2021); Tab AG, Brianna Keilar and Veronica Stracqualursi, *Taliban issue death sentence for brother of Afghan translator who helped US troops, according to letters obtained by CNN*, CNN (Aug. 23, 2021).

<sup>199</sup> Tab F, Declaration of Dr. ██████ ██████, at 15.

<sup>200</sup> Tab A, Declaration of ██████; Tab B, Declaration of ██████.



investigation was conducted, and how and why the official reached his...conclusion” are unreliable. *Anim v. Mukasey*, 535 F.3d 243, 258 (4th Cir. 2008).

While Mr. ██████ has been accused of adultery/fornication in Afghanistan, it does not qualify as a serious non-political crime. Mr. ██████ seems to have been accused of the crime of fornication also called “*Zina*” which is a moral crime in Afghanistan.<sup>201</sup> It is important to note the definition of crimes of “fornication” or adultery in Afghanistan. Classic Islamic law categorizes all (heterosexual) intercourse outside of marriage as the crime of “*Zina*,” i.e. adultery or fornication, punishable as a criminal offense under the Afghan criminal code.<sup>202</sup> These crimes in Afghanistan are classified as crimes against God, which stipulates stoning of those who are married and lashing of those who are not.<sup>203</sup> Historically, the Taliban has imposed severe punishments on adulterers under the strict Shari’a law, such as stoning, flogging, lashing, public executions, and murders.<sup>204</sup> In the areas recently controlled by the Taliban, women and men found guilty of having a relationship outside of marriage are sentenced to death.<sup>205</sup> Before the 2018 legislation which reduced punishment for *Zina* to 5 years, and for rape up to 16 years, *Zina* crime was punishable up to 15 years.

Here, the government has not provided any official documents showing that Mr. ██████ was convicted of adultery or kidnapping. The government also has not provided any pertinent “information about the investigator, how the investigation was conducted, and how and why the official reached his...conclusion” are unreliable. *Anim v. Mukasey*, 535 F.3d 243, 258 (4th Cir. 2008). A single sentence in Mr. ██████’s I-213 form that the government submits states his information “was found to be a match to a USVISIT hit for prior criminal history.” However, this single sentence without further proof cannot suffice to meet the “serious reasons to believe” standard as required under the statute.<sup>206</sup> Around 2008, when Mr. ██████ was convicted, the corruption in the police and the judiciary was endemic.<sup>207</sup> For instance, a 2013 survey revealed that 65% of the people admitted having paid a bribe to the judiciary in one form or another at least on in the previous year.<sup>208</sup> When Mr. ██████ was arrested for the alleged crime, the police

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<sup>201</sup> See Tab E.3, A copy of ██████’s Passport Request Form, indicating his conviction.

<sup>202</sup> Tab F, Declaration of Dr. ██████ ██████, at 10.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*, at 12.

<sup>206</sup> *Anim v. Mukasey*, 535 F.3d 243, 258 (4th Cir. 2008).

<sup>207</sup> Tab F, Declaration of Dr. ██████ ██████, at 4-6.

<sup>208</sup> *Id.* at 6.

demanded that he pay them the bribe in the amount of half a million Afghan money.<sup>209</sup> But because he was innocent and did not want to pay the bribe, he was sent to jail without any help from a lawyer or any due process protections.<sup>210</sup> The most recent U.S. Department of State report is replete with reports of lack of due process, trial, arbitrary detentions and bribery in the judiciary system.<sup>211</sup> Thus, it is not surprising that Mr. ██████ was arbitrarily arrested and sent to jail for *Zina* without any due process. Notably, Mr. ██████ experienced torture while detained at the infamous "Pul-e-Charkhil" jail which is notorious for its reports of gruesome torture, maltreatment, and human rights violations.<sup>212</sup> While detained there, Mr. ██████ was severely beaten on multiple occasions, hung upside down, and hit with an iron rod.<sup>213</sup> So, not only was he falsely accused of *Zina*, he was also arbitrarily detained and tortured.

Here, as corroborating evidence, Mr. ██████ submits the passport release document from the Ministry of Interior of the previous Afghan government, which clearly indicates that he was sent to jail for "fornication," and not "a rape" or kidnapping.<sup>214</sup> Mr. ██████ states that he has never been convicted of any other crimes, but fornication.<sup>215</sup> Adultery, as defined in Afghanistan (while unmarried) does not constitute an aggravated felony or a crime involving moral turpitude for INA purposes in the United States. Thus, the government has not met its burden to establish probable cause, nor serious reasons to believe that Mr. ██████ was convicted of kidnapping, or any other violent crime, and Mr. ██████ has established by preponderance of evidence through an official document from the Ministry of Interior that he was never convicted of a rape, or kidnapping or any other violent crime. Accordingly, since he also filed his asylum application within one year of entering the US and there is no reason to believe he has persecuted others, there are no bars to Mr. ██████'s asylum.

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<sup>209</sup> Tab A, Declaration of ██████.

<sup>210</sup> *Id.*

<sup>211</sup> Tab I, Afghanistan U.S. Dep't of State-Human Rights Report 2020 (March 30, 2021).

<sup>212</sup> See Tab AT, *Preventing Torture and Upholding the Rights of Detainees in Afghanistan: A Factor for Peace 2021*, United Nations Human Rights: Office of the High Commissioner (Feb. 2021); Tab AU, Bilal Sarwary, *Kabul's prison of death*, BBC News, (Feb. 27, 2006); Tab AV, Frud Bezhan and Naseem Shafaq, *Hunger Strike Revives Allegations Of Mistreatment At Afghan Prisons*, Radio Free Europe, (Mar. 16, 2012) (stating that "inmates have alleged widespread abuse and mistreatment at the hands of Afghan officials. Those allegations of prisoner mistreatment resurfaced this week after prison officials at Pul-e Charkhi confirmed that at least 100 inmates had gone on hunger strike and sewed their lips together in protest at what they say are inhumane conditions.").

<sup>213</sup> Tab A, Declaration of ██████.

<sup>214</sup> Tab E, A Copy of ██████'s Passport Release Document, with a certificate of translation. While the document also includes "robbery," Dari translator has stated in the document that it is not clear whether these were simply accusations, charges, or convictions.

<sup>215</sup> Tab A, Declaration of ██████.

**f. The Taliban government will itself participate in the persecution of Mr. ██████ and will be “unable and unwilling” to protect Mr. ██████ from harm, torture, or even death.**

Mr. ██████ satisfies the “unable and unwilling” standard because the Taliban government will itself participate in the persecution of Mr. ██████. Since the takeover of the Taliban government and the departure of the American forces, citizens of Afghanistan have been living under constant threat of harm and terror. Afghans continued to experience high levels of violence and ongoing active conflict in several parts of the country.<sup>216</sup> The new Taliban government has already taken over 34 Afghan provincial capitals and it's growing its reach over other territories.<sup>217</sup> In September 2021, the Taliban declared Afghanistan as an “Islamic Emirate,” comprising of an all-male cabinet who are senior Taliban leaders notorious for attacks on US forces, including Mullah Mohammad Hassan Akhund, and Sirajuddin Haqqani-both blacklisted by the U.S. and FBI’s most wanted list.<sup>218</sup> Various U.S. Department of State reports document continued attacks against civilian journalists, religious minorities, and members of the international community.<sup>219</sup> Additionally, on January 27, 2022, the joint statement of the United States and other European countries states that representative from the U.S. and other countries made clear that “*that their meetings with the Taliban in no way implied any sense of official recognition or legitimization of the interim government announced by the Taliban in September 2021.*”<sup>220</sup> Various media outlets are reporting that the Taliban has denied the humanitarian catastrophe, and instead has established repressive state that already has carried out targeted killings and abductions.<sup>221</sup> Because of the Taliban’s commitment to enforce strict Shari’a law through its newly established Ministry of Vice and Virtue, the Taliban will itself target Mr. ██████. As Dr. ██████ explains, Mr. ██████ will be the target for multiple compounded reasons: he is the son of a former Army General who actively opposed the Taliban rule; he closely worked with the employees of the Bagram base, including the Americans, and even traded American goods.<sup>222</sup>

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<sup>216</sup> Tab F, Declaration of Dr. ██████ ██████, at 19; see also Tab H, U.S. Dep’t of State – Bureau of Consular Affairs, *Afghanistan Country Report*, (Aug. 31, 2021); Tab K, U.S. Dep’t of State, Readout: U.S. Delegation Meeting with Taliban Representatives (Nov. 30, 2021); Tab N, Jane Ferguson, *Afghanistan Has Become The World’s Largest Humanitarian Crisis*, *The New Yorker* (Jan. 5, 2022).

<sup>217</sup> Tab F, Declaration of Dr. ██████ ██████, at 20.

<sup>218</sup> *Id.* at 20.

<sup>219</sup> Tab J, U.S. Dep’t of State, Readout: U.S. Delegation Meeting with Taliban Representatives (Nov. 30, 2021).

<sup>220</sup> See Dep’t of State, Office of the Spokesperson, U.S.-Europe Joint Statement on Afghanistan, Media Note, January 27, 2022. <https://www.state.gov/u-s-europe-joint-statement-on-afghanistan/>

<sup>221</sup> Tab N, Jane Ferguson, *Afghanistan Has Become The World’s Largest Humanitarian Crisis*, *The New Yorker* (Jan. 5, 2022).

<sup>222</sup> Tab F, Declaration of Dr. ██████ ██████, at 21-22.

**g. There is nowhere in Afghanistan Mr. ██████ can safely relocate**

Mr. ██████ cannot relocate to save his life from persecution and torture by the Taliban. An applicant that can avoid future persecution by reasonably internally relocating cannot establish a well-founded fear of persecution. 8 C.F.R. § 1203.13(b)(1)(i)(B). The size of the country, geographic locus of alleged persecution, and the size, numerosity and reach of the alleged persecutor, are all relevant considerations in determining reasonableness of relocation. *Id.* at § 1203.13(3). In cases in which the persecutor is a government or government sponsored actor, relocation is presumed to be unreasonable. *Id.* at § 1203.13(3)(ii). Relocation is unreasonable if the applicant is forced to live in fear and hiding. *Essouhou v. Gonzales*, 471 F.3d 518, 522 (4th Cir. 2006). Here, the Taliban is the new government of Afghanistan and now occupies almost every part of the country. The Taliban has already announced that they will not follow any international legal standards and will be enforcing their own interpretations of the law.<sup>223</sup> There have already been numerous killings, abductions, and kidnappings of those perceived as opposing the Taliban, or simply acting “non-Islamic.”<sup>224</sup> Dr. ██████ states, it will only get worse.<sup>225</sup> The Taliban deploys many young Talibs and community members as spies, or individuals who are charged with information gathering on potential traitors, employees of the former government, or former military and government officials.<sup>226</sup> In close-knit communities such as in Afghanistan where people know each other, and where people live in tribal and ethnic-based communities, anonymity is not generally possible.<sup>227</sup> Thus, there is nowhere Mr. ██████ can hide.<sup>228</sup>

**h. Mr. ██████ warrants discretionary relief**

In addition to Mr. ██████’s statutory eligibility for asylum, he should be granted asylum as a matter of discretion. In exercising its discretion, this Court should consider “the totality of the circumstances and actions of the alien in his flight from the country where he fears persecution... [t]he danger of persecution should generally outweigh all but the most egregious of adverse factors.” *Matter of Pula*, 19 I&N Dec. 467, 473-74 (BIA 1987). Here, Mr. ██████ merits this Court’s discretion. The Taliban has told his family members on multiple occasions that they want “his head” because of his dealings with the Americans. The Taliban has burned down his house, destroyed his business, and his wife and three minor children are currently in hiding. Despite

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<sup>223</sup> See Tab R, *Afghanistan: Taliban Rights Pledges Raise Concerns: International Monitoring Mechanism Urgently Needed*, Human Rights Watch, (August 18, 2021); Tab F, Declaration of Dr. ██████ ██████, at 10-14.

<sup>224</sup> See Tab H, Tab K, Tab N, Tab Q, Tab R, Tab S, Tab T, Tab W, Tab AC, Tab AE, Tab AF, Tab AG, Tab AS, Tab AX.

<sup>225</sup> *Id.*; see also Tab F, Declaration of Dr. ██████ ██████, at 22-24.

<sup>226</sup> Tab F, Declaration of D. ██████ ██████, at 18; Tab D, Declaration of ██████ (sister) (stating that the Taliban is offering about \$20 to individuals to gather information on their suspects).

<sup>227</sup> Tab F, Declaration of Dr. ██████ ██████, at 22.

<sup>228</sup> Tab F, Declaration of Dr. ██████ ██████, at 22-24.

fleeing the Taliban have continued to threaten his family and him. If he is deported, he would almost certainly be returning to his death at the hands of the Taliban controlled government. Mr. ██████ has lived a relatively peaceful life throughout the turmoil in his country. He is a husband, father, and only hopes to find safety for himself and his family after the violent takeover of his country.

**2. In the alternative Mr. ██████ merits a grant of humanitarian asylum**

Mr. ██████ merits a grant of humanitarian asylum due to the death threats and suffering to his family and himself at the hands of the Taliban. Humanitarian asylum may be warranted when there is a compelling reason that someone would be unable or unwilling to return to his home country because of “severe past persecution” or if there is a “reasonable possibility that he or she may suffer other serious harm upon removal to that country.”<sup>229</sup> As explained, the abuse that Mr. ██████ endured from the Taliban was of a level of severity sufficient to warrant the granting of asylum under the humanitarian principle articulated in *Matter of Chen*.<sup>230</sup> If deported, Mr. ██████ will be subjected to “other serious harm” as he will be the main target for the Taliban due to his association with the Americans. The Taliban already burned down his home. his business supplies, continue to terrorize his family, and will likely identify and capture him upon his return. Because Mr. ██████ has violated the Taliban’s Islamic law and moral code by cooperating and doing business with the Americans, he will undoubtedly be labeled as a traitor and “collaborator,” putting him at a high risk of serious harm, torture, and ultimately his likely murder.

**3. Mr. ██████ is also entitled to a mandatory grant of Withholding of Removal under INA §241(b)(3).**

In the alternative, Mr. ██████ is statutorily eligible for withholding of removal under INA §241(b)(3). Under this provision, the Attorney general shall not remove an alien to a country if the Attorney General decides that the alien’s life of freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion. To make this showing, the applicant must establish a clear probability of persecution or that it is “more likely than not” that the alien will suffer persecution on account of one of the protected grounds. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 429 (1987). There is no discretionary element to the granting of withholding of removal. *Id* at 421. Withholding of removal to a particular country is mandatory if the Attorney General determines that the applicant’s life or

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<sup>229</sup> 8 CFR §§208.13(b)(1)(iii), 1208.13(b)(1)(iii).

<sup>230</sup> *See generally Matter of Chen*, 20 I&N Dec. 16 (BIA 1989) (holding that an applicant who demonstrates severe past persecution can be granted asylum on humanitarian grounds without a well-founded fear of future persecution).

freedom will be threatened in that country. *Id* at 429. This standard is weaker than the nexus requirement for asylum purposes. *Barajas-Romero v. Lynch*, 846 F.3d 357 (9th Cir. 2017) (holding that the nexus standard for withholding is weaker than in the asylum context).

Here, the risk of persecution Mr. ██████ will face at the hands of the Taliban due to his ethnicity, his actual and imputed political opinion, imputed religion, and his membership in a PSG far exceeds the over 50% threshold. Due to the reasons described in detail above, Mr. ██████ is also entitled to a grant of Withholding of Removal.

#### **4. Mr. ██████ is entitled to mandatory protection under CAT**

As an alternative to asylum and withholding of removal under the INA, Mr. ██████ is entitled to protection under Article 3 of the Convention Against Torture (CAT) because it is more likely than not that he will be tortured by the Taliban, and potentially by other terrorist groups operating in Afghanistan.<sup>231</sup> In evaluating an application for protection under CAT, an immigration judge must consider *all* relevant evidence.<sup>232</sup> Torture is defined as “severe pain and suffering...intentionally inflicted on a person for such purposes as...punishing him or her for an act he or she...has committed...or for any reason based on discrimination of any kind...or by or at the instigation of...a public official or other person acting in an official capacity.”<sup>233</sup> To constitute torture, the harm must occur at the hands of a public official, or with the acquiescence of a public official, requiring that the official be aware of the events “prior to the activity constituting torture,” and fail to intervene.<sup>234</sup> Eligibility for protection under CAT requires more than a “series of suppositions” to show that it is more likely than not that torture will result.<sup>235</sup> There is no nexus requirement. In *Rodriguez-Arias*, the Fourth Circuit held that the “risk of torture from all sources should be combined when assessing eligibility for CAT. *Rodriguez - Arias v. Whitaker*, 915 F.3d 968 (4th Cir. 2019). Additionally, the court held that when assessing a CAT applicant is more likely than not to be tortured, the risk of each entity the applicant fears must be individually weighed and then combined to determine the total aggregate risk from all entities exceeds 50%.<sup>236</sup> Declarations and testimony from family members must be taken into account as

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<sup>231</sup> See 8 C.F.R. § 208.169(c).

<sup>232</sup> 8 C.F.R. § 208.16(c) (2020) (stating that evidence of past torture inflicted on the applicant is a factor to consider in assessing whether it is more likely than not than an applicant would be tortured in the country of removal).

<sup>233</sup> See 8 C.F.R. § 1208.18(a)(1); INA § 208.18(a)(1); See also *Matter of J-E-*, 23 I&N Dec. 291 (BIA 2002).”

<sup>234</sup> See 8 C.F.R. § 1208.18(a)(7)

<sup>235</sup> *In re J-F-F-*, 23 I&N Dec 912 (A.G. 2006).

<sup>236</sup> 915 F.3d 968, 973 (4th Cir. 2019) (holding that “the proper response to [respondent’s] fears is to add the amount of risk that each group poses to him and then determine whether that sum is greater than 50%”).

corroborative evidence.<sup>237</sup> The Court “may not ignore legally significant evidence and base their decision on isolated parts of the record.”<sup>238</sup>

Here, there is no doubt that the Taliban is impatiently waiting for Mr. ██████’s arrival to Afghanistan. They have already burnt his house down, taken his shop away, and have visited his parents’ house on multiple occasions to give threats of death and kidnapping and inquire about Mr. ██████’s whereabouts. The Taliban members, armed with AK47s have threatened Mr. ██████’s mother that if they don’t tell the Taliban about Mr. ██████’s whereabouts, they are “going to kill entire family.”<sup>239</sup> These threats from one of the most dangerous groups in the world cannot be taken lightly. The Taliba’s status as a group, or an organization that has and is currently orchestrating stoning’s and public executions to those who betray the Sharia law or other moral codes, must be taken into account. As Dr. ██████ states, there is a significant chance, that Mr. ██████ will be identified and singled out because of his status as a “collaborator” with the American forces, and his status as a Tajik person who is the son of a former Army General, and has himself participated in the political campaign.<sup>240</sup> Further if returned, he will have the status of a deportee who has previously been convicted of *Zina*, a crime punishable by death or stoning under the Taliban’s new moral code. Finally, if other insurgent groups, like ISIS-K or al-Qa’ida target Mr. ██████, the Taliban government will not be able and willing to protect him, as the Taliban government is an active ally to various insurgent groups in the region.<sup>241</sup> The risks of harm, when aggregated together far exceed 50% chance of torture.<sup>242</sup>

## V. CONCLUSION

In conclusion, Mr. ██████ qualifies for asylum because he is on the hit list of the current Taliban government in Afghanistan. His house has been burned; his wife and children are in hiding; and his parents have received numerous death threats. Mr. ██████ made a difficult journey to come to the United States to seek shelter. Given all the facts above, he merits asylum, or in the alternative withholding of removal, or CAT.

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<sup>237</sup> *Arita-Deras v. Wilkinson*, 990 F.3d 350, 359 (4th Cir. 2021).

<sup>238</sup> *Id.* (citing *Ortez-Cruz v. Barr*, 951 F.3d 391, 395 (4th Cir. 2020)).

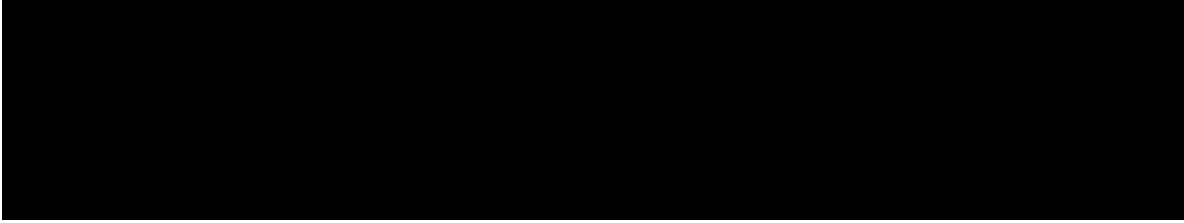
<sup>239</sup> Tab C, Declaration of ██████.

<sup>240</sup> Tab F, Declaration of Dr. ██████ ██████, at 22-24.

<sup>241</sup> Tab AI. The World Factbook: Afghanistan, CIA (last visited January 22, 2022); Tab AP, *American Forces Destroy C.I.A. Base In Controlled Detonation*, The New York Times (Aug. 27, 2021, Updated Sept. 1, 2021) (stating that the Islamic State affiliate in Afghanistan — known as Islamic State Khorasan or ISIS-K — is a bitter, albeit much smaller, rival that has carried out dozens of attacks in Afghanistan this year against civilians, officials and the Taliban themselves).

<sup>242</sup> *Rodriguez - Arias v. Whitaker*, 915 F.3d 968 (4th Cir. 2019).

Respectfully submitted,



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