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DATE

USCIS Texas Service Processing Center
Attention: Asylum
P.O. Box 851892
Mesquite, Texas 75185-1892

*Re.: Letter Brief in Support of XXX XXXXX's Application for Asylum, Withholding of Removal,
and Protection Under the UN Convention Against Torture*

To Whom it May Concern,

I am pro bono counsel for Mr. XXX XXXXX and respectfully submit this letter brief in support of his affirmative application for asylum in the United States, or in the alternative withholding of removal and protection under the UN Convention Against Torture.

Mr. XXXXX meets all of the requirements for asylum. He is a refugee as defined in INA §101(a)(42)(A), none of the statutory bars to asylum apply, and he merits asylum as a matter of discretion. He has been the victim of severe physical and psychological abuse solely because he is a homosexual man. If forced to return to Ghana, he has a well-founded fear of future persecution based on his sexual orientation and gender identity. This letter brief is submitted in anticipation of his interview and outlines the factual and legal bases of his claim.

Summary of Facts

Mr. XXXXX was born on XXXX in Battor, Ghana. *See* Exhibit A, Applicant's Birth Certificate; *see also* Exhibit B, Applicant's Passport. He became cognizant of his physical and emotional attraction to the same sex when he was between the ages of 13 and 14. *See* Exhibit C, Affidavit from Applicant, ¶5. It was at this age that he first openly expressed his romantic feelings towards another male student by dropping a note in his classmate's bag. *Id.* The classmate reported Mr. XXXXX's actions to the headmaster and this marks the first occasion when Mr. XXXXX was publicly humiliated in front of the student body and physically beaten by the headmaster simply for expressing his romantic interest in another male. *Id.* Following the beating he was suspended from school and sent home to his mother. *Id.* at ¶6.

Several months after the incident at his school Mr. XXXXX was further humiliated and physically abused under the instruction of the chief of his town. *Id.* at ¶7. Having heard that Mr. XXXXX was gay, the town chief demanded Mr. XXXXX and his parents appear before him. *See* Exhibit D, Letter from Applicant's mother, XX XXXXX. The chief ultimately declared homosexuality to be an abomination and locked Mr. XXXXX in a cell for multiple days before having various rituals performed on him with the aim of ridding him of his homosexuality. Ex. C at ¶¶7,8. Mr. XXXXX was subsequently beat by the chief's guards. When he fell to the ground in response, his hand was injured to the point of requiring medical attention. *See* Exhibit E, Letter from Doctor B. The chief then banished Mr. XXXXX from the town. Ex. C at ¶8. At only 14 years old he was forced to leave his home to never return.

Mr. XXXXX eventually moved to Denu, Ghana to attend a reputable all-boys high school. *Id.* at ¶10. For several years he successfully hid his sexual orientation and gender identity from his peers. Then, in May 2012, he developed a secret relationship with one of his classmates. *Id.* at ¶10. Several months after the relationship began the two boys were caught kissing by the school prefect. *Id.* Mr. XXXXX was once again publicly brought before the school body, beaten and suspended solely because he acted romantically towards another male. *Id.* at ¶12.

After this incident Mr. XXXXX fled to the north of Ghana, to Bawku. *Id.* at ¶13. In May 2013 he was again severely beaten, this time by fellow nationals because he was perceived to be gay. *Id.* at ¶16. The police were called and responded to the scene only to further ostracize and badger Mr. XXXXX for being a gay man. *Id.* at ¶17. The police made no attempt to protect him. *Id.* He later learned that his mother had to bribe the police to prevent them from pressing charges against Mr. XXXXX for homosexual conduct. *Id.* at 18. Mr. XXXXX experienced such extreme internal injuries that he lost consciousness. *Id.* at ¶17.

Once again Mr. XXXXX attempted to relocate within Ghana in order to seek safety; on this occasion he fled to Tamale. *Id.* at ¶19. Unfortunately, soon after he arrived he learned that the local chiefs in the area were instructing countrymen to identify all people believed to be gay. *Id.* Fearing for his life, his mother frantically explored options to get her son safely out of the country and protect him. *Id.* at ¶20. After working closely with an agency that focuses on educational experiences abroad, Mr. XXXXX was accepted at a college in Arkansas. *Id.* at ¶22.

Mr. XXXXX left Ghana on January 12, 2014 and entered the United States on an F1 student visa. Ex. A. He first attended Cossatot Community College and then transferred to Central Texas College. Ex. C at ¶23. He has always placed a lot of emphasis on his education and had every intention of remaining in school until his mother informed him that she didn't have sufficient funds to cover his tuition. *Id.* As a result, Mr. XXXXX was forced to drop out of school in December 2014. *Id.*

While enrolled in Central Texas College, Mr. XXXXX was finally comfortable expressing his sexual orientation and gender identity. *Id.* at ¶24. He joined the Gay Straight Alliance and has been an active member in the group. *See* Exhibit F, Letter of Support from Rickey Hicks, President of the Gay Straight Alliance. Mr. XXXXX aspires to gain lawful status so that he can apply for financial aid in order to re-enroll in school and pursue a career in the medical field. Ex. C at ¶25. If forced to return to Ghana he will have to repress his sexual orientation and gender identity. Furthermore, he would continue living in fear knowing that fellow Ghanaians might attack him simply for perceiving him to be gay. *Id.* at ¶27.

Argument

To demonstrate eligibility for asylum the applicant must establish that he is a "refugee," which requires a showing that he has suffered past persecution or has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA §101(a)(42)(A). Furthermore, he must prove that he is not barred from asylum under INA §208(b)(2). After proving eligibility, asylum is a matter of discretion.

I. Mr. XXXXX is a Refugee and Should be Granted Asylum

i. Mr. XXXXX has Suffered Past Persecution

There is no universally accepted definition of "persecution." *See Handbook on Procedures and Criteria for Determining Refugee Status*, Office of the United High Commission of Refugees, 51, ¶14 (Geneva, January 1992). The Fifth Circuit defines "persecution" as "[t]he infliction of suffering or harm, under government sanction, upon persons who differ in a way regarded as offensive (e.g., race, religion, political opinion, etc.), in a manner condemned by civilized governments." *Zhao v. Gonzales*, 404 F.3d 295, 307 (5th Cir. 2005) (quoting *Abdel-Masieh v. INS*, 73 F.3d 579, 583-84 (5th Cir. 1996)). When determining whether an applicant's

abuse constitutes past persecution, courts are to look at the record as a whole. “An applicant may establish past persecution on the basis of the cumulative effects of multiple incidents even if each incident, considered in isolation, would not rise to the level of persecution.” *Lin*, 478 F. App’x at 227. Likewise, a court should consider the cumulative significance of the events, taken as a whole, and should avoid addressing the severity of each event in isolation. *Tamara-Gomez v. Gonzales*, 447 F.3d 343, 348 (5th Cir. 2006).

It is indisputable that Mr. XXXXX has suffered past persecution. *See* Ex. C. He was physically beaten and suspended from two separate schools. *Id.* at ¶2. He was ostracized and publicly humiliated on both instances by authoritative figures before the entire student body. *Id.* at ¶¶5,12. In addition, he was imprisoned for days and beaten at the direction of the chief of his town and banished after being advised never to return. *Id.* at ¶8. Mr. XXXXX has also been beaten to the point of losing consciousness by his fellow nationals. *Id.* at ¶¶16-17.

ii. Mr. XXXXX Has been Persecuted on Account of his Membership in a Particular Social Group - Homosexuals in Ghana

Courts look to the following factors when determining whether a “particular social group” exists: “(1) whether the group’s shared characteristic gives the members the requisite social visibility to make them readily identifiable in society and (2) whether the group can be defined with sufficient *particularity* to delimit its membership.” *Chehab v. Holder*, 538 F. App’x 466, 469 (5th Cir. 2013) (per curiam) (internal quotation marks and citation omitted) (emphasis in original). A group need not be *ocularly visible* to be a particular social group. *Matter of W-G-R*, 26 I&N Dec. 208, 217 (BIA 2014) (noting that courts have “for decades” recognized that groups, such as homosexuals, “that are clearly not ocularly visible” constitute a “particular social group”). It is enough that a group has enough *social distinction* to be identified. *See Matter of M-E-V-G-*, 26 I&N Dec. 227, 243 (BIA 2014).

The BIA and other courts have for decades recognized homosexuals in certain countries as a “particular social group.” *See, e.g., Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822-23 (BIA 1990) (gay men in Cuba are a particular social group). In July 1994, almost ten years after *Toboso-Alfonso* made his original request for asylum, then U.S. Attorney General Janet Reno released Order 1895-94 (Order), which made *Toboso-Alfonso* binding precedent for INS officials making future immigration and asylum decisions. The Order stated that “an individual who has

been identified as homosexual and persecuted by his or her government for that reason alone may be eligible for relief under the refugee laws on the basis of persecution because of membership in a social group."

Once the group is defined membership in the particular social group must be "one central reason for persecuting the applicant." 8 U.S.C. § 1158(b)(1)(B)(i). The applicant need not "provide direct proof of his persecutors' motives," but rather "must provide *some* evidence of it, direct or circumstantial." *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992). Overall, there must be a "nexus" between the applicant's membership in a particular social group and the persecution. *See Sharma*, 729 F.3d at 413.

Mr. XXXXX has known since he was a child that he is gay. *See* Ex. C, ¶5. This is further confirmed by his mother. *See* Ex. D. The persecution he has experienced is on account of him being gay. His attackers in his schools, the chief of his town, and individuals on the street specifically stated that they were beating him because he is gay. The police refused to protect him because he is gay.

iii. The Government In Ghana Is Either Unable Or Unwilling To Protect Mr. XXXXX

"To prevail on a claim of past persecution, an alien must establish that he suffered persecution at the hands of 'the government or forces that a government is unable or unwilling to control.'" *Perez v. Holder*, 516 F. App'x 327, 328 (5th Cir. 2013) (per curiam) (citation omitted); *see also Gharti-Magar v. Holder*, 551 F. App'x 197, 198 (5th Cir. 2014) (per curiam) ("Past persecution involves harm caused by the government or forces that the government is unable or unwilling to control."); *Tesfamichael v. Gonzales*, 469 F.3d 109, 113 (5th Cir. 2006) ("Past persecution entails harm inflicted on the alien on account of a statutorily enumerated ground by the government or forces that a government is unable or unwilling to control.") (citing 8 C.F.R. § 1208.13(b)(1) (2006)). "Whether a government is 'unable or unwilling to control' private actors . . . is a factual question that must be resolved based on the record in each case." *Crespin-Valladares*, 632 F.3d at 128-29 (internal quotation marks and citation omitted). When making this factual determination, courts routinely look to State Department country reports. *E.g., Zhu v. Gonzales*, 493 F.3d 588, 598, 601 (5th Cir. 2007).

The Ghanaian Government has criminalized homosexual acts. Under Ghanaian law, a “person who has unnatural carnal knowledge of ... another person of not less than sixteen years of age with the consent of that other person commits a misdemeanor,” Criminal Offences Act 29 of 1960 § 104, 3 Laws of Ghana (rev. ed. 2004). The offense is punishable on conviction by a maximum three-year prison term. Criminal and Other Offences (Procedure) Act 30 of 1960, § 296, 3 Laws of Ghana (rev. ed. 2004). “Unnatural carnal knowledge” involves “sexual intercourse with a person in an unnatural manner” and requires “the least degree of penetration.” Criminal Offences Act 29 OF 1960 §§ 99 & 104. In addition to criminalizing same-sex sexual acts, the police discriminate against LGBT people. The State Department reports that police “were reluctant to investigate claims of assault or violence against LGBT persons. *See Exhibit G, Country Reports on Human Rights Practices for 2013: Ghana*, published annually by the U.S. Department of State, Bureau of Democracy, Human Rights and Labor (“State Department Reports”), available at <http://www.state.gov/j/drl/rls/hrrpt/index.htm>.

Furthermore, public discrimination against gays and lesbians is widespread. The State Department report notes that LGBT persons in Ghana experience discrimination in employment and education. *Id.* In communities “homosexuals are regularly subject to harassment, gay bashing, physical violence and extortion. The government overtly promotes the discrimination of gays and lesbians. As Amnesty International reported in its Annual Report in 2012, a regional minister in Ghana “ordered security forces to arrest all gay men and lesbians in the west of the country, and called on landlords and tenants to report anyone they suspected of being gay or lesbian. *See Exhibit H, Amnesty International Report 2012*, available at <http://www.amnestyusa.org/sites/default/files/air12-report-english.pdf>. Crimes are occurring “at the hands of, or with the collusion of, the police or other agents of the state.” *See Exhibit I, “Because of You: Blackmail and Extortion of Gay and Bisexual Men in Ghana”, Nowhere to Turn*, International Gay and Lesbian Human Rights Commission, available at https://iglhrc.org/sites/default/files/519-1_0.pdf.

On two occasions Mr. XXXXX sought the protection of the police but they did nothing to help him. In the first instance his mother turned to the police after her son was beat by the town chief and banished from the municipality. *See Ex. D.* The police “made a mockery of the whole thing...” and threatened to arrest and prosecute her son because he is a homosexual. *Id.* Years

later, in a different part of the country, Mr. XXXXX again turned to the police after being brutally attacked on the street. In this instance, when the police responded to the scene and learned that Mr. XXXXX had been assaulted because he was gay, they told him he was “polluting the community” and took no steps to penalize the men who attacked him. *See* Ex. C, ¶17. Furthermore, his mother had to bribe the officers to prevent them from arresting Mr. XXXXX for homosexual conduct. *Id* at ¶18. Mr. XXXXX’s mother went to the courthouses in attempt to have her letter in support of this claim notarized and they refused because of the nature of the claim. *See* Ex. D.

iv. Mr. XXXXX Has a Well-Founded Fear of Future Persecution Should He Return to Ghana

Because Mr. XXXXX has established past persecution, he “shall also be presumed to have a well-founded fear of [future] persecution on the basis of the original claim.” 8 C.F.R. § 208.13(b)(1) (2014); *Cinaj v. Gonzales*, 247 F. App’x 537, 538-39 (5th Cir. 2007) (per curiam) (vacating BIA’s decision because it failed to apply the presumption of future persecution). That presumption cannot be rebutted because the government cannot show that conditions for gay men in Ghana have changed so drastically that his fear of persecution is no longer well-founded, or show that he could reasonably move in safety to another part of his country. *See* 8 C.F.R. § 208.13(b)(1) (2014).

Even if the government could overcome Mr. XXXXX’s presumption of future persecution, he can “demonstrate a subjective fear of persecution” that is also “objectively reasonable.” *See Zhao*, 404 F.3d at 307-10 (finding BIA abused its discretion in finding lack of well-founded fear of persecution). The individual is not required to establish “that he will be persecuted on returning to” Ghana, but only to make “a lesser showing of certainty—he must show ‘to a reasonable degree’ that his return there would be intolerable.” *Id.* at 307 (quoting *Eduard*, 379 F.3d at 189). Similarly, an applicant need not establish that “the persecutor is aware” of his sexuality. “It is well-settled that asylum applicants must only demonstrate that a feared persecutor ‘could easily become aware’ of an applicant’s protected beliefs or characteristics.” *Eduard*, 379 F.3d at 192-93 (citation omitted).

Mr. XXXXX has a subjective fear and his fear is objectively reasonable. He has personally been attacked in his schools, in his hometown and on the street. He moved throughout

the country and continued to experience discrimination. The police took no steps to protect him. Moreover, the country criminalizes homosexual conduct and community discrimination against homosexuals is well-documented and condoned by the State itself.

II. Extraordinary Circumstances Excuse the One-Year Filing Deadline

An asylum application must be filed within one year of the applicant's last arrival in the United States. INA §208(a)(2)(B); 8 C.F.R. §208.4(a)(2). In the event that an application is filed after the one year deadline, the applicant must show that he qualifies for one of two exceptions: 1) changed circumstances that materially affect eligibility for asylum, or 2) extraordinary circumstances relating to the delay in filing an application within a year of entry. INA §208(a)(2)(D); 8 C.F.R. §208.4(a)(4)-(5). In either instance the applicant must apply within a reasonable period given the changed or extraordinary circumstances. 8 C.F.R. §208.4(a)(4).

Mr. XXXXX entered the United States on January 12, 2014 on an F1 student visa. *See* Ex. A; *see also*, Exhibit J, I-20s from Cossatot College and Central Texas College. He first attended Cossatot College in De Queen, Arkansas and then transferred to Central Texas Community College in Killeen, Texas. In December 2014 he learned that his mother did not have the money for him to continue his studies and so he was forced to drop out of school. *See* Ex. C, ¶23. No longer with lawful status and fearful for his life if he had to return to Ghana, Mr. XXXXX sought legal assistance. His case was accepted by Human Rights First on a pro bono basis in February and Mr. XXXXX is now filing his asylum application within a reasonable period of time.

III. Discretionary Factors Weigh in Favor of Granting Mr. XXXXX Asylum

A refugee who is not barred should be granted asylum in the absence of "egregious adverse factors." *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1985). There is no adverse factor weighing against an exercise of discretion to grant Mr. XXXXX asylum. He is a 21 year old who has worked hard to pursue an education. He was forced to flee his home country in order to find safety here in the United States and the only thing he wants to be able to do is live his life openly as a gay man without fearing for his safety.

IV. **In the Alternative, Mr. XXXXX Should be Granted Withholding of Removal to Ghana Under Section 241(b)(3) of the Immigration and Nationality Act or Protection Under the UN Convention Against Torture**

i. **Mr. XXXXX Must be Granted Withholding of Removal**

Unlike asylum, withholding of removal is not discretionary because “the Attorney General may not remove an alien to a country if the Attorney General decides that the alien’s life or freedom would be threatened in that country because of the alien’s . . . membership in a particular social group.” *Zhu*, 493 F.3d at 596 (citing 8 U.S.C. § 1231(b)(3)(A)). Where the applicant establishes past persecution, “it shall be presumed that the applicant’s life or freedom would be threatened in the future in the country of removal.” 8 C.F.R. § 208.16(b)(1) (2014). An applicant may also establish a claim with a showing that he faces a “clear probability of persecution.” *INS v. Stevic*, 467 U.S. 407, 413 (1984).

As set forth above, Mr. XXXXX can establish past persecution and therefore is entitled to a presumption of future persecution. The criminalization of homosexual conduct and the well-documented accounts of discrimination against the LGBT community in Ghana make it clear that there’s a clear probability that he would face future persecution. There are no bars to a grant of withholding in this case. Therefore, Mr. XXXXX must be granted a withholding of removal.

ii. **Mr. XXXXX is Entitled to Relief Under the UN Convention Against Torture**

“Claims based on the Convention Against Torture differ from those based on eligibility for asylum or withholding of removal because the claim need not be based on race, religion, nationality, membership in a particular social group, or political opinion.” *Garcia v. Holder*, --- F.3d ---, No. 13-60381, 2014 WL 2958637, at *3, 5, 7 (5th Cir. July 1, 2014). The question for Convention Against Torture claims is whether it is “more likely than not that [the applicant] would be tortured if removed to the proposed country of removal.” *Id.* (quoting 8 C.F.R. § 208.16(c)(2) (2014)). Torture, for purposes of CAT, is “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person . . . for any reason based on discrimination of any kind, when such pain or suffering is inflicted. . . with the consent or acquiescence of a public official or other person acting in an official capacity.” 8 C.F.R. § 208.18(a)(1) (2014).

It is more likely than not that Mr. XXXXX would be physically and mentally tortured by the public without protection from the government if he is forced to return to Ghana. Public discrimination of people who are gay and people who are perceived to be gay runs rampant. Furthermore, the police are irresponsible to investigating acts of violence toward the LGBT community. *See supra.*

Conclusion

Based on the foregoing, Mr. XXXXX should be granted asylum. In the alternative, he must be granted withholding of removal under INA §241(B)(3) and protection under the UN Convention Against Torture.

Respectfully submitted,

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